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

CRIMINAL APPLICATION NO.6344 OF 2015

The State of Maharashtra
Through Police Station Incharge
Bhingar Camp Police Station
Tq. & Dist. Ahmednagar. ..APPLICANT

VERSUS

Devidas Sopan Udbatte,
R/o. Alamgir, Bhingar,
Tq. & Dist. Ahmednagar & anr ..RESPONDENTS

Mr C.V. Dharurkar, A.P.P. for applicant;
Mr Satej S. Jadhav, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 30th SEPTEMBER, 2016

ORAL ORDER :

Learned Assistant Sessions Judge,
Ahmednagar ordered acquittal of the respondent-
accused for an offence punishable under Sections
498-A and 306 read with Section 34 of the Indian
Penal Code in Sessions Case No. 231 of 2013 on 3rd
September, 2015. As such, present application by
the prosecution under the provisions of Section
378(1)(3) of the Code of Criminal Procedure.

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2. The facts as are necessary for deciding the present application are as under : -

Respondent-accused was married with deceased Manisha some time in 1997 and accused No. 2 Savitrabai is mother of accused No.1 Devidas. It is then claimed that initially for period of six months everything went smooth, thereafter respondent No. 2-accused removed her ornaments, her character was suspected by the accused persons and accused were assaulting her regularly. Manisha was subjected to physical and mental cruelty. It is claimed that Manisha died after pouring kerosene by setting herself ablazed. She died of burn injuries in the civil hospital during her treatment and was complaining against the husband and not against mother in law.

3. Crime No. 79 of 2012 for an offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code came to be

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registered against the accused. Subsequently, offence under Section 306 of the Indian Penal Code came to be added.

4. In support of the prosecution case, seven witnesses were examined. PW-1 Suresh, father of victim, at Exhibit-22, PW-2 Vaibhav, panch witness at Exhibit-23, PW-3 Navnath, Circle Officer, who has recorded dying declaration at Exhibit-25, PW-4 Subhash, ASI, who has recorded first dying declaration at Exhibit-35, PW-5 Dr. Vijaya Sardesai, in whose presence dying declaration was recorded by Subhash (PW-4) and Circle Officer (PW-3). PW-6 ASI Shaikh Pahilwan Amir, who has recorded statement of victim Manisha and investigated the crime in question at Exhibit-42. PW-7 Dr. Rahul, in whose presence PW-6 has recorded third dying declaration, examined at Exhibit-61.

5. Some un-disputed facts about relationship between the parties i.e. Manisha and accused persons, death of Manisha on 25th July, 2012 due to

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burn injuries, incident dated 17th July, 2012 are required to be taken note of. PW-1 Suresh, who is examined at Exhibit-22, father of victim Manisha, has denied the case of prosecution in entirety. During his cross examination, he admitted that Manisha sustained burn injuries, which was improvement. PW-2 Vaibhav, panch witness has supported the case of the prosecution and proved seizure panchnama at Exhibit-24 which contents article match box, kerosene tin and partly burn gown of gown of victim.

6. The case of the prosecution is based on three dying declarations. First dying declaration was recorded by PW-4 Subhash, A.S.I. who claims that he went to civil hospital for recording statement of Manisha and after examining physical condition of victim, upon request, by the Doctor, he recorded her statement and obtained her signature and also of Doctor on it, which is at Exhibit-37. Said statement Exhibit-37 depicts that Manisha stated that accused Devidas was addicted to

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liquor. Evidence of PW-4 was supported by PW-5 Dr. Vijaya. Second dying declaration was recorded by Circle Inspector, PW-3 Navnath, which is at Exhibit-29. He stated that upon receipt of the letter from police station, he went to civil hospital. He confirmed physical and mental condition of victim Manisha from Dr. Sardesai, obtained endorsement of Doctor and recorded statement. Said dying declaration Exhibit-29 is also proved. However, it is required to be noted that during cross examination, it is brought on record that Dr. Sardesai has stated that signature of deceased Manisha was not obtained on Exhibit-29 in his presence.

7. Third dying declaration recorded by PW-6 ASI Shaikh, the Investigating Officer, pursuant to the directions of Police Station Officer. It is Dr. Rahul, PW-7, who confirmed mental and physical condition of victim Manisha. Based on the said statement, he came to the police station and registered crime against the accused. In the cross

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examination, PW-7 Dr. Rahul has stated that he has administered pain killer injection to victim.

8. The fact remains that the incident in question took place on 17th July, 2012 and statement of Manisha was recorded at Exhibit-37, thereafter Exhibit-29 and on next day, Exhibit-43 dying declaration came to be recorded.

9. PW-1 father of victim Manisha has not supported the prosecution case.

10. It is brought on record that during recording of dying declaration, relatives of Manisha including her brother was present with her in the hospital. Brother of victim on 18th July, 2012 filed complaint with the police requesting to record another statement of the victim. Brother of victim has stated that earlier two dying declarations which were recorded were incorrect and as such, the said statement of brother of victim Manisha establishes his presence during recording

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of statement. As such, earlier dying declarations at Exhibits-37 and 29 were recorded in presence of brother of Manisha is required to be inferred and as such, the dying declarations were recorded under the influence of brother cannot be ruled out. In this background, the dying declaration does not appear to voluntary but same appears to have been recorded and influenced by the presence of brother of victim.

11. In the back ground of above, the Court below, in my opinion, has rightly discarded all the dying declarations, as the same do not repose confidence in the prosecution story.

12. In view thereof, no case for grant of leave to file appeal is made out. As such, leave to file appeal stands refused. Criminal Application stands dismissed.

(N.W. SAMBRE, J.)