

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

**974 CRIMINAL APPEAL NO. 269 OF 2022**

KAILAS @ RAJU S/O DATTA SHETTE  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

...  
Mr. Avinash D. Hande, Advocate for Appellant.  
Mr. R. V. Dasalkar, A.P.P. for Respondent/State.  
Mr. D. B. Bhange, Advocate for Respondent No.2.

...

AND

**CRIMINAL APPEAL NO. 292 OF 2022**

MAROTI @ PINTU SHIVRAM MATHAPATI  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

...  
Mr. Shivaji Bhimrao Bhapkar, Advocate for Appellant.  
Mr. R. V. Dasalkar, A.P.P. for Respondent/State.  
Mr. D. B. Bhange, Advocate for Respondent No.2.

...

CORAM : **SARANG V. KOTWAL AND  
BHARAT P. DESHPANDE, JJ.**

DATE : 01<sup>st</sup> July, 2022.

**PER COURT:**

. Both these appeals are decided by this common order because they arise out of same incident, same registered offence and the same investigation. Whenever necessary, both the appellants are referred to by their names.

2            Heard both the learned counsel for the appellants and learned APP for the State.

3            Criminal Appeal No.269 of 2022 is filed Kailas @ Raju Shette and Criminal Appeal No.292 of 2022 is preferred by Maroti @ Pintu Mathapati. The prosecution case is that in the night of 29<sup>th</sup> September, 2021 at about 11:00 pm both the appellants and one Nagbhushan Wagdale quarreled and fought with the deceased Navnath and caused his murder.

4            Both the learned counsel for the appellants submitted that the prosecution case is based on solitary statement of witness Ramrao Jangewad. His statement was recorded on 19<sup>th</sup> October, 2021. He was immediate neighbour of the deceased and his silence for the period of twenty days is suspicious. Therefore, they submitted that because of this weak piece of evidence, both the appellants deserve to be released on bail.

5            We have considered these submissions. Both the appellants are arrested in connection with C.R. No.229 of 2021, registered at Umri Police Station, District Nanded, for the offence punishable under Sections 302 read with 34 of the Indian Penal Code

and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The FIR is lodged by Dr. Hari Boyale, who was the brother of the deceased Navnath. He has stated that Navnath was a private veterinary practitioner. He was residing alone as he had matrimonial dispute with his family. On 1<sup>st</sup> October, 2021, one Mahajan Gaikwad informed him telephonically that Navnath had expired. Therefore, the informant went there. The dead body was taken to the Government Hospital. Postmortem was conducted and the police had recorded accidental death report. After that, the informant came back to his native place. On 19<sup>th</sup> October, 2021, he met one Ramrao Jangewad resident of Umri near Navnath's house. He told him that on the night of incident, he had seen quarrel between the appellants and the deceased and he had seen the deceased being assaulted by the appellants. When the informant received this information from Ramrao, he approached the police and lodged the FIR. The investigation was carried out. Both the appellants were arrested on 19<sup>th</sup> October, 2021 as the FIR was lodged on the same day. On that very day, the statement of Ramrao was recorded. He has stated that he was residing near the house of the deceased, who was residing alone in his house. About one month prior to the incident, the appellant Kailas had taken motorcycle of the deceased and had not returned it for some days. The deceased had told this fact to the appellant Kailash's father; because of which the appellant Kailas

was angry with the deceased. On 29<sup>th</sup> September, 2021 at about 11:00 pm, this witness heard noise of quarrel. He went out and saw that both the appellants and one Nagbhushan were abusing and quarreling with the deceased. They were also assaulting the deceased. This witness had seen all three accused leaving the place. On the next day morning, he went to attend his daily agricultural work. In the afternoon, he came to know that the deceased was found dead in his house and the police were making inquiry. On 19<sup>th</sup> October, 2021, the informant met him and at that time, this witness told him about the incident, which he had seen. Apart from this solitary statement, there is hardly anything. There is no other witness, who had seen the incident.

6            Learned counsel for the respondent No.2 as well as learned APP for the State relied on this very statement to oppose these appeals.

7            We have also perused the postmortem notes. There were seven injuries in the nature of contusions and abrasions over left eye, neck, back, elbow, knee, thigh. The postmortem notes did not mention the cause of death. The opinion was reserved as the viscera was preserved. The final cause of death was given after receipt of viscera report and it was opined that the death was due to "Internal Abdominal Bleeding". The postmortem notes also show that there was bleeding

near spleen. It is obvious that no particular weapon was used in the assault, which was suffered by the deceased as is clear from the external injuries noted in the postmortem notes. Even otherwise, the only piece of evidence against the appellants is in the nature of statement given by Ramrao. His statement is recorded on 19<sup>th</sup> October, 2021. The alleged date of incident is 29<sup>th</sup> September, 2021. There is absolutely no explanation as to why Ramrao had not earlier approached the police or relative of the deceased and narrated this story. His statement itself shows that on the next date of the incident, the police were making inquiry. This witness, therefore, was aware that the police were available and yet he did not tell about the incident, which he allegedly seen, even to the police. Thus, it raises sufficient doubt about the veracity and truthfulness of this witness's statement. In this view of the matter, there being no other circumstances against the the appellants, they deserve to be released on bail. Hence, the following order :

### **ORDER**

- I. Both the appeals are allowed.
- II. In connection with C.R. No.229 of 2021, registered at Umri Police Station, District Nanded, the appellants are directed to be released on bail on their furnishing P. R.

bond in the sum of Rs.25,000/- (Rupees Twenty-Five Thousand Only) each with one or two sureties each in the like amount.

III. Both the appeals stand disposed of accordingly.

*nga* [ BHARAT P. DESHPANDE, J. ]

[ SARANG V. KOTWAL, J. ]