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

902 CRIMINAL APPEAL NO.2 OF 2021
WITH APPLN/2/2021
IN CRIMINAL APPEAL NO.2 OF 2021

SATYASING MAYASING BAVRI & ORS.
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Appellants/Applicants : Mr S.J. Salunke;
APP for Respondent : Mr S. D. Ghayal

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : 18th February, 2021

PER COURT:

1. Insofar as the appeal is concerned, all these appellants - original accused have been convicted by the Trial Court for having committed offences punishable under Sections 302, 143, 147, 148, 323 and 504, read with Section 149 of the Indian Penal Code and under Section 37 (1) and (3) punishable under Section 135 of the Bombay Police Act, read with Section 149 of the Indian Penal Code and have been sentenced to suffer life imprisonment along with other sentences and pay the fine amount. All the sentences are to run concurrently.

2. Having considered the submissions of the learned Advocate for the appellants and the learned Prosecutor on behalf of the respondent - State, this appeal is **“ADMITTED”**. The learned Prosecutor waives service of notice on admission.

3. The learned Trial Court is requested to prepare the appeal paper book in Sessions Case No.101/2017, on or before 30/09/2021 and transmit the same along with the original record and proceedings and the Muddemal property, to this Court, on or before 30/11/2021.

4. Insofar as Criminal Application No.2/2021 is concerned, the convicted accused pray for suspension of the substantive sentence and enlargement on bail during the pendency of this appeal. The learned Advocate for the applicant Nos.1, 2 and 3, namely, Satyasing, Ravising and Malingsing, submits on instructions that these three appellants seek leave to withdraw this application to their extent. As such, this application is disposed off, as withdrawn, to the extent of the accused, namely, Satyasing, Ravising and Malingsing.

5. We have considered the submissions of the learned Advocate and the learned Prosecutor to the extent of the two accused, namely, Malabai and Kalibai. With their assistance, we have gone through the record available and we have perused the testimony of all the witnesses. We have also considered the analysis of the evidence in the impugned judgment and the reasons assigned for coming to a conclusion that all the accused are guilty of having committed the offences.

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6. The record reveals that deceased Rahul, on 12/07/2017, was having his meals in the front courtyard of the house which is at a distance of about 14 to 15 feet from the house. His brother, Ajay, who is an eye witness - PW3, was resting inside the house after his dinner. The evidence reveals that Satyasing started demanding money from the deceased for purchasing liquor. The deceased declined to oblige him and Satyasing started abusing him. When the accused realized that the deceased was not parting with money in any circumstances, he started assaulting him. He was joined by his real brothers Ravising and Malingsing and they started beating the deceased. The mother of the deceased attempted to rescue her son and Satyasing pushed her, which resulted in her head banging on the wall. She suffered a blunt injury to her head. PW3- also rushed out of the house on hearing the commotion. At that time, Satyasing whipped out a sharp knife with an iron handle and slashed Rahul - the deceased, on the left side of his abdomen. At that time, the mother of these three accused, Malabai and the wife of Satyasing - Kalibai, also came to the scene and it is the case of the prosecution that these two ladies also started beating the deceased.

7. It is established through evidence that the deceased was carried to the Civil Hospital, Jalgaon by PW3, mother of the deceased - PW7 and his wife. After the Doctors administered the stitches, the deceased was found to be in a critical condition and was therefore shifted to Om

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Critical Hospital. Thereafter, PW3 went to the Ramanand Nagar Police Station and lodged the report. Since the condition of the deceased deteriorated, the Doctors advised his shifting to Mumbai and on the next day, while taking him to Mumbai, the victim passed away at Nasik in the Civil Hospital, Nasik, where he was promptly admitted, noticing his deteriorating condition.

8. The appellants have relied upon the judgment of the Honourable Apex Court delivered in the case of **Bikau Pandey & ors. Vs. State of Bihar, AIR 2004 Supreme Court 997**, wherein the Honourable Apex Court has laid down the law with regard to an unlawful assembly and the effect of Section 149 of the Indian Penal Code in paragraph Nos. 9, 10 and 11, which read as under :-

“9. We shall deal with the question regarding applicability of Section 149 IPC, which was urged emphatically.

10. A plea which was emphasized by the respondents relates to the question whether [Section 149](#), IPC has any application for fastening the constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of [Section 149](#). The crucial question to determine is whether the assembly

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consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in [Section 141](#). It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of [Section 141](#). The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in [Section 149](#) have to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of [Section 149](#), IPC may be different on different members of the same assembly.

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11. 'Common object' is different from a 'common intention' as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. Under the Explanation to [Section 141](#), an assembly which was not unlawful when it was assembled, may subsequently become unlawful. It is not necessary that the intention or the purpose, which is necessary to render an assembly an unlawful one comes into existence at the outset. The time of forming an unlawful intent is not material. An assembly which, at its commencement or even for some time thereafter, is lawful, may subsequently become unlawful. In other words it can develop during the course of incident at the spot eo instanti."

9. We have Considered the expression of law by the Honourable Apex Court that, it cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is allegedly a

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member of an unlawful assembly, he cannot be said to be guilty being a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts, which fall within the purview of Section 141.

10. The word 'object' is interpreted to mean that in order to make it 'common', it must be shared by all. In other words, who compose the assembly, that is to say, they should be aware of it and concur in it. A common object may be formed by an expressed agreement after mutual consultation, but that is by no means necessary. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only upto a particular stage, and not thereafter. Members of an unlawful assembly may have community of object upto a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object, vary not only according to the information at his command, but also according to the extent to which he shares the community of object and as a consequence of this, the effect of Section 149, IPC, may be different on different members of the same assembly.

11. Prima facie, we are of the view that these two ladies may not be party to the process of Satyasing demanding money from deceased Rahul for purchasing liquor for consumption. After they heard the commotion, they appeared to have rushed out and may not have made an attempt to rescue Rahul. In the process of assaulting Rahul, they may have participated and being a part of an assembly of five persons, Section 149 of the Indian Penal Code was invoked even against them. Both these ladies were on bail during the trial. Considering the law in Bikau Pandey (supra), we are of the prima facie view that these two ladies may have an arguable case as against the constructive liability under Section 149, and also in the light of the judgment of the learned Division Bench of the Madras High Court in the matter of **Muniyand & ors. Vs. State and ors., 2017 Cri. L.J. 4033** (Madras High Court).

12. As such, this application is partly allowed. The substantive sentence awarded to the two accused, namely, Malabai and Kalibai, vide the impugned judgment, shall stand stayed until the decision in the appeal. They shall be released on bail, subject to the following conditions :-

- (a) They shall deposit the entire fine amount before the Trial Court.
- (b) They shall tender P.R.Bond of Rs.15,000/-, with one

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surety in the like amount.

(c) They shall mark their attendance on every 7th and 21st day of each month, in between 10.00 a.m. to 1.00 p.m. and the Station House Officer shall record their attendance by obtaining their signature in the Station House Diary, till the decision in the appeal.

(d) In the event of any illness or hospitalization, each shall apply to the Station House Officer, who shall accordingly grant a reasonable time for treatment and recovery and exemption for marking the attendance.

(e) Each of these two ladies shall tender the self attested copies of their Election Commission Voter I.D. Card or Adhar Card and a proof of permanent address of their residence. Any change in the address shall be intimated in writing within one week of such change.

(f) They shall not leave the Jalgaon District without prior permission of the SHO.

(g) Violation of any of these conditions, would be a ground for cancellation of bail.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)