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RANJIT KUMAR HALDAR

v.

STATE OF SIKKIM

(Criminal Appeal No. 427 of 2014)

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JULY 25, 2019

**[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]**

- Penal Code, 1860: s.302 – Murder – Prosecution case was that the victim-deceased had gone with his family for work with the accused – Accused along with his nephew and wife of the deceased murdered the victim and buried his body in the house where they used to stay – Body of deceased was concealed underneath the wooden flooring at their place of residence and was recovered on the disclosure statement made by the wife of the deceased after removing the flooring – Conviction of appellants by courts below –*
- C *On appeal, held: There is no dispute that the lock of the house was opened by the Police for the first time after appellant locked the house and went to his native village – The house was in his possession and no one had access to that house and, therefore, the burden of proving the fact that somebody had access to the house during his absence was on him in terms of s.106 of the Evidence Act – Appellant did not even suggest to the prosecution witnesses of possibility of access to the house rented by him – The testimony of PW-5 that the house was taken on rent by the appellant was proved – Appellant miserably failed to disprove the presumption under s.106 of the Evidence Act – In respect of the lady accused, recovery of*
- D *dead body concealed under the wooden planks covered by mud and stones on her disclosure statement was very strong incriminating circumstance against her to maintain her conviction – Apart from that, there was a statement of PW-2 before whom she had confessed – PW-4, husband of PW-2 supported this testimony – Also the dead*
- E *body was identified by PW-3 from the wearing apparels of the deceased such as sweater and a mala – None of the witnesses were cross-examined to the effect that dead body was not of the deceased – Both the courts below rightly recorded conviction of the appellants as the persons responsible for causing death of the deceased – Evidence Act, 1872 – s.106.*
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*Evidence Act, 1872: s.106 – Burden of proof – s.106 lays down general rule about the burden of proof – This section was introduced not to relieve the prosecution of their duty but was designed to meet the situation in which it is impossible or difficult for the prosecution to establish facts which were especially within the knowledge of the accused – Penal Code, 1860 – s.302.*

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*First Information Report: Murder case – FIR was lodged originally in Bengali language which was later translated in Nepali language – Non-examination of translator – Effect on prosecution case – Held: First Information Report was only in respect of information of death – The Investigating Officer carried out investigation de-hors the version given by the informant in the First Information Report – Therefore, non-examination of translator would not create any doubt on the prosecution case – Penal Code, 1860 – s.302.*

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#### **Dismissing the appeals, the Court**

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**HELD :** 1.1 **Burden of proof.** Section 106 of the Evidence Act was introduced not to relieve the prosecution of their duty but it is designed to meet the situation in which it would be impossible or difficult for the prosecution to establish facts which are especially within the knowledge of the accused. [Para 14] [761-B-C]

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1.2 The dead body was recovered in a gunny bag concealed under the wooden planks covered by mud and stones. The lock of the house was opened by the Police for the first time after appellant locked the house and went to his native village. Therefore, in the absence of any question on these aspects that the house was in his possession and no one had access to that house, the burden of proving the fact that somebody had access to the house during his absence was on him in terms of Section 106 of the Act. The testimony of PW-5 that the house was taken on rent by the appellant was proved and on the basis of statement of PW-3, who is a Carpenter and was residing in the same area, the appellant miserably failed to disprove the presumption under Section 106 of the Act. [Para 21] [767-B-E]

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2. In respect of the lady accused, there is evidence of recovery of dead body concealed in a house on the basis of her

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- A disclosure statement, where she was allegedly living with the other appellant along with the deceased and her two children. The recovery of dead body concealed under the wooden planks covered by mud and stones is very strong incriminating circumstance against her to maintain her conviction. Apart from such incriminating circumstance, there is a statement of PW-2 before whom she has confessed. [Para 22] [767-E-G]
- B 3. The argument that the person who translated the Bengali version into Nepali was not examined when the First Information Report was lodged is wholly inconsequential. Such First Information Report was only in respect of information of death.
- C The Investigating Officer carried out investigation de-hors the version given by the informant in the First Information Report. Therefore, non-examination of translator would not create any doubt on the prosecution case. [Para 23] [767-G-H; 768-A]
- D 4. Argument that no DNA Test was conducted to identify the dead body, is not tenable. The dead body was recovered on the statement of wife of the deceased who stated in the disclosure statement that dead body of her husband is concealed under the wooden planks in a room which was in her possession. Apart from the said statement, PW-3 identified the dead body from the wearing apparels of the deceased such as sweater and a mala. Therefore, the argument raised is not tenable. [Para 24] [768-B-C]
- F *Shambu Nath Mehra v. State of Ajmer AIR 1956 SC 404 : [1956] SCR 199 ; Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681 : [2006] 7 Suppl. SCR 156 ; Nika Ram v. State of Himachal Pradesh (1972) 2 SCC 80 : [1973] 1 SCR 428 ; State of Rajasthan v. Thakur Singh (2014) 12 SCC 211 : [2014] 8 SCR 18 ; Dnyaneshwar v. State of Maharashtra (2007) 10 SCC 445 : [2007] 4 SCR 248 ; Ram Gulab Chaudhary & Ors. v. State of Bihar (2001) 8 SCC 311 : [2001] 3 Suppl. SCR 279 – relied on.*
- G *Sudam Charan Dash v. State of Orissa & Anr. (2014) 2 SCC 141 : [2013] 10 SCR 284 – referred to.*
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<u>Case Law Reference</u>			A
<b>[2013] 10 SCR 284</b>	<b>referred to</b>	<b>Para 5</b>	
<b>[1956] SCR 199</b>	<b>relied on</b>	<b>Para 15</b>	
<b>[2006] 7 Suppl. SCR 156</b>	<b>relied on</b>	<b>Para 16</b>	
<b>[1973] 1 SCR 428</b>	<b>relied on</b>	<b>Para 17</b>	B
<b>[2014] 8 SCR 18</b>	<b>relied on</b>	<b>Para 18</b>	
<b>[2007] 4 SCR 248</b>	<b>relied on</b>	<b>Para 19</b>	
<b>[2001] 3 Suppl. SCR 279</b>	<b>relied on</b>	<b>Para 20</b>	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 427 of 2014.

From the Judgment and Order dated 25.11.2011 of the High Court of Sikkim at Gangtok in Crl. A. No. 8 of 2010.

With

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Crl. A. No. 458 of 2015.

Ms. Aparna Jha, Ms. Kriti Sondhi, Arvind Sharma, F. I. Choudhury and Rameshwar Prasad Goyal, Advs. for the Appellant.

Raghvendra Kumar and M/s. Arputham Aruna and Co., Advs. for the Respondent.

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The Judgment of the Court was delivered by

**HEMANT GUPTA, J.**

1. The present appeals arise out of common judgment dated November 25, 2011, maintaining conviction and sentence on the appellants for causing death of Netai Mohanta.

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2. An FIR was lodged by Bhola Mohanta (PW-1), brother of the deceased, on December 28, 2004. The original FIR was lodged in Bengali language (Exh. 1), which was later translated in Nepali language. Bhola Mohanta (PW-1) in his statement has stated that his brother had gone to Rabom Power House at Lachung along with his family with the accused Ranjit Haldar to work as Carpenter. He further stated that his deceased brother, Netai Mohanta, was murdered by accused Ranjit Haldar along with his nephew Puran Bandhu Mondal and Mamta Mohanta, wife of

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A the deceased. He also stated that the body of his deceased brother was buried inside the house at Rabom where they used to stay.

3. On the basis of his statement, the investigations were undertaken by Rinzing Palzor Bhutia (PW-15). He deposed that he availed the services of one Krishna Kanta Burman for translating the contents of

B FIR, lodged by Bhola Mohanta, from Bengali language to Nepali language. He visited the place of occurrence at the house belonging to one Jamyang Bhutia (PW-5) and prepared rough sketch map and also arranged to take photographs of the place of occurrence. Accused Mamta Mohanta was present at the place of occurrence who was brought by Bhola Mohanta (PW-1). The statement (Exh. 4) of accused Mamta

C Mohanta was recorded under Section 27 of the Indian Evidence Act, 1872<sup>1</sup>. On the basis of statement, the dead body of deceased Netai Mohanta concealed underneath the wooden flooring at the place of residence was recovered after the flooring was removed. Dr. S.D. Sharma (PW-12), a medical consultant of STNM Hospital, was also

D present at the time of recovery of dead body. The dead body was found packed in a gunny bag with its opening tied by a rope. The body has not decomposed but dried to certain extent as the weather condition at Rabom being cold. The dead body was identified by Ravi Deb (PW-3). The postmortem report is Exh. 27. The investigating officer took into

E possession one plane (*randa*), one local made ‘angethi’, one ‘batali’ (carpenter tool) and a lock. He also took into possession two gunny bags smeared with mud, two pieces of rope of different sizes from the place of occurrence.

4. Learned counsel for the appellants have vehemently argued that the original FIR was recorded in Bengali which was translated in

F Nepali but prosecution has not examined Krishna Kanta Burman who facilitated translation of the FIR from Bengali to Nepali. The prosecution has examined Kumar Tamang (PW-14) who has written the First Information Report as told by Krishna Kanta Burman. Still further, the FIR was not sent to the Magistrate, therefore, the first version in the

G FIR is not creditworthy. Since the foundation itself is shaky, the entire prosecution story is doubtful.

5. Learned counsel for the appellants relied upon the judgment in *Sudam Charan Dash v. State of Orissa & Anr.*<sup>2</sup> to contend that

H <sup>1</sup> for short, ‘Act’

<sup>2</sup> (2014) 2 SCC 141

information to the Magistrate is necessary chain of events in the investigation. It is also argued that there is no evidence that the dead body recovered is that of deceased Netai Mohanta as there was no DNA examination conducted. The statements of witnesses in respect of identification of dead body are discrepant therefore, the prosecution cannot be said to have completed the chain of circumstances so as to convict the appellants.

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6. It is also argued by the learned counsel for the appellants that appellants were not residing in the house at the time of recovery of alleged dead body, therefore, the prosecution has failed to prove that the house continued to be in possession of the appellants at the time of recovery of dead body.

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7. The prosecution examined Jamyang Bhutia (PW-5) who deposed that he has given two rooms in his house on rent to Ranjit Haldar. He further deposed that he has engaged him in the construction work of his another house. He deposed that one boy who was initially residing with the accused left the place. Later, one more Carpenter along with his wife and two small children started living together in the same two rooms. After residing in his house for less than a month, they all left the house after locking the door. He has not seen them leaving the house. It is after one month, the Police came to find out whether any Carpenter was residing in his house. He showed the house where the Carpenter was residing. Thereafter, the Police along with the female accused came to his house. The lady accused standing in the dock pointed the spot below the wooden floor of the house where the dead body of her husband was concealed. The Police removed the wooden planks from the floor and found the dead body packed in a gunny bag. The dead body was in a decomposed state and foul smell was coming out therefrom. The dead body was examined by a Doctor present there. The witness deposed that he does not reside in the house from where the dead body was recovered. He lives in a separate house with his family. The accused lived for less than a month in the said house. The lady accused joined later. He further deposed that the door of the house remained under lock and key till the arrival of the Police.

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8. Ravi Deb (PW-3) is also a Carpenter. He knew both the accused. He was informed of the death of Nitai Mohanta and was called by the Police. The Police in his presence broke open the lock of the door of a portion of the house. The appellant Mamta Mohanta was

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- A asked where the dead body of her husband was. On her pointing out to a spot under a bed as being the place where dead body of the deceased was concealed, the Police with the help of persons present there removed wooden planks. Under the wooden planks, there were stones and mud. After stones and mud was removed, a dead body found concealed wrapped in a jute gunny bag whose opening was tied with a string. The dead body was then brought out. He identified the deceased from his wearing apparels particularly a sweater and one mala (tulsi) around his neck which he used to wear and also from the appearance of the face.
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- 9. Doma Lepcha (PW-2) is the Vice President of Kazor Block Panchayat. She deposed that one Bhola Mohanta (PW-1) has filed a written report at his Gram Panchayat in respect of missing of his deceased brother Netai Mohanta. Appellant Mamta Mohanta was brought by Bhola Mohanta (PW-1). Mamta Mohanta disclosed that her husband has been murdered by Ranjit Haldar with 'randa' and the dead body has been concealed in the same rented house in which they were last residing
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- D in North Sikkim. She also disclosed that, during the incident, her husband was strangulated with a rope by Ranjit Haldar and his nephew Puran Bandhu Mondal and she had helped them. Doma Lepcha (PW-2) is a witness of extra-judicial confession of Mamta Mohanta. In cross-examination, Doma Lepcha (PW-2) deposed that she knew the deceased Netai Mohanta as he was staying near her house.
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10. Phurba Lepcha (PW-4) is a resident of Kazor Busty, Mangan and a witness of the disclosure statement made by Mamta Mohanta which led to recovery of dead body.

- F 11. Dr. S.D. Sharma (PW-12) was associated at the time of recovery of dead body. He deposed that the body was in the advance stage of putrefaction. He deposed that time since death was more than two weeks and the cause of death was combined effect of antemortem head injury produced by blunt force and antemortem strangulation by ligature. The Medical Legal Autopsy Report is Exh. 25. The postmortem was conducted at the site where the dead body was recovered.
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12. Bhola Mohanta (PW-1) is the brother of the deceased Netai Mohanta and the informant on whose information the prosecution was set in motion. He stated that he does not know English, Hindi or Nepali and only knows Bengali. He deposed that he had never met Ranjit Haldar earlier.

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13. Before we examine respective contentions of the learned counsel for the parties, it would be appropriate to extract Section 106 of the Act, which reads 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.”

14. The general rule is that the burden of proof is on the prosecution. Section 106 of the Act was introduced not to relieve the prosecution of their duty but it is designed to meet the situation in which it would be impossible or difficult for the prosecution to establish facts which are especially within the knowledge of the accused.

15. In *Shambu Nath Mehra v. State of Ajmer*<sup>3</sup>, the Court held as under:

“8. ... Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof.

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.”

Illustration (a) says—

“A desires a court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.”

9. 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 *pre-eminently* or *exceptionally* within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because

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<sup>3</sup> AIR 1956 SC 404

- A who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are *Attygalle v. Emperor* [AIR 1936 PC 169] and *Seneviratne v. R.* [(1936) 3 All ER 36, 49].

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- C 11. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. This is a section which must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts."
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- F 16. In another judgment reported as *Trimukh Maroti Kirkan v. State of Maharashtra*<sup>4</sup>, the Court considered a situation wherein accused is alleged to have committed the murder of his wife. The prosecution succeeded in leading evidence to show that shortly before the commission of the crime, they were seen together or the offence takes place in the dwelling house where the appellant normally resided. The Court held as under:

- G "22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be

false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* [(1972) 2 SCC 80 : 1972 SCC (Cri) 635 : AIR 1972 SC 2077] it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with "khukhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* [(1992) 3 SCC 106 : 1993 SCC (Cri) 435] the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of T.N. v. Rajendran* [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a

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A result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

B 17. In another Judgment reported as *Nika Ram v. State of Himachal Pradesh*<sup>5</sup>, it was held that the absence of any cogent explanation by the accused would indicate that the accused is responsible for commission of the crime. The Court held as under:

C “16. It is in the evidence of Girju PW that only the accused and Churi deceased resided in the house of the accused. To similar effect are the statements of Mani Ram (PW 8), who is the uncle of the accused, and Bhagat Ram school teacher (PW 16). According to Bhagat Ram, he saw the accused and the deceased together at their house on the day of occurrence. Mani Ram (PW 8) saw the accused at his house at 3 p.m., while Poshu Ram (PW 7) saw the accused and the deceased at their house on the evening of the day of occurrence. The accused also does not deny that he was with the deceased at his house on the day of occurrence. The house of the accused, according to plan PM, consists of one residential room, one other small room and a verandah. The correctness of that plan is proved by A.R. Verma overseer (PW 5). The fact that the accused alone was with Churi deceased in the house when she was murdered there with the khokhri and the fact that the relations of the accused with the deceased, as would be shown hereafter, were strained would, in the absence of any cogent explanation by him, point to his guilt.”

F 18. In *State of Rajasthan v. Thakur Singh*<sup>6</sup>, this Court reiterated the principle that burden of proving guilt of the accused is on the prosecution but there may be certain facts pertaining to a crime that can be known only to the accused. The Court held as under:

G “22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he

H <sup>5</sup>(1972) 2 SCC 80

<sup>6</sup>(2014) 12 SCC 211

does not do so, then it is a strong circumstance pointing to his guilt A based on those facts.”

19. In *Dnyaneshwar v. State of Maharashtra*<sup>7</sup>, this Court held as under:

“10. It has not been disputed before us that the deceased was murdered in her matrimonial home. It is not the case of the appellant that the offence was committed by somebody else. It is also not his case that there was a possibility of an outsider to commit the said offence. One of the circumstances which is relevant is that when the couple was last seen in a premises to which an outsider may not have any access, it is for the husband to explain the ground for unnatural death of his wife. In *Raj Kumar Prasad Tamarkar v. State of Bihar* [(2007) 10 SCC 433: (2007) 3 SCC (Cri) 716: (2007) 1 Scale 19] this Court held: (SCC p. 440, paras 22-23)

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“22. The conspectus of the events which had been noticed by the learned Sessions Judge as also by the High Court categorically goes to show that at the time when the occurrence took place, the deceased and the respondent only were in the bedroom and the terrace connecting the same. There was no other person. The cause of death of the deceased Usha Devi i.e. by a gunshot injury is not disputed. The fact that the terrace and the bedroom are adjoining each other is not in dispute.

23. The autopsy report shows that ‘a blackening and charring’ existed so far as Injury (i) is concerned. The blackening and charring keeping in view the nature of the firearm, which is said to have been used clearly go to show that a shot was fired from a short distance. Blackening or charring is possible when a shot is fired from a distance of about 2 feet to 3 feet. It, therefore cannot be a case where the death might have been caused by somebody by firing a shot at the deceased from a distance of more than 6 feet. The place of injury is also important. The lacerated wound was found over glabella (middle of forehead). It goes a long way to show that the same must have been done by a person who wanted to kill the deceased from a short distance. There was, thus, a remote

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<sup>7</sup> (2007) 10 SCC 445

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- A possibility of causation of such type of injury by any other person, who was not on the terrace. Once the prosecution has been able to show that at the relevant time, the room and terrace were in exclusive occupation of the couple, the burden of proof lay upon the respondent to show under what circumstances death was caused to his wife. The onus was on him. He failed to discharge the same.”
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20. In *Ram Gulab Chaudhary & Ors. v. State of Bihar*<sup>8</sup>, this Court held as under:

- C “24. Even otherwise, in our view, this is a case where Section 106 of the Evidence Act would apply. Krishnanand Chaudhary was brutally assaulted and then a chhura-blow was given on the chest. Thus chhura-blow was given after Bijoy Chaudhary had said “he is still alive and should be killed”. The appellants then carried away the body. What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the appellants.
- D The appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary has not been seen alive. 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. We, therefore, see no substance in this submission of Mr Mishra.”
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21. With this background, the argument of learned counsel for the appellants is that recovery of dead body was at the instance of Mamta

Mohanta and that there is no recovery in pursuance of disclosure statement made by appellant-Ranjit Haldar. Therefore, the recovery of dead body on the statement of wife of the deceased cannot be used against the appellant. We do not find any merit in the said argument. The consistent statement of the prosecution witnesses such as Jamyang Bhutia (PW-5) corroborated by Ravi Deb (PW-3) is that the house in Rabom was taken on rent by the appellant- Ranjit Haldar. The dead body was recovered in a gunny bag concealed under the wooden planks covered by mud and stones. The cross-examination conducted on the witnesses does not suggest that the renting of the premises by Ranjit Haldar is disputed in any manner. There is no dispute that the lock of the house was opened by the Police for the first time after Ranjit Haldar locked the house and went to his native village. Therefore, in the absence of any question on these aspects that the house was in his possession and no one had access to that house, the burden of proving the fact that somebody had access to the house during his absence was on him in terms of Section 106 of the Act. The appellant Ranjit Haldar has not even suggested to the prosecution witnesses of possibility of access to the house rented by him. The testimony of Jamyang Bhutia (PW-5) that the house was taken on rent by Ranjit Haldar is proved and on the basis of statement of Ravi Deb (PW-3), who is a Carpenter and was residing in the same area, the appellant Ranjit Haldar has miserably failed to disprove the presumption under Section 106 of the Act.

22. In respect of the appellant Mamta Mohanta, there is evidence of recovery of dead body concealed in a house on the basis of her disclosure statement, where she was allegedly living with the other appellant along with the deceased and her two children. The recovery of dead body concealed under the wooden planks covered by mud and stones is very strong incriminating circumstance against Mamta Mohanta to maintain her conviction. Apart from such incriminating circumstance, there is a statement of Doma Lepcha (PW-2) before whom she has confessed. Phurba Lepcha (PW-4) is the husband of Doma Lepcha (PW-2) who supports this testimony.

23. The argument that Krishna Kanta Burman who translated the Bengali version into Nepali was not examined when the above mentioned First Information Report was lodged is wholly inconsequential. Such First Information Report was only in respect of information of death. The Investigating Officer has carried out investigation *de-hors* the

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- A version given by the informant in the First Information Report. Therefore, non-examination of Krishna Kanta Burman does not create any doubt on the prosecution case.

24. In respect of an argument that no DNA Test was conducted to identify the dead body, is not tenable. The dead body was recovered

- B on the statement of wife of the deceased who has stated in the disclosure statement that dead body of her husband is concealed under the wooden planks in a room which was in her possession. Apart from the said statement, Ravi Deb (PW-3) identified the dead body from the wearing apparels of the deceased such as sweater and a mala. None of the witnesses have been cross-examined to the effect that dead body was not of the deceased. Therefore, the argument raised is not tenable.

25. Both the Courts below have rightly recorded conviction of the appellants as the persons responsible for causing death of the deceased Netai Mohanta. Consequently, we do not find any error in the judgment

- D passed by the Courts below which does not warrant any interference.
- D Accordingly, both the appeals are dismissed.

Devika Gujral

Appeals dismissed.