

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Appeal No. 341 of 2002

* The State of Maharashtra. .. **Appellant.**

Versus

- 1) Dadasaheb Pandurang Dongare
Age 23 years, Occupation : Agriculture.
- 2) Pandurang Baburao Dongare,
Age 50 years, Occupation : Agriculture.
- 3) Kushiwartabai Pandurang Dongare,
Age 45 years,
Occupation : Household & Agri.
All R/o Eknathwadi,
Taluka Pathardi,
District Ahmednagar. .. **Respondents.**

Shri. S.J. Salgare, Additional Public Prosecutor, for
appellant.

Shri. H.F. Pawar, Advocate, holding for Shri. A.H.
Kapadia, Advocate for the respondents.

**Coram: T.V. NALAWADE &
A.M. DHAVALA, JJ.**

Date: 6 October 2017

JUDGMENT (Per T.V. Nalawade, J.):

- 1) The appeal is filed against the judgment and
order of Sessions Case No.167/2000 which was pending in

the Court of learned 4th Ad-hoc Additional Sessions Judge Ahmednagar. The respondents are acquitted of the offences punishable under sections 304-B, 306, 498-A, 34 and under sections 504, 506, 34 of the Indian Penal Code. Both the sides are heard.

2) In short, the facts leading to the institution of the present appeal can be stated as under :

Deceased Nita was a daughter of the first informant, Karbhari Khedkar. He is resident of Ghatshil Pargaon, Tahsil Shirur, District Beed. She was given in marriage to accused No.1 Dadasaheb on 26-5-1997. Accused Nos.2 and 3 are parents of accused No.1 and they are residents of Eknathwadi, Tahsil Pathardi. No issue was born to the deceased.

3) It is the case of the prosecution that for few months there was no ill-treatment to Nita but after 2 to 4 months of the marriage the accused started asking the deceased to bring Rs.50,000 from her parents. The accused wanted that amount for installation of electric motor and pipeline on the well for irrigation purpose. It is

the case of the State that to force the demand they were giving beating to the deceased and on few occasions the deceased was virtually driven out of matrimonial house. The deceased used to disclose about the ill-treatment and the demand to her parents.

4) In May 1998 the deceased was driven out of matrimonial house and she was reached to her parents house as the aforesaid demand was not met with by the parents of the deceased. On that occasion, for 5 to 6 months Nita lived in the house of her parents. The parents of the deceased then some how convinced the accused and she was reached to the matrimonial house. She was treated well for 4 to 5 months but after that again ill-treatment was given to her on the ground that their demand was not met with and she was driven out of matrimonial house. The deceased again lived with her parents. She was reached to the matrimonial house three months prior to the date of the incident by the first informant and his relatives. A meeting was held in the village of the accused and on that occasion and in the meeting the first informant gave Rs.10,000/- to accused

No.2, father-in-law of the deceased for purchasing electric motor.

5) The deceased left the matrimonial house at noon time on 29 August 2000 and her dead body was found on the morning of 30 August 2000 in the well of the accused. Prior to that the accused had made enquiry with the parents of the deceased as she was missing. Information was given to the Police Patil after finding the dead body and he forwarded the information to the concerned police station. Initially A.D. was registered and during inquiry of the A.D., inquest panchanama was prepared and spot panchanama was prepared. The dead body was referred for post mortem examination. The doctor, who conducted post mortem examination gave opinion that the death took place due to asphyxia due to drowning. Viscera was preserved and the C.A. report showed that insecticide was detected in viscera. Father of the deceased gave report to police on 31-8-2000 and the crime came to be registered at about 1.30 p.m. for the aforesaid offences. During investigation police recorded statements of the relatives of the deceased on parents

side and charge-sheet came to be filed for aforesaid offences. Charge was framed for the aforesaid offences. The accused pleaded not guilty. Prosecution examined in all 8 witnesses to prove the offences. The accused took defence of total denial. No defence evidence is given.

6) The trial Court has held that the prosecution has failed to prove that there was demand of dowry and the accused caused dowry death.

7) Karbhari (PW 1), father of the deceased has given evidence that after one year of the marriage demand of Rs.50,000/- was made by the accused as they wanted to install electric motor and lay pipeline for irrigating their land. He has given evidence that the amount was not paid by him to the accused and so ill-treatment was given to the deceased. He has deposed that the accused were beating the deceased and ultimately they drove her out of the matrimonial house. He has deposed that during his visits to the matrimonial house of the deceased, she used to disclose about the ill-treatment. He has deposed that in the year 1998 the

deceased was reached to his house by accused No.1 and he had said on that occasion that unless demand was met with, they will not accept the deceased back in matrimonial house. He has deposed that on that occasion the deceased had lived in his house for 4 to 5 months.

8) Karbhari (PW 1) has given evidence that he and others met the accused to settle the dispute and after convincing the accused he reached his daughter to the matrimonial house. He has deposed that after this settlement the deceased lived in the matrimonial house for 4 to 5 months but thereafter ill-treatment was again given to her on the same count and the deceased was again driven out of the matrimonial house. He has given evidence that on that occasion also the deceased stayed in his house for few months and few months prior to the incident he had reached the deceased to the matrimonial house. He has given evidence that in June 2000 he had reached the deceased to the house of the accused. He has given specific date as 4-8-2000 to say that on that date demand of Rs.10,000/- was again made by the accused for purchasing electric motor. He has given evidence that on

28-8-2000, one day prior to the incident, accused No.2 had again demanded money and on that occasion accused No.2 had given threat to finish the deceased. However, he admits that on 29-8-2000 the accused No.2 had come to him. He tried to say that on that day the accused had said that they had finished the deceased.

9) Before discussing and appreciating the other evidence, first the omissions which amount to contradiction in relation to the F.I.R. given by Karbhari need to be considered. He had not specially mentioned in the F.I.R. that on 28-8-2000 accused No.2 had visited his house for demanding the amount. He has not mentioned in the F.I.R. that on 29-8-2000 the accused had come to him and they had informed him that they had finished his daughter. It is clear that he tried to exaggerate the things. It can be said that the accused persons had informed on 29-8-2000 that the deceased was missing and they were searching for the deceased. The aforesaid omissions were pointed out to the witness and they are duly proved.

10) The version of PW 1 that he had given Rs.10,000 to the accused is also not probable in nature. In the cross-examination, he has admitted that on the first occasion when the deceased had stayed in his house for few months and when he had reached the deceased to her matrimonial house, he had not taken the money with him to meet the demand and the accused had accepted the deceased in the matrimonial house. He has admitted that the deceased had lived in the matrimonial house for few months. There is no independent evidence to support the version of PW 1 that amount of Rs.10,000 was really given by him to the accused persons in the meeting. When there is specific case that meeting was held and it was attended by persons of both sides, some respectable persons from the village of the accused could have been examined by the prosecution to give independent evidence.

11) Cross-examination of PW 1 shows that he has agricultural land and his financial condition is sound. He or his family members had never worked as labour. He has admitted that right from beginning labour work was the source of livelihood for the family of the accused and

after the marriage the deceased was required to do such labour work. This circumstance needs to be kept in mind. The deceased was not accustomed to hard labour work. There is one more circumstance. The deceased could not conceive for about three years after the marriage. Such circumstances may create frustration in the mind of Indian lady and due to that a lady may take extreme step like committing suicide.

12) The prosecution examined other witnesses like Aprukabai (PW 5), mother of the deceased and Narayan (PW 6), brother of the first informant. No independent witness is examined. Both these witnesses have given similar versions. They have also exaggerated the things in similar manner. They have admitted that the deceased was not accustomed to hard labour work. They have tried to improve the versions which were given to police by giving specific occasions when the demands were made and the nature of the evidence given by them shows that their evidence is vague and it is very close to imaginary things. Thus there is no convincing evidence to prove that there was demand of money from the accused persons. The first

informant has deposed on one hand that there was demand of Rs.50,000 and on the other hand he has deposed that he had given only Rs.10,000 to meet the demand and the dispute was settled. No investigation was made to ascertain as to whether electric motor was purchased or pipe line is laid by the accused. Whenever there is such allegation there needs to be independent corroboration. Such allegations are ordinarily made by close relatives of the deceased in such cases.

13) The conduct of the accused persons shows that they had informed to the parents of Nita when they found her dead body in the well. They had searched for the deceased on the night between 29-8-2000 and 30-8-2000. They had informed the relatives of the deceased on parents side that deceased was missing. It can be said that they realised that the deceased was missing on the night of 29-8-2000. Spot panchanama shows that the well is situated at a distance of one and half kilometers from the village. Depth of the well was 30 feet and the water was upto the height of 22 feet. Foot wears of the deceased were near the well. There was electric motor to lift water

and there was electric connection taken for this motor. There were steps to enter the well. Agricultural implements like sickle were found at some distance from the steps of the well. Pieces of bangles of the deceased were lying near the footwear. By the side of the well there was standing crop of sugarcane. These circumstances and the other circumstances like no injury was found indicates that force was not used against the deceased. The circumstance that insecticide was detected in the viscera shows that initially she must have consumed insecticide but to avoid further possibility like anybody noticing her, she had jumped into well to commit suicide. As the doctor who conducted post mortem examination gave opinion that death took due to drowning, no investigation was made by police to trace the insecticide or the container from which the insecticide was used.

14) For committing suicide there may be many reasons for Indian lady. There is no specific evidence with the prosecution which can be called as convincing to show that some incident had taken place just prior to 29-8-2000 or on 29-8-2000 due to which the deceased took decision

to commit suicide. Nobody from the village of the accused is examined as a witness and only persons from the village of the accused could have said few things about such incident. Due to absence of such evidence and as there are aforesaid circumstances particularly the deceased could not conceive for about three years a probability is created that the deceased decided to put an end to her life. Thus there is other probability as a reason for committing suicide. The trial Court has considered all these circumstances. Due to these circumstances, there is no need to discuss other evidence. In view of the aforesaid discussion there is no possibility of interference in the decision given by the trial Court. In the result, the appeal stands dismissed. The bail bonds of the accused are to continue for three months for giving opportunity to the State to challenge the decision of this Court.

Sd/-
(A.M. DHAVALÉ J.)

Sd/-
(T.V. NALAWADE, J.)

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