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

CRIMINAL APPEAL NO. 63 OF 2015

Mainabai w/o Appasaheb Sawant,
Age: 41 years, Occu: Household & Agri.,
R/o. Vijora, Tq. Washi,
District Osmanabad

..APPELLANT

VERSUS

1. The State of Maharashtra

2. Jagdish Dasu Mete,
Age: 25 years, Occu: Service,
R/o. Vijora, Tq. Washi,
Dist. Osmanabad

3. Sumanbai w/o Dasu Mete,
Age: 41 years, Occu: Household,
R/o. As above

..RESPONDENTS

Mr P. S. Koshti, Advocate holding for Mr D. H. Jadhavar, Advocate for
appellant;

Mr D. V. Tele, Addl. Public Prosecutor for respondent No. 1

CORAM : N.W. SAMBRE, J.

DATE : 11th March, 2016

ORAL ORDER :

This appeal under section 378 (4) of the Code of Criminal Procedure is preferred by original complainant, questioning acquittal of respondents no.2 & 3 – accused, for offences punishable under sections 498-A, 323, 504 read with section 34 of the Indian Penal Code, by order dated 26th November, 2014, passed by Additional Sessions Judge, Bhoom,

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2. The prosecution case, in brief is, respondent no.2 Jagdish is the son of respondent no.3 Sumanbai. Respondent no.2 was married to deceased Swati in May, 2010. Respondent no.2, who is a serviceman, had love marriage with deceased Swati as they were residing in neighbourhood.

3. The prosecution claims that respondent no.2 along with his mother respondent no.3 had assaulted deceased Swati, on the day preceding the incident, by means of stick and waist belt and as such, she committed suicide. Respondents no.2 and 3, therefore, were charged with the offence of cruelty and abetment of suicide.

4. In order to prove guilt of respondents no.2 and 3, the prosecution has examined in all three witnesses, namely, P.W.1 complainant Mainabai – the mother of deceased Swati, P.W.2 Pramodini – sister of deceased and P.W.3 Sudam.

5. It is claimed that in the morning of 13th day of the month in which Diwali was to be celebrated, respondent no.2 assaulted Swati by means of a stick. It is further claimed that since deceased Swati was not behaving properly and performing her matrimonial duties and was arrogantly behaving with respondent no.3 - her mother-in-law, respondents no.2 and 3 had assaulted her. It is further claimed that the said assault had prompted deceased Swati to commit suicide.

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6. While trying to make out a case for grant of leave to appeal, learned Counsel appearing on behalf of the applicant – complainant would urge that learned Additional Sessions Judge has committed an error while appreciating the factual matrix and evidence on record. According to him, the dying declaration recorded by the Executive Magistrate and the endorsement of the Doctor on the said dying declaration at Exh.55 was wrongly appreciated. He would then submit that there is corroboration to the evidence of all three witnesses to that of the dying declaration and as such, there is strong *prima facie* case of conviction against respondents no.2 and 3.

7. With the assistance of learned Counsel, I have perused the entire record. It is noted that the complaint Exh.35 was lodged by P.W.1 Mainabai – mother of deceased Swati. After the complaint, investigation was set in motion and it was noted that respondent no.2 Jagdish removed Swati to the Government Hospital, Washi and then to the hospital at Osmanabad and lastly at hospital in Solapur, for proper treatment. Swati died at Solapur hospital. It is after the death of Swati, complaint Exh.35 came to be lodged by P.W.1 – mother of deceased Swati.

8. P.W.1 Mainabai has admitted in her evidence that the accused persons have lodged a prosecution against her and her family members alleging an assault on the family members of respondents no.2 & 3 - accused of taking away valuable articles. It is also brought on record that the husband of P.W.1 was convicted by the Judicial Magistrate for the said

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offence, at the behest of accused, against which an appeal is pending. She then admitted in cross-examination that though the police visited her house after the death of her daughter, she lodged complaint at belated stage on 30th November, 2010. P.W.2 Pramodini admitted that the deceased Swati was treated in a proper manner up-to a period of four months and thereafter there used to be exchange of words between deceased and her husband. She then narrated about the cruelty meted out by respondent no.3. It is then claimed that respondent no.2 assaulted Swati by means of stick and waist belt and as such, due to said illtreatment she consumed poison. She has admitted in cross-examination that though there were offers to deceased for marriage from Police Constable Shinde and a Teacher, she preferred to marry respondent no.2 Jagdish as she used to love him. She has admitted in cross-examination that a day before admission of Swati in the hospital, husband of P.W.1, who is her father, removed sewing machine from the house of respondents – accused and her father assaulted respondent no.3, deceased Swati and father of respondent no.2 by means of stick, which act of beating was resisted by them. Although it is claimed in the prosecution story that on the morning of 13th November, 2010 there was an assault and, therefore, Swati consumed poison on the same day in the evening, yet there is variance as regards the time, date and means of weapon used in the assault. From perusal of evidence of respective witnesses, it is noted that there are vague allegations as regards illtreatment.

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9. Though the prosecution has relied upon the post mortem notes Exh.42 and dying declaration of Swati at Exh.67, it is required to be noted that the dying declaration was recorded by PW.8 Executive Magistrate in the presence of P.W.5 Dr. Rashmi Pawar.

10. P.W.5 Dr. Rashmi Pawar though has not treated deceased Swati, in her evidence she has admitted that the endorsement about fit state of mind of deceased Swati to give dying declaration was based upon the instructions received from Dr. Tapdiya on phone. She has in unequivocal terms has admitted the same in cross-examination. The dying declaration recorded by the Executive Magistrate who has deposed at Exh.55, in the above referred background, was required to be overlooked. The report of the Chemical Analyzer (Exh.45), in the matter of chemical analysis of viscera does not reveal any poison in samples 1 and 2.

11. In the above background, in my opinion, the acquittal ordered by the learned Additional Sessions Judge appears to be just and proper. There is hardly any convincing material on record, so as to bring home the guilt of the accused.

12. In view thereof, Criminal Appeal fails and stands dismissed.

(N.W. SAMBRE, J.)

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