

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 887 OF 2010**

Yakub Chandrakant Pol ... Appellant
V/s.
The State of Maharashtra ... Respondent

Mr. Aashay B.Topiwala for the Appellant.
Mr. N.B. Patil, APP for the Respondent -State.

**CORAM : SMT. SADHANA S. JADHAV &
N.R. BORKAR, JJ.**

**RESERVED ON : 22.02.2021.
PRONOUNCED ON : 22.06.2021.**

JUDGMENT (PER N.R. BORKAR, J.)

1] This appeal takes an exception to the judgment and order dated 17.8.2010 passed by the learned Additional Sessions Judge, Kalyan in Sessions Case No. 300 of 2008. By the impugned judgment and order, the appellant, who was the accused No.1 before the trial court, has been convicted for the offence punishable under section 302 of the Indian Penal Code (IPC) and sentenced to suffer Rigorous Imprisonment for Life and to pay fine of Rs.1000/-, in default, to suffer Rigorous Imprisonment for two months.

2] The deceased Rahel was the wife of the present appellant/accused No.1. It is the case of the prosecution that the deceased was initially married to one Ashok Kale. However, due to differences, they took divorce after one year of their marriage. Accused No.1 then married to the deceased.

3] After marriage, the deceased went to cohabit with accused No.1 at Mahalaxmi Nagar, Ambarnath. The family of the accused No.1 was consisting of his mother, brother and wife of his brother, who were accused nos.2 to 4 before the trial Court. It is alleged that accused were not treating the deceased well and they were insisting her to stay separately with accused No.1. The deceased was, therefore, constrained to lodge the report against them at Shivaji Nagar Police Station. The deceased thereafter left the house of accused and came to reside with her father PW-1 Bhausahab Randive. On the next day accused No.1 came to the house of PW-1 and told him that he would stay with the deceased separately and requested PW-1 to search house on rent for them. Accordingly, PW-1 had searched the house on rent for them at some distance from his house. The deceased and accused No.1 then came to reside in the said rented premises and they were residing there till the date of incident.

4] It is alleged that on the date of incident which took place on 7.9.2008 at about 9.00 p.m., PW-1 saw accused Nos.2 to 4 coming to the house of deceased. At about 11.30 p.m., accused No.1 came to the house of PW-1 and asked him to accompany him to his house. Accordingly, PW-1 accompanied the accused No.1 to his house. On reaching there, he saw that the deceased was lying on the cot and she was movementless. Therefore, he took her to the Central Hospital. However, she was declared brought dead. The postmortem of the deceased was conducted and it was found that the

deceased died due to asphyxia. On the report of PW-1, crime was registered against the accused Nos.1 to 4 vide Crime No. I-241 of 2008 for offence punishable under section 302 read with 34 of the IPC. However, on completion of investigation, the charge-sheet was filed against the accused Nos.1 to 4 for the offence punishable under section 302 read with 109 of the IPC.

5] The accused Nos.1 to 4 were charged and tried for the offences punishable under section 302 read with 109 of the IPC. The trial court by the impugned judgement and order convicted the present appellant/accused No.1 for the offence punishable under section 302 of the IPC and acquitted the accused Nos.2 to 4 of all the charges levelled against them. The State has not filed appeal against the acquittal of accused Nos.2 to 4.

6] We have heard learned Counsel for the appellant/accused No.1 and learned APP for the respondent -State.

7] The prosecution in order to prove the death of deceased was homicidal, has examined PW-8 Dr. Namrata Kulkarni. PW-8 has stated that on 8.9.2008 she was on duty as Casualty Medical Officer. On that day, she received the dead body of Rahel Yakub Pol from Ambernath Police Station for postmortem. On external examination, she found ligature mark of bluish-black colour and it's size was 10 x 2 cms. and it was on anterior aspect of neck. On internal examination,

she found muscle beneath ligature mark was congested and the hyoid bone was fractured. Thus, according to her the probable cause of death of the deceased was due to asphyxia.

8] PW-8 was cross-examined and in her cross-examination it was suggested to her that the ligature mark found on the person of deceased is possible in case of hanging. However, she has denied the said suggestion. There is no material on record to show that the death of deceased was either suicidal or accidental. In absence of such material, the trial court was justified in holding that the death of deceased was homicidal.

9] The question is, however, whether the homicidal death of the deceased was caused by the accused No.1 ?

10] PW-1 has stated in his evidence that as the deceased was being harassed by the accused, she had lodged the report against them with Shivaji Nagar Police Station. After lodging the complaint, the deceased and accused No.1 came to him and told him that they want to reside separately from accused Nos.2 to 4. Therefore, he had arranged separate residence for them on rent. The deceased and the accused No.1 then came to reside in the said rented premises two months prior to the incident.

11] PW-1 has been cross-examined on behalf of the accused. In the cross-examination, he has admitted that he

came to know about the incident from accused No.1. However, the evidence of PW-1 that on the day of incident the accused No.1 and the deceased were residing together has not been challenged.

12] According to PW-7 Vaishali More, she was residing in the neighbourhood of the deceased. She has stated in her evidence that the nature of deceased was very friendly. The deceased used to go for work and accused No.1 was not doing any work. Accused No.1 used to abuse and quarrel with the deceased. As this witness has denied that on the date of incident, she heard the sound of quarrel from the house of accused No.1, she was declared hostile. However, her evidence that accused No.1 used to abuse and quarrel with the deceased remained unchallenged as the learned advocate for the accused declined to cross-examine her.

13] It is apparent from the evidence of PW-7 that the accused No.1 was not treating the deceased well.

14] The accused No.1 and the deceased were residing together on the date of incident. Admittedly, the incident took place inside the dwelling house. PW-6 Vilas Deshmukh, the panch on spot panchanama, has stated in his evidence that broken bangles were lying at the place of incident. The evidence of PW-6 that broken bangles were lying at the place of incidence has not been challenged in the cross-examination. The said fact would indicate that the deceased

struggled to save herself. In the facts and circumstances, it was necessary for the accused No.1 to offer explanation in his statement under section 313 of Cr.P.C. for the injuries to his wife in terms of section 106 of the Evidence Act. However, the defence of the accused No.1 is of total denial.

15] The Supreme Court in the case of ***State of Rajasthan Vs. Thakur Singh - 2014 (12) SCC 211*** while interpreting section 106 of the Evidence Act, 1872, has held thus:

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

23. Applying this principle to the facts of the case, since Dhapu Kunwar died an unnatural death in the room occupied by her and Thakur Singh, the cause of the unnatural death was known to Thakur Singh. There is no evidence that anybody else had entered their room or could have entered their room. Thakur Singh did not set up any case that he was not in their room or not in the vicinity of their room while the incident occurred nor did he set up any case that some other person entered the room and caused the unnatural death of his wife. The facts relevant to the cause of Dhapu Kunwar's death being known only to Thakur Singh, yet he chose not to disclose them or to explain them. The principle laid down in Section 106 of the Evidence Act is clearly applicable to the facts of the case and there is, therefore, a very strong presumption that Dhapu Kunwar was murdered by Thakur Singh."

16] In the present case also the accused did not set up any case that he was not there in the house while the incident occurred or some other person entered in their house and caused the death of his wife. The trial Court was, therefore, justified in convicting the accused No.1 for the offence punishable under Section 302 of the Indian Penal Code. No interference is called for in the impugned judgment and order. In the result, the following order is passed.

ORDER

- i] Criminal Appeal is dismissed.
- ii] Criminal Applications, if any, do not survive and the same are disposed of accordingly.

(N.R. BORKAR, J.) (SMT. SADHANA S. JADHAV, J.)