

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 589/2019

- PETITIONERS:**
1. Radharaman Rishikesh Tiwari, aged about 47 years, Occ. Service, R/o. Ramsingh Pali Chakki, Kiraat Layout, Mankapur, Nagpur, Police Station - Mankapur.
 2. Poonam Radharaman Tiwari, aged about 44 years, Occ. Housewife, R/o. Ramsingh Pali Chakki, Kiraat Layout, Mankapur, Nagpur, Police Station - Mankapur.

...VERSUS...

- RESPONDENTS:**
1. State of Maharashtra, through its Commissioner of Police, Nagpur City, Civil Lines, Nagpur.
 2. The Police Inspector, Sandip Bhosle, Investigation Officer, Crime Branch, Nagpur City, Nagpur.
 3. Narendra Yashwantrao Khandait (Deleted)
 4. Shri Rahul Bajaj (deleted)
 5. Shri Shekhar Bajaj (deleted)
 6. Shri Sanjay Bhargava (deleted)
 7. Shri Purushotamdas Dwarkaprasad Khemuka (deleted)
 8. Smt. Bhavana Gaturwar (deleted)
 9. Shri Badri Prasad Shankar Prasad Pande (deleted)

10. Ajay Nandlal Turkar,
aged about 18 years, Occ. Student,
R/o. Plot No. 94, Near Mahalaxmi
Medical, Hariom Nagar, Dattwadi,
Nagpur, Police Station - Wadi

11. Naresh Patni s/o Bansilal (deleted)

Shri K.R.Trivedi, Advocate for petitioners
Shri S.M.Ghodeswar, APP for respondent no.1

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.
DATE : 16/02/2021.**

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

Heard.

Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2] This petition has been filed by the parents of deceased Rahul Tiwari, who was studying, at the time of his death, in 12th standard. The incident took place in the afternoon of 02.08.2018. It is seen from the statement of eye-witnesses that on 02.08.2018, 12th standard classes were going on as usual and at about 3.45 p.m., some of the boys

and girls took certain liberties and started playing pranks with each other.

3] It is further seen from the version of the eye-witnesses that during the course of such pranks, there was a heated exchange of words between deceased Rahul and accused Ajay Turkar and it slowly turned into a fight in which, it is alleged that the accused Ajay gave slaps to deceased Rahul, due to which deceased Rahul fell down on the floor and sustained injuries. It was then noticed that some froth had started coming out of mouth of Rahul and the boys & girls who had an occasion to witness this incident were horrified. They called for the help and by the time the teachers and senior lecturers gathered at the spot, Rahul had slept into unconsciousness and so he was taken to Dande Hospital, where he was declared as brought dead.

4] The post mortem examination was conducted and initially the opinion was reserved and finally opinion regarding cause of death was issued by the Doctor on 11.09.2018. The Doctor opined that the cause of death was

“cerebral and pulmonary oedema in a case with history and circumstances suggestive of vagal inhibition”.

5] It is the contention of learned counsel for the petitioner that the opinion as to the cause of death suggests occurrence of death due to pressing of neck from both sides and this is what the expression "vagal inhibition" means. He submits that, however, the statements recorded and material gathered by the I.O. indicates something different. He pointed out that just before deceased Rahul fell unconscious, according to the version of eye-witnesses, Rahul was slapped on the face by accused Ajay. According to the learned counsel, this version is not prima facie consistent with the cause of death mentioned in the opinion of the doctor dated 11.09.2018 and therefore, it is necessary that proper investigation in the matter be made and as the I.O. is not performing his duty, necessary direction is required to be issued to the I.O. He also submits that it is not possible in ordinary course of circumstances that a person would die only upon receiving some slaps.

6] It is true that the opinion as regards cause of death indicates that "cerebral and pulmonary oedem" that was noticed in the dead body of Rahul and it was suggestive of "vagal inhibition". The petitioners themselves have elaborated this expression in the memo of petition in paragraph 25. The petitioners state that "vagal inhibition" means "stopping the heart by stimulation of the vagus nerve in the neck. This can be caused by pressure on the neck." Now, if this meaning is accepted as it is, it would only mean that "vagal inhibition" is nothing but stimulation of vagus nerve in the neck and one of the factors which would cause such stimulation is bringing of pressure on the neck. It would also mean that there could be many other factors by which such stimulation of the vagus nerve of the neck is possible. Once this is understood, we do not think that the version of the incident as given by the eye-witnesses could be considered as inconsistent with the post mortem report or contradictory to what has been opined by the doctor as regard the cause of death. Thus, the possibility of stimulation of vagus nerve occurring due to slapping also cannot be ruled

out. Therefore, we do not think that the investigation made in this case could be termed as ineffective or improper or negligent.

7] As regards the filing of charge-sheet, we must say that at present it takes care of the concern expressed by the petitioners, as the charge-sheet has been filed for an offence under Section 304 of I.P.C. However, during the course of trial, if the Juvenile Court comes across further evidence suggesting the case to be of murder, the Juvenile Court would always be at liberty to also charge the juvenile in conflict of law for such an offence in accordance with the provisions contained in the Juvenile Justice Act read with Code of Criminal Procedure.

8] In the result, we do not find any substance in the petition. The petition is dismissed. Rule is discharged.

JUDGE

JUDGE