

### Precedents on custodial death

**Custodial death—Police atrocities—Burden of proof—Necessity to amend the law to shift the burden of proving the complicity of police officials.**

We would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police Officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to their for protection.

*State of Uttar Pradesh v. Ram Sagar Yadav and others*, 1986 CrLJ 836 : 1985 AIR (SC) 416 : 1985 SCC (Cr) 552 : 1985 CrLR (SC) 73 : 1985(1) Crimes 344 : 1985(1) Rec CrR 600

**Section 106—Burden of proof—Criminal offence—Burden of proving the defence would arise only when the prosecution has discharged its general burden of proving the guilt of accused.**

*Sawal Das v. State of Bihar*, 1974 CrLJ 664 : 1974 AIR (SC) 778 : 1974(4) SCC 193 : 1974(3) SCR 74

**Section 106—Burden of proof—Defence of accused—It has to be proved on preponderance of probabilities.**

*Mahesh Prasad Gupta v. State of Rajasthan*, 1974 CrLJ 509 : 1974 AIR (SC) 773 : 1974(3) SCC 591 : 1974 Cr LR (SC) 60

**Section 106—Burden of proof—Facts specially within knowledge of accused—Though the burden of proving the guilt is on prosecution, the illustration (b) cannot be extended to offences like murder to call upon the accused to prove that he did not commit the crime.**

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 who could know better than the whether he did or did not.

Illustration (b) to Section 106 has obvious reference to a very special type of case namely to offences under Sections 112 and 113, Indian Railways Act for travelling or attempting to travel without a pass or ticket or with an insufficient pass or ticket or with an insufficient pass, etc.

*Shambhu Nath Mehra v. The State of Ajmer*, 1956 AIR (SC) 404 : 1956 CrLJ 794 : 1956 SCR 199 : 1956 All WR (Supp) 79 : 1956 Nag LJ 464 : 1956(2) Mad LJ (SC) 1

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