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

CRIMINAL REVISION APPLICATION NO.133 OF 2004

Santaram s/o Sambhaji Kapkar,
Age: 66 years, Occ: Agri.,
R/o. Halda, Tq. Bhokar,
Dist. Nanded.

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Police Station Office
Police Station Bhokar,
Tq.Bhokar, Dist. Nanded.

2. Sk. Farid s/o Lalmiyan
Age: 21 years, Occ: Education,
R/o. Halda, Tq. Bhokar,
Dist. Nanded.

3. Parmeshwar s/o Ganpati Panaswad,
Age: 21 years, Occ: Education,
R/o. Halda, Tq. Bhokar,
Dist. Nanded.

4. Ananda s/o Saibu Boinwad,
Age: 22 years, Occ: Agri.,
R/o. Halda, Tq. Bhokar,
Dist. Nanded.

..RESPONDENTS

Mr G.M. Jadhav, Advocate for applicant;
Mr N.T. Bhagat, A.P.P. for respondent/State;
Mr S.V. Chandole, Advocate for respondent Nos. 2 to
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CORAM : N.W. SAMBRE, J.

DATE : 5th OCTOBER, 2016

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ORAL JUDGMENT :

Complainant Santaram, who is examined at Exhibit-21, lodged the complaint alleging that his daughter Parwatibai committed suicide by consuming poison and the said act was abetted by the accused persons on 25th August, 2001. The accused persons have tried to manhandle her in front of her own house.

2. Parwatibai consumed poison on 26th April, 2001 and she expired on 27th August, 2001. The provisional post mortem report at Exhibit-17 speaks cause of death as unknown poison, whereas Exhibit-18 final post mortem notes does not speak cause of death as viscera was preserved. Upon perusal of the original record, I hardly find in the report of C.A. depicting the contents of poison in the viscera.

3. Be that as it may, learned Sessions Judge, while dealing with the case of prosecution, upon appreciation of evidence, recorded findings of

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acquittal and as such, present revision.

4. Mr. Jadhav, learned Counsel for the applicant submits that leave apart the offence punishable under Section 306 of the Indian Penal Code, the contents of the complaint speaks of offence punishable under Section 354 of the Indian Penal Code, which was neither investigated into nor any charge is framed. He would then urge that perusal of the statement of complainant Santaram, who is examined at Exhibit-21 speaks of involvement of the respondents-accused in the crime in question. He would also invite my attention to the evidence of PW-2 Laxman, cousin maternal brother of deceased Parwatibai, who is examined at Exhibit-23 so as to substantiate the case for conviction. According to him, cumulative effect of oral evidence takes this Court to the only conclusion that respondents-accused have committed an offence punishable under Sections 354, 306 of the Indian Penal Code.

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5. Learned Counsel for the respondents-accused submits that the incident in question took place on 25th August, 2001, whereas deceased Parwatibai consumed poison on 26th August, 2001 and she died on 27th August, 2001. Learned Counsel for the respondents-accused would then urge that apart from delay in lodging first information report, the fact remains that the involvement of the respondents-accused is termed on 25th August, 2001, whereas the alleged incident of consuming of poison by Parwatibai is of 26th August, 2001 evening. According to him, the prosecution has failed to bring on record that what happened in the intervening period, which prompted her to consume poison. He would urge that in any case, the ingredients of Section 306 of the Indian Penal Code are not satisfied and evidence as is considered by learned Courts below has rightly resulted in acquittal of respondents-accused. He submits that no case for interference is made out and revision be dismissed.

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6. It is brought on record that the evidence of PW-1 and PW-2 that Laxman was residing in adjoining plot of Rajaram, which plot was purchased by Shaikh Farid. There was dispute between Shaikh Farid and PW-2 Laxman as regards the boundary of the property and same has been resolved through panchas. Though such difference was denied by PW-2, however, in the evidence of PW-1 Santaram, it has come on record that there was dispute between PW-2 Laxman and accused Shaikh Farid.

7. Said contradiction is required to be taken note of.

8. It is then required to be noted that in the evidence of PW-1, he has stated that it is 27th August, 2001 when he went to the field, where his wife came there and informed him about health of daughter Parwatibai, whereas the said fact is not stated by him in his statement recorded under Section 161 of the Code of Criminal Procedure and as such, omission to that effect is taken note of.

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9. Apart from above, it is required to be noted that Parwatibai's maternal uncle Laxman and Subhash were on one side and accused Shaikh Farid was on the other side and there was difference qua organizing drama during Ganesh festival in the said village. It is also brought on record that PW-1 who was having two wives namely Prayagabai and Sheshabai. Sheshabai committed suicide. It is also sought to be brought on record that Sheshabai to whom Parwatibai was born, has committed suicide due to illtreatment meted out to her by PW-1 and another wife Prayagabai.

10. Apart from above, it is then required to be noted that in the evidence of PW-2 Laxman, omission is brought on record that he had come to the house of Parwatibai at 7-00 to 8-00 p.m. and there was quarrel between Shaikh Farid and Ananda as to visit of Shaikh Farid to the house of Parwatibai. The omission is also brought on record as it is claimed by PW-2 that Ananda asked Shaikh

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Farid about his bad behaviour and also informed same to his mother, father and brother. The omission is also brought on record as regards giddiness, if any, suffered by Parwatibai on 27th August, 2001. The contradiction is brought on record as regards initial medical treatment administered to deceased Parwatibai by Dr. Bhuddewad. So far as accused No. 3 is concerned, it is also brought on record that he was somewhat close to accused No. 3 Ananda and amount of Rs.3000/- was given in advance to PW-2 Laxman, as he was working as daily wager with him.

11. PW-3 Pundlik, who is examined at Exhibit-24, has stated that Parwatibai was his cousin niece and accused used to harass her. However, in his evidence, contradiction is brought on record as regards portion mark-B, in which it is mentioned that at that time she felt giddiness and she used to sleep, which was not informed to police. Another contradiction that is brought on record in regard to treatment given by Dr. Buddhewad to deceased

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Parwatibai, which was not stated in the statement under Section 161 of the Code of Criminal Procedure. His testimony creates serious doubt, particularly when he has stated that he has informed police that it is within period of 15 minutes of consumption of poison by Parwatibai, she lost her life. PW-4 Dhondiba is hearsay witness, who claims to have learn about the incident from PW-2 Laxman. The said witness has not supported the case of the prosecution. PW-5 Maroti, who is examined at Exhibit-26 claims that Parwatibai was daughter of his maternal uncle and his evidence is material only to the extent of arguments ensured between accused and deceased Parwatibai. PW-6 Ganesh, who is examined at Exhibit-27, has deposed that he is a witness to the incident as a member of the crowd. PW-7 Bhagwat, Investigating Officer, who is examined at Exhibit-23, has proved inquest panchnama, spot panchnama at Exhibits-15 and 16, provisonal post mortem report at Exhibit-17, post mortem report at Exhibit-18, seizure panchnama at Exhibit-19, and arrest panchnama at Exhibit-20.

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However, so far as his testimony is concerned, the omissions and contradictions as are observed here in above are required to be taken note of.

12. The above referred omissions and contradictions and fact that the evidence of PW-1 and PW-2, who prima facie appears to be having somewhat inimical terms with that of accused persons with that of accused persons, particularly PW-2 is required to be taken note of while analyzing their evidence. Based on above, learned Sessions Judge has ordered acquittal of the accused persons.

13. In my opinion, the contradictions and omissions in the evidence of star witnesses PW-1 and PW-2, the sanctity of their evidence has been rightly analyzed by learned Sessions Judge. Though Mr. Jadhav, learned Counsel has tried to impress upon the Court to remand the matter back for fresh consideration, however, in my opinion, in view of provisions of Section 167 of the Evidence Act, the

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matter cannot be remanded for filling up lacunae during the trial. As such, no case for interference in revisional jurisdiction is made out. As such, criminal revision application fails and stands dismissed.

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

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