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

CRIMINAL REVISION APPLICATION NO.27 OF 2004

Jarnailsingh s/o Bhujangsingh
Gadiwale, Age: 22 years,
Occu: Business,
R/o. Kankaiyya Compound,
Gate No. 2, Gurudwara, Nanded ..APPLICANT

VERSUS

1. The State of Maharashtra
2. Gurucharansingh s/o Nishansingh
Chima, Age: 34 years
3. Gurudeepkaur w/o Nishansingh Chima,
Age: 47 years
4. Nishansingh s/o Tarasingh Chima,
Age: 57 years
5. Darasingh s/o Nishansingh Chima,
Age: 30 years
6. Bhagabai w/o Ram Dhaygude,
Age: 77 years

Nos. 2 to 6 R/o Maratha Matan
Khanawal, V.I.P. Road,
Nanded ..RESPONDENTS

Mr A. G. Godhamgaonkar, Advocate for applicant;
Mr K. D. Munde, A.P.P. for respondent No.1;
Mr H. M. Salve, Advocate for respondent Nos.2 to 6

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CORAM : N.W. SAMBRE, J.**DATE : 18th August, 2016****ORAL JUDGMENT :**

This revision is by the original complainant. The respondents-accused were acquitted by learned Additional Sessions Judge, Nanded, in Sessions Case No. 214 of 1997 for an offence punishable under Sections 498-A, 302 read with Section 34 of the Indian Penal Code, vide judgment and order dated 18th August, 2003.

2. The prosecution story against the present respondents-accused are as under :-

Deceased Vijyendrakaur, daughter of present applicant, was married to accused No.1 Gurucharansingh in 1992. After marriage, she started cohabiting with accused No.1 who was having joint family. Accused Nos. 2,3,4 and 5 are mother in law, father in law, brother in law and grand mother in law of Vijyendrakaur. During

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cohabitation, illtreatment was meted out to the deceased Vijyendrakaur, as she has delivered two female children and was not having any male child. On 26th August, 1997, a quarrel ensued between Vijyendrakaur and accused and as such, parents of deceased Vijyendrakaur were called on telephone message. By that time, they reached home of Vijyendrakaur, it is claimed that in presence of sister and mother, Vijyendrakaur was assaulted by the accused persons, dragged her in the kitchen and accused No.1 set her on fire by pouring kerosene, resulting in to registration of crime in question as she sustained 83% burn injuries and she died on 31st August, 1997.

3. In support of prosecution story, after framing of charge at Exhibit-9, since it is claimed that death was homicidal and not suicidal, PW-1 Jaswantkaur, sister of deceased Vijyendrakaur is examined at Exhibit-33, PW-2 Bhujangsingh Gadiwale, father of deceased Vijyendrakaur at Exhibit-39, PW-3 Shahabuddin Badroddin Shaikh, Judicial

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Magistrate, First Class, Nanded, who recorded dying declaration of deceased Vijyendrakaur at Exhibit-48, PW-4 Dr. Ganesh Degloorkar at Exhibit-56, PW-5 Dr. Nitin Bilolikar at Exhibit-68, PW-6 Dr. Yeshwant Lamture at Exhibit-79 and the Investigating Officer, Police Inspector Ashok Patil at Exhibit-85. Additional witnesses namely Shantabai Landge and Harbanskaur Gadiwale were examined at Exhibits-105 and 106 respectively. Witness Shantabai was maid servant, whereas Harbanskaur is mother of deceased Vijyendrakaur.

4. While trying to make out a case for remand, Mr. A.G. Godhamgaonkar, learned Counsel for the applicant would strenuously urge that the acquittal of accused persons for an offence punishable under Sections 498-A, 302 read with Section 34 of the Indian Penal Code is not sustainable, particularly in the light of iota of evidence brought on record. He would submit that in revision, this Court may consider remand of the matter to the learned Court below again, as learned

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Sessions Judge has failed to appreciate the evidence on record in its true perceptive.

5. From the original record, it could be noted that learned Judicial Magistrate, First Class, Nanded Mr. Shahabuddin Shaikh recorded dying declaration which is at Exhibit-49 by deposing at Exhibit-48. According to the said witness, deceased has stated that there was quarrel with accused No.1 and thereafter accused Nos. 1 and 3 poured kerosene on her and was set ablaze. He stated that Dr. Kulkarni was present in burn ward, since known to him, pointed out deceased and then he obtained endorsement regarding mental status of the deceased and proceed to record the declaration.

6. It is important to note that the prosecution has not examined Dr. Kulkarni, who has made endorsement on the dying declaration about fit state of mind of deceased Vijyendrakaur, who has examined Dr. Lamture at Exhibit-79. It is to be noted that dying declaration is not in the question

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and answer form though Dr. Lamture proved his endorsement on dying declaration at Exhibit-80, however, presence of said Doctor at the spot is not established. As such, the evidence of Dr. Lamture and Mr. Shaikh, Judicial Magistrate, First Class, who recorded dying declaration was rightly discarded.

7. Apart from above, Exhibit-51 copy of dying declaration produced by the accused speaks that answers were not written as regards questions, as space for some of the answers are left blank. It is to be noted that in stead of Executive Magistrate, Judicial Magistrate, First Class was summoned vide Exhibit-52, though it was addressed to Executive Magistrate. There was also delay of about 15 days in submitting dying declaration to the Chief Judicial Magistrate. It is then to be noted that thumb impression was noticed on dying declaration, whereas in the post mortem report Exhibit-75, the hands and palms of deceased were burn. There is also variance about time on which

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dying declaration was recorded as could be appreciated from perusal of Exhibit-114 i.e. medical papers.

8. Apart from above, there is hardly any incriminating circumstance, which could be noticed against the respondents-accused so as to warrant the remand of the matter. The offence under Section 498-A of the Indian Penal Code as has been alleged qua cruelty was also not proved, as could be appreciated from Exhibit-43 photographs.

9. It is also required to be noted that the issue of illtreatment and mediation by respected persons from the society though sought to be canvassed, however, no any witness was examined. Original statement which could be noticed in the record does not depict any incriminating material against the accused persons.

10. In the above back ground, the acquittal as is ordered by learned Courts below is just and

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proper. No case for exercising revisional jurisdiction is made out. As such, criminal revision application fails and stands rejected.

Sd/-
(**N.W. SAMBRE, J.**)

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