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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE SIDE****CRIMINAL REVISION APPLICATION NO. 562 OF 2009**

Chandrabali Yadav

... Applicant

Versus

Teras Ramraj Yadav and Ors.

... Respondents

Mr. V.K. Gupta, Advocate for the applicant.

Mr. D.R. More, A.P.P. for State.

CORAM : K.U. CHANDIWAL,J.**DATED : AUGUST 30, 2011****P.C.**

Heard the learned counsel for the original complainant. The respondent despite of service and causing appearance through advocate absent. Perused the affidavit in reply of the State. The shattered father challenged acquittal recorded by the learned 4th Ad hoc Additional Sessions Judge, Dindhosi on 6.5.2009 in Sessions Case No. 1196 of 1998.

2. The complainant father, informed the police that his daughter Sarita was married to Rajesh on 20.5.1997. After marriage she joined

the accused at matrimonial home. The other accused are the parents of Said Rajesh. The complainant alleged in the marriage the accused persistently made demand for Rs. 25,000/-, gold ornaments, television set. The uncle of deceased Kailash when visited the matrimonial home and found the plight of Sarita as she complained. On 3.8.1998 the complainant received telephonic call informing that Sarita had died due to electric shock. He immediately came to Mumbai and he was informed that Sarita died due to shock. Consequently report was lodged on 3.8.1998. The police authorities recorded the spot panchanama, inquest panchanama The dead body was sent for post mortem. The statements of witnesses were recorded and thereafter chargesheet was filed against the accused. The learned Sessions Judge framed charge below Exh. 11 in terms of Section 498A read with 34 of I.P.C. with section 304B read with 34 or alternatively section 306 read with 34 of I.P.C. The learned A.P.P. does not dispute that the charge was framed for the offence punishable under section 304B read with 34 of I.P.C. Unfortunately, the learned Judge while recording the acquittal referred above, acquitted the accused in terms of 498 A read with 34 of I.P.C. without recording finding as to acquittal or conviction in terms of offence under section 304B read with 34 of I.P.C. though it was framed

as Point No. 2 for determination.

3. The another feature that appears is, in paragraph 16 of the judgment the learned Judge records that Sarita died due to 100% burn and it was unnatural death. However, post mortem notes were not produced. The prosecution failed to examine two important witnesses namely Guddu who had climbed at the roof by removing the roof files and entered into the room and facilitated the opening of latch of the room. The another important witness is Poonam who had allegedly witnessed the incident. No reason is assigned for non prosecution of those important witnesses. In the affidavit in reply in para 7 and 8 the affiant Shantaram Birje, submits that Dr. Kachare who had conducted post mortem was present in court, however, he did not bring full post mortem report as it was not available. Dr. Kachare informed that complete post mortem report was not available as the papers of ADR file were lying in the Corronor Court and the said Court is closed.

4. Taking these aspects into consideration and grievance of the complainant that the prosecution miserably failed to put in proper evidence though available finds substance. The net result is, the order of acquittal recorded by the learned Sessions Judge is set aside. The matter

is remitted to the learned Sessions Judge, Dindoshi to decide afresh in the light of the observations made hereinbefore and particularly for not answering point no.2 in respect of offence under section 304B read with 34 of I.P.C. The investigator shall examine two named witnesses. The accused will have liberty to cross examine these witnesses. The investigator shall also ensure production of the post mortem notes or its copies.

5. The parties to appear before the learned Additional Sessions Judge, Dindoshi on 19/10/2011. The Investigator will intimate the accused/respondent about the next date. The complainant is at liberty to inform by registered post A.D. within three days from today of the remand of the matter and the next date to the respondent. Place before the learned Additional Sessions Judge, Dindoshi. Revision allowed to the above extent.

(K.U. CHANDIWAL,J.)