

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 49 OF 2004**

State of Maharashtra } Appellant

Versus

1. Subhash Shripati Shinde	}	
2. Sou. Housabai Shripati Shinde	}	
Age-55 years.	}	
3. Shripati Dnyanu Shinde	}	
Age-62 years.	}	
(appeal is abated against respondent nos.	}	
2 and 3)	}	Respondents

Ms. M.H. Mhatre – APP for the State/Appellant.

Mr. Rahul S. Kate for the respondent nos. 1 to 3.

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

RESERVED ON : MARCH 11, 2021.

PRONOUNCED ON : MARCH 17, 2021.

JUDGMENT :- (PER SADHANA S. JADHAV, J.)

1. The State of Maharashtra being aggrieved by the judgment passed by the First Ad-hoc Additional Sessions Judge, Karad in Sessions Case No. 253 /2000, thereby acquitting the respondent of the offences punishable under section 498-A, 306, 304-B read with 34 of Indian Penal Code vide judgment and order dated 17th May 2003 has filed the present appeal. The appeal is abated against the respondent nos. 2 and 3.

2. The facts of the case are as follows:-

a) The daughter of PW.1 Vasant Sawant namely Vandana was married to the respondent no. 1 in May 1997. The accused Nos. 2 and 3 happened to be the parents of the respondent no.1. PW.1 is resident of Sawantwadi, Mouje Manav, Tal-Karad, whereas the respondents have resident of village Ond. The distance between both the villages is hardly 2 km. The respondent no.1 was in service at Kupwad, District-Sangli.

b) On 23rd May 1999 at about 7.00 a.m. the respondent nos. 2 and 3 had been to the house of PW.1 and inquired with him as to whether Vandana had been to his house as she was missing from her matrimonial home since 5.00 a.m. They had searched at the house of all relatives. When they were searching for her in their own village they learnt that the body of Vandana was floating in a Well in village Ond. PW.1-Vasant Sawant had accordingly informed the police about the same at about 6.45 p.m., on the basis of which A.D. No. 45 of 1995 was registered.

3. The inquest panchnama was performed. The same is at Exhibit-10. Her skin was nibbled by aquatic animals and her stomach appeared to be slightly bloated. Inquest panchnama was conducted in the course of A.D. enquiry. Similarly the scene of offence panchnama was also conducted in A.D. enquiry which shows that the subject Well in which Vandana had fallen was about 39 feet deep. The water was

upto the height of 12 feet. The Well had parapet wall. An electric motor was installed on the Well. There were about 21 steps for descending into Well. The Well was located in the agricultural land of Raghu Tukaram Thorat. The body was sent for autopsy. The postmortem notes are at Exhibit-14. There were no apparent external injuries present on the deceased. The eyelids, lower lips and pinna of both ears were nibbled by aquatic animals. The deceased had died 6 hours after her last meal. The cause of death was 'Asphyxia due to drowning'. She was pregnant of about 10 weeks. The scene of offence panchnama and the postmortem notes are admitted by the accused under Section 294 of Cr.PC.

4. On 24th May 1999, PW.1 Vasant Sawant lodged a report at Karad Taluka Police Station alleging therein that in 1997 his daughter Vandana was married to the respondent no.1. It was agreed that PW.1 would pay Rs. 500/- towards dowry and 2 Tolas Gold. It is alleged that Vandana was subjected to harassment and ill-treatment at the hands of the accused for not fulfilling their demands of two tolas gold and also on account of the failure on the part of PW.1 to honor the family members of the accused properly. At the time of Ganesh Festival Vandana had been to her matrimonial house and had disclosed to her parents that the harassment and ill-treatment is meted out to her since the demands of the accused are not fulfilled and therefore, she has to encounter taunting at the hands of her mother-in-law.

5. PW.1 had given an assurance that he would fulfill the demand. That the deceased Vandana had complained to her parents on several occasions that she was harassed and ill treated in her

matrimonial home. On 23rd May 1999, she had left her matrimonial home at about 5.00 a.m. Her in-laws had enquired with her parents about her whereabouts. Finally, she was found in a Well. On the basis of the said report Crime No. 78 of 1999 was registered against all the respondents for offence punishable under section 498-A, 306 and 304-B read with 34 of Indian Penal Code.

6. At the trial, the prosecution has examined as many as four witnesses to bring home the guilt of the accused.

7. PW.1, happens to be the first informant i.e. father of deceased Vandana. He has testified before the court in consonance with the First Information Report. According to him, Vandana was not being allowed to visit their house and therefore, occasionally he used to go to the house of Vandana to meet her. According to him, he had tried to persuade the accused on more than two occasions and requested not to harass Vandana. He has further elaborated before the Court that a week prior to the incident he had been to the house of Vandana to meet her. She had disclosed that the ill treatment was unbearable and that if he did not take steps, she will do so. The admissions in the cross-examination are as follows:-

- i. The biological mother of Vandana had expired.
- ii. PW.1 had remarried. PW.1 has stated several instances before the Court to show that Vandana had intermittently informed PW.1 about the harassment meted out to her at the hands of the respondents. It is admitted in

the cross-examination that Vandana had undergone abortion just two days prior to the death of her paternal grandmother. It is also admitted that in fact, the accused had offered two and half Tola Golden chain to Vandana. The marriage expenses were also shared by both the families.

iii. According to PW.1, she was not being sent to her maternal house on any occasion after she had conceived. However, it is also admitted that she had been to her maternal house to see her paternal grandmother, when she was ill. She had also attended the next day rituals after the demise of her grandmother. The witness was confronted with his previous statement and it is seen that there are several material contradictions as well the said contradictions are proved through investigating officer (PW.4).

8. PW.2- Sunanda Dange, happens to be the cousin sister of deceased Vandana. Even according to her, she was informed by Vandana that she has been harassed and ill treated. Vandana has visited her maternal house in January and had stayed there for one month. She had also visited the maternal house along with her mother-in-law to meet her ailing grandmother. She had visited her maternal house on each and every festival. There are inconsistencies in the evidence of PW.1 and PW.2. The prosecution has also made a frail attempt to establish the elements of harassment and ill treatment to Vandana in her matrimonial house. There are omissions in respect of

the harassment.

9. PW.4.- Bajirao Bhosale, happens to be the investigating officer. He has proved the omissions and contradictions in the evidence of the witnesses and has testified before the Court the steps taken by him in the course of investigation.

10. Taking into consideration the recitals of the spot panchnama, it is clear that Vandana has not succumbed to an accidental fall in the Well. It appears that it is a case of suicide. However, the prosecution has failed to prove, she committed suicide by adducing cogent and convincing evidence. The reason for commission of suicide by Vandana has not surfaced. It cannot be said that the respondents had abetted or instigated Vandana to commit suicide. The defence of the accused that in the month of May she had been to fetch water from the Well and at that time, in all probabilities, she slipped and fell into the Well is also not acceptable. The prosecution has failed to prove the presence of the respondent no.1 in village Mauje Manav, Tal-Karad on the day of incident. The defence of the accused is far from probabilities since the Well has parapet wall. The reasons for commission of suicide was known to the deceased alone. No role is attributed to the respondents.

11. The evidence of PW.1 that the deceased had committed suicide as she was fed up of ill-treatment at the hands of respondents also does not inspire confidence. It does not appear to be a case of dowry death. There is evidence on record to show that the accused

themselves had offered two and half tolas gold to the deceased.

12. According to PW.1, Vandana had undergone miscarriage two days before the demise of his mother and he had requested the accused not to disclose the said fact of death of his mother to Vandana. The accused had obliged. However, Vandana had visited her maternal house and participated in performing last rites on her grandmother.

13. The learned Sessions Judge has rightly observed that there are several lacunas in the course of investigation. The prosecution has not proved the suicidal death of Vandana beyond reasonable doubt. That, in fact, the death of Vandana is otherwise than under normal circumstances within 7 years of her marriage. However, that by itself is not sufficient to contribute any role to the respondents in the commissions of suicide of Vandana. The reasons assigned by the learned Sessions Judge are justified, no interference is called for. Hence, appeal stands dismissed.

(N.R. BORKAR, J)

(SMT. SADHANA S. JADHAV, J)