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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.320 OF 2020**

Mr. Suresh Sakharam Jagtap)
Age 59 years, Occupation: Retired)
R/at Room No.2270, Building No.82)
Kannamwar Nagar No.2, Vikhroli (East))
Mumbai – 400 083.) Appellant
(Original Complainant)

V/s

1] Rahul Suresh Palve)
Aged 34 years, Occ – Service)
2] Smt. Sunita Suresh Palve,)
Aged 58 years, Occ – Housewife)
3] Sou. Sarika Suresh Palve)
Aged 28 years, Occ – Housewife)
4] Siddharath Suresh Palve)
Aged 30 years, Occ – Service)
All are residing at Room No.304,)
Om Heram Pushpa CHS., Shanti)
Nagar, Badlapur (West), District Thane)
5] Vinayak Govind Sable,)
Aged 60 years, Occ – Retired)
6] Sou. Sadhana Vinayak Sable,)
Aged 63 years, Occ – Service)
Both are residing at Room No.3/338/)
4086, Hariyali Village, Tagore Nagar,)
Vikhroli (East), Mumai – 400083)
7] Smt. Vijaya Sudhakar Kedare)

Aged 55 years, Occ – Housewife)
Residing at Siddharath Nagar,)
Kolsewadi, Kalyan (East), District Thane)
)
8. State of Maharashtra)
Through Badlapur(West), Police Station,))
Taluka – Ambernath, District – Thane) Respondents
(Resp. No. 1 to 7 are orig.
Accused Nos. 1 to 7.

Ms. Ankita Nishad, Advocate for the Appellant, appointed by the Court.

Smt. G.P. Mulekar, APP for the Respondent/State.

**CORAM: NITIN W. SAMBRE &
S. M. MODAK, JJ.**

DATE: JANUARY 09, 2023

JUDGMENT: (Per Nitin W. Sambre, J.)

1] This Appeal is by the complainant, questioning judgment of acquittal delivered in Sessions Case No.270 of 2016 by the learned Sessions Judge, Kalyan on 18/12/2019 for offence punishable under Sections 498A, 306 read with Section 34 of the Indian Penal Code.

2] The case of the prosecution is, deceased Rajani was married to Respondent No.1 on 25/05/2009. Respondent No.1 was initially employed with BSNL. However, subsequently, he has accepted employment with Income-tax Department. Respondent No.1 in 2011

purchased flat in Herambh Co-operative Housing Society.

3] Respondent No.1 was residing with his mother i.e. Respondent No.2. Respondent No.3 is sister of Respondent No.1. Respondent No.4 is the brother-in-law of Rajani. Respondent Nos. 5 and 6 are maternal uncle and aunt of Respondent No.1, whereas Respondent No.7 is the aunt of Respondent No.1. The case of the prosecution is, deceased Rajani suffered 95% burn injuries after explosion of flames of stove which incident occurred on 12/10/2012. Rajani died of the aforesaid burn injuries having suffered septicemia on 16/10/2012. Father of deceased i.e. P.W.1 – Suresh Jagtap who is examined at Exhibit-15 lodged a complaint resulting into registration of Exhibit-16 – FIR and Crime No.I-13 of 2013.

4] P.W. 4 – Suresh Mohite, Investigating Officer recorded the aforesaid FIR – Exhibit-16, so also initial registration of ADR No.00/2012. Dying declaration was also received by him alongwith panchanama of scene of incident, inquest panchanama, first report of accidental death and statement of complainant. He has deposed that kerosene stove suddenly got burst, as a consequence clothes of Rajani got ablaze. He has deposed about notes of postmortem – Exhibit-26 and filing of charge-sheet. In his cross-examination, he has stated that he has recorded statement of Dr. Saldhana under whose treatment deceased was. He has admitted that none of the residents in the Society of Accused No.1 volunteered to state that deceased was subjected to cruelty. He has also admitted that complainant had no

complaint against any person when he gave accidental death report in Sion Police Station.

5] P.W. 1 – Suresh Jagtap, father of the deceased, in his examination-in-chief stated that he visited house of Rajani at Nashik for couple of times after her marriage and he found everything was in good condition. He has also stated that wife of maternal uncle of Accused No.1 as also maternal uncle used to ill-treat deceased Rajani on the ground of not conceiving child. He has deposed that he raised an amount of Rs 1,40,000/- after mortgaging jewelry of deceased so as to facilitate Accused No.1 to purchase flat. According to him, about the incident in question, he received call from Accused No.1. In his cross-examination, he has admitted that he has completed 29 years of service in Police Department. He has also admitted that his father and grand-father of Accused No.3 were fast friends and were acquainted to each other since long. He has also admitted that, initially, he was not inclined to get the deceased married to Accused No.1. However, subsequently, he consented for marriage after taking the deceased into confidence. He has admitted that his daughter Rajani was healthy. He has also admitted that during his stay at Nashik, there was no complaint from Rajani. He has also stated that mother-in-law of Rajani was mentally ill. He has also admitted that Accused No.1 has provided treatment to Rajani after having not conceived the child for a long period. He has also admitted that Accused No.1 has purchased his own house in Badlapur in March, 2012 out of his own income and from borrowing. He has also admitted that in dying declaration, his

daughter has stated that while igniting kerosene stove, she suffered burn injuries due to accident. He has also admitted that, initially, he lodged ADR and thereafter at belated stage lodged a complaint on 02/11/2012.

6] From the testimony of P.W. 1 – Suresh Jagtap it can be inferred that P.W. 1 i.e. father of Rajani was not having any grievance about conduct of Accused No.1, particularly having regard to the cruelty as explained under Section 498-A of the Indian Penal Code. Vague allegations are made by the said witness against other accused persons. However, he being an employee of the Police Department was knowing about intricacies of offence under Section 498-A and could have lodged a complaint which he has failed to. Apart from above, natural response of registering ADR and dying declaration given by deceased Rajani sufficiently endorses non-involvement of the accused persons in the commission of crime in question. Apart from above, evidence of neighbor Mukesh who is examined at Exhibit-28 has supported the case of accused persons.

7] In the aforesaid backdrop, there is hardly any material on record to infer that prosecution has established guilt of the accused persons beyond reasonable doubt. Though learned APP Smt Mulekar tried to rely on the provisions of Section 113B of the Evidence Act which provides for presumption in regard to the death within seven years of the date of marriage, fact remains that said presumption prompts the prosecution initially to discharge its burden. Prosecution

has failed to discharge its burden, particularly when P.W.1, father of deceased Rajani, has registered ADR and at belated stage after 15 days without explaining delay has lodged a complaint. In addition to above, dying declaration given by Rajani has not supported the case of the prosecution. As such, reliance placed by the learned APP on the provisions of Section 113B will hardly support the case of the prosecution.

8] As such, present Appeal lacks merit and same stands dismissed.

9] This Appeal was called out twice. However, on second call none appeared for the Appellant. Having regard to the law laid down by the Apex Court in the matter of *Surya Baksh Singh vs. State of Uttar Pradesh* reported in (2014) 14 SCC 222, this Court appointed Advocate Ms. Ankita Nishad to assist the Court in deciding the appeal. She has rendered valuable assistance to the Court in deciding the Appeal. This Court deems it appropriate to direct the High Court Legal Services Committee, Mumbai to release the professional fees to which she is entitled to for arguing the present Appeal on merit.

10] Appeal is accordingly disposed of.

[S. M. MODAK, J.]

[NITIN W. SAMBRE, J.]