

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

CRIMINAL APPEAL NO.775 OF 2018

- 1) Devidas s/o Bhika Nawghare,) **Separate appeal**
Age 35 years, Occu. Agril.) **filed as per Court's**
) **order dated 8/9/2020**
- 2) Kailas s/o Bhika Nawghare,)
Age 41 years, Occu. Agril.)
- 3) Shivram Suba Nawghare
Age 64 years, Occu. Agril.
- 4) Uttam Suba Nawghare,
Age 61 years, Occu. Agril.
- 5) Shivdas Shivram Nawghare,) **Separate appeal**
Age 37 years, Occu. Agril.) **filed as per Court's**
) **order dated 8/9/2020**
- 6) Vilas Shivram Nawghare)
Age 29 years, Occu. Agril.)

All R/o Kapuswadi, Tq. Jamner,
District Jalgaon

... APPELLANTS

VERSUS

The State of Maharashtra,
(Copy to be served on P.P.
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Shri Govind Kulkarni, Advocate for appellants
Mrs. R.P. Gaur, A.P.P. for respondent
.....

WITH

**CRIMINAL APPEAL NO.496 OF 2020 WITH
CRIMINAL APPLICATION NO.2302 OF 2020**

- 1) Devidas s/o Bhika Nawghare,
Age 36 years, Occu. Agril.
R/o Kapuswadi, Tq. Jamner,
District Jalgaon
- 2) Kailas s/o Bhika Nawghare,
Age 42 years, Occu. Agril.
R/o Kapuswadi, Tq. Jamner,
District Jalgaon
- 3) Shivdas Shivram Nawghare,
Age 38 years, Occu. Agril.
R/o Kapuswadi, Tq. Jamner,
District Jalgaon
- 6) Vilas Shivram Nawghare
Age 30 years, Occu. Agril.
R/o Kapuswadi, Tq. Jamner,
District Jalgaon

... APPELLANTS

VERSUS

The State of Maharashtra,
(Copy to be served on P.P.
High Court of Bombay,
Bench at Aurangabad)

... RESPONDENT

.....
Shri N.S. Ghanekar, Advocate for appellants
Mrs. R.P. Gaur, A.P.P. for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 6th January, 2022

Date of pronouncing judgment : 5th May, 2022

J U D G M E N T :

Both these appeals are being decided by this
common judgment since the challenge therein is to a

judgment and order dated 15/10/2018, passed by Additional Sessions Judge, Jalgaon in Sessions Case No.92/2012. The appellants have been convicted for the offences punishable under Sections 304 (Part-II), 143, 147 and 148 read with Section 149 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.1000/- each, in default to undergo simple imprisonment for three months for the offence punishable under Section 304 Part-II of the Indian Penal Code; rigorous imprisonment for three years and to pay fine of Rs.5000/- each, in default to suffer S.I. for one month for the offence punishable under Section 148 read with Section 149 of the Indian Penal Code; rigorous imprisonment for two years and fine of Rs.200/- each, in default to suffer S.I. for 15 days for the offence punishable under Section 147 read with Section 149 of the Indian Penal Code; and rigorous imprisonment for six months and to pay fine of Rs.100/- each, in default to suffer S.I. for 7 days for the offence punishable under Section 143 read with Section 149 of the Indian Penal Code. The substantive sentences of imprisonment have been directed to run concurrently.

2. The appellants were charged with the offence

punishable under Section 302 read with Section 149 of the Indian Penal Code. The trial Court acquitted the appellants of the offence punishable under Section 302 of the Indian Penal Code, holding it to be an offence punishable under Section 304 (Part-II) of the Indian Penal Code.

3. The facts giving rise to the present appeals are as follows :-

Pravin Gopal (deceased) and his family members owned a piece of land (House site) at village Kapuswadi, Taluka Jamner, District Jalgaon. One Vinod Waghmare had started residing on the said plot with the consent of the family members of deceased Pravin. Vinod Waghmare planned to make a permanent construction on the land. He, therefore, collected building material. Deceased Pravin and his parents had asked him to not make any construction on the site. As he was not in a listening mood, they evicted Vinod from the plot. Vinod is the brother-in-law of appellants Kailas and Devidas. Since the day of eviction of Vinod, relationship between these two appellants on one hand and the family of deceased Pravin on the other had not been good.

Raju Gopal (P.W.5), cousin of deceased Pravin was

present outside his house by 2.00 p.m. of 8/4/2012. Appellant Devidas gave him two slaps. The quarrel was, however, settled then and there.

4. At about 9.30 p.m. on the same day (9/4/2012), deceased Pravin had a quarrel with his mother over her permitting Vinod to reside on the family plot. Deceased Pravin was also annoyed by appellant Devidas to have slapped Raju in the afternoon. Appellant devidas was around. He was armed with a stick. He first assaulted on the ear of Pravin with stick. He gave second stick blow on Pravin's back. Other appellants thrashed Pravin with fisty-cuffs and kicks. Pravin, therefore, started running away with a view to save his life. There was a well in the nearby. All the appellants chased him. All of them again beat up Pravin. While running away, Pravin stopped at the parapet wall of the well. All the appellants again thrashed him there. As a result, Pravin fell into the well. He was immediately taken out of the well to find him to have passed away.

5. P.W.5 Raju, therefore, lodged the First Information Report (Exh.86). Crime vide C.R. No.50/2012 came to be registered with Jamner Police Station for the offence punishable under Sections 302, 143, 147, 148, 149, 323, 504,

506 of the Indian Penal Code. The scene of offence panchanama was drawn. Clothes on the person of the deceased were taken charge of under the panchanama. Appellant Devidas gave a disclosure statement, pursuant to which a stick used in commission of the offence came to be recovered. Mortal remains of Pravin was subjected to post mortem examination (p.m.). The p.m. report indicates he died of haemorrhagic shock due to multiple injuries. On completion of the investigation, the appellants were proceeded against by filing a charge sheet before the learned Judicial Magistrate, First Class, Jamner, who in turn, committed the case to the Court of Sessions.

6. Learned Additional Sessions Judge framed the charge (Exh.53). The appellants pleaded not guilty. It is their case that, the deceased had a quarrel with his mother. His relations, therefore, had beaten him up. Since he could not bear with the beating at the hands of his own relations, he committed suicide by jumping into a well.

7. The prosecution examined 10 witnesses and produced in evidence certain documents. On appreciation of the evidence in the case, the learned Additional Sessions Judge convicted and sentenced the appellants as stated

above.

8. Heard learned Advocates appearing for the appellants. Also heard learned A.P.P. for the State. It was submitted by the learned Advocates appearing for the appellants that, the material witnesses examined on behalf of the prosecution were all relations of the deceased. There is inconsistency inter-se the evidence of the eye witnesses. No independent witnesses have been examined. The p.m. report (Exh.93) indicates the deceased to have suffered no serious injuries. Except the appellant Devidas, others are alleged to have assaulted the deceased with fists and kicks. Due to accidental fall of the deceased into a well, he suffered fatal injury. There was no much water in the well. There was an iron foundation for placing an electric motor in the well. The deceased might have suffered injuries due to fall thereon and on rocky bottom of the well. According to learned counsel, it would at the most be an offence punishable under Section 324 or 323 of the Indian Penal Code. The appellants have been behind the bars for little over three and half years. They, therefore, urged for allowing the appeal.

9. The learned A.P.P., on the other hand, submits that, presence of the eye witnesses at the scene of offence is

undisputed. The appellants had mercilessly beaten up the deceased in the presence of his mother. While the deceased started running away to save his life, the appellants chased him and again beat him up on the parapet wall of the well. As a result of severe beating, the deceased fell into the well. He died of the injuries suffered due to the beating which is also the cause for his fall in the well. The p.m. report undoubtedly indicates the deceased died of haemorrhagic shock due to multiple injuries. He did not die of asphyxia due to drowning. According to learned A.P.P., the family members of the deceased and the appellants have relations inter-se. The eye witnesses are relations of the appellants and their evidence, therefore, cannot be branded as that of the interested witnesses. The learned A.P.P. would submit that, the trial Court has rightly convicted the appellants. She urged for non-interference with the impugned order.

10. Considered the submissions advanced. Perused the evidence relied on. Although the prosecution had examined 10 witnesses to bring home the charge, for deciding the present appeal, the relevant evidence would be that of the three eye witnesses and the medical officer who conducted the p.m. examination. Needless to mention, rest of the

witnesses were panchas to the scene of offence panchanama, seizure of stick and clothes as well. The witnesses did not stand by the prosecution. Rest of the two witnesses are police officials who participated in the investigation. One of them had carried vicera to Central Forensic Science Laboratory for analysis. The other one is the investigating officer Dilip Shirsath (P.W.10).

11. Let us appreciate the evidence. P.W.5 Raju had lodged the F.I.R. (Exh.86). It is in his evidence that, Vinod Waghmare was residing on the property owned by his uncle Dnyandeo. Vinod wanted to make some permanent construction on the said property. He and deceased Pravin had, therefore, asked him not to make any construction. Pravin, therefore, evicted Vinod from the said place about 4 – 5 days prior to the incident dated 8/4/2012. On account of Vinod having been evicted from the property, his brothers-in-law, appellant Devidas and Kailas got annoyed. Devidas gave him (Raju) 2 – 3 slaps on his face. The quarrel was, however, settled then and there. It is further in his evidence that, on the same day at about 8.00 p.m., opposite the house of one Ratan Navghare, Pravin (deceased) questioned his mother as to why Vinod was permitted to make construction at the

place. Pravin also stated her that appellant Devidas had slapped Raju over the said issue. It is further in his evidence that, at that time, the appellant Devidas assaulted Pravin on his ear and back with a wooden stick. Other appellants beat him with fisty-cuffs and kicks. Mother and sister of the deceased Pravin intervened to rescue him. Devidas, therefore, beat him up with stick. Other appellants also beat up the mother and sister of the deceased. Pravin, with a view to save himself, tried to go towards his house. Appellant Devidas again beat him up with wooden stick near public well. Pravin fell on the parapet wall of the well. Other appellants again beat him up with fists and kicks. As a result, Pravin fell in the well. The appellants fled from the scene. It is further in his evidence that, Ganesh and Vilas immediately took Pravin out of the well with the aid of rope. Blood was oozing from Pravin's ear. Pravin was dead. He, therefore, immediately went to Jamner Police Station and lodged the F.I.R. (Exh.86).

12. In response to the questions put to him during cross-examination, he replied that, Savita and Sunandabai were sisters of Pravin. Vikas and Ganesh were cousins of deceased Pravin. Vinod Waghmare hailed from village Khadki

Borgaon. As Vinod was in the relation and belonging to the same community, he was given the place to reside for 15 days. Vinod was residing along with his family members. It was a room of tin sheets. Vinod and his wife were doing labour work to earn their living. It is further in his evidence that, there was no dispute regarding the said property until Vinod vacated it. It has also come in his evidence that, he did not lodge any police report for having been slapped by appellant Devidas in the afternoon on 8/4/2012. He further testified that, deceased Pravin was abusing his mother. He was trying to take him home. Pravin was in the hit of anger with his mother. Pravin's father and his (Raju's) father had gone to Dhule on that day. He specifically denied the suggestion that, Pravin was beaten by him since Pravin was abusing his mother. He also denied his suggestion that Pravin lost his balance during shuffle with him (Raju) and as a result he fell in the well. He also testified that he had discussion with the relatives and then it was decided to lodge F.I.R. against the appellants.

13. P.W.6 Ganesh is another eye witness. It is in his evidence that, appellant Kailas and Devidas had grudge on account of Vinod to have been evicted from the room. It is

further in his evidence that, the incident took place by 9.30 p.m. on 8/4/2012 opposite the house of one Ratan Navghare. Pravin, his mother Sumanbai and Raju (P.W.5) were present there. Pravin was abusing his mother. Pravin had asked his mother to come home. Appellant Devidas gave 2 – 3 slaps to Pravin. He also beat Pravin with wooden stick. Rest of the appellants beat up Pravin with fists and kicks. It is further in his evidence that, he himself, Vikas and Raju intervened to rescue Pravin. Pravin, to save himself, started going towards his house. The appellants followed and again beat him up. The said beating took place near Grampanchayat well. Pravin fell into the well as a result of beating. The appellants went away.

14. During his cross-examination, P.W.6 Ganesh testified that, Vinod had not brought construction material at the site. He volunteered to state that Vinod had stated that he would initiate construction on the land given to him for residence. It is in his evidence that, Pravin did not want Vinod to be permitted to stay on their family property. Vinod was made to vacate the site. Vinod, therefore, left the village. It is further in his evidence that, he had returned from the field by 6.00 p.m. on 8/4/2012. He denied the

suggestions that Pravin was alive before he fell into the well. He also denied that Pravin died due to fall in the well. Some omissions amounting to contradictions have also been brought on record during his cross-examination. He claimed to have stated the police that Devidas had given 2 – 3 slaps to Pravin. Devidas had also beaten up Pravin on his leg with a stick. Other appellants had also beaten up Pravin near the well. He, however, denied that, Pravin died as a result of injury suffered on account of his fall in the well.

15. On the same line is the evidence of the mother of the deceased. P.W.7 Sumanbai was Pravin's mother. It is in her evidence that, it was about 9.30 p.m. Pravin, his sister Savita, Raju (P.W.5) and herself were present opposite the house of one Ratan Navghare. Pravin was abusing her as he (Pravin) had stated that appellant Devidas had beaten up Raju (P.W.5). Pravin was asking her to go home instead of remaining there. It is further in her evidence that, appellant Devidas brought a wooden stick. He beat up Pravin on his ear with the said stick. Stick blow was also given on Pravin's leg. Other appellants beat up Pravin with fisty-cuffs and kicks. She and Raju (P.W.5) intervened to save Pravin. Pravin ran towards the house to save himself. While Pravin

was near Grampanchayat well, the appellant Devidas again beat up him with a stick. It is further in her evidence that, the appellant threw Pravin in the well.

16. During her cross-examination, it has come on record that, Vinod had vacated the place soon after he was asked to vacate. She testified to have stated to the police in her police statement that the appellants threw Pravin into a well. The same, however, does not find place in her police statement. She denied to have falsely implicated the appellants.

17. P.W.8 Dr. Milind had examined the dead body of Pravin. It is in his evidence that he performed p.m. on mortal remains of Pravin. Clothes on the person of Pravin were wet with water stains with blood and soil. His body was well nourished. Rigour mortis wheel marks were present on whole body. He noticed following external injuries on the person of deceased

- (1) Transverse scar of blunt trauma on abdomen
- (2) Scar on blunt trauma on chest at 4th cervical rib in a mid clavicular line.
- (3) Scar of blunt trauma on right thigh at mid femoral point.

- (4) CLW on scalp temporal region size
about 7.5 cm. X 2.5 cm. X 1.00 cm.
- (5) Cut wound on right ear pinna about 0.5 cm. long.
- (6) Contusion marks on both elbow joints.

According to him, the aforesaid injuries were ante mortem. There was haematoma in the temporal region. Fourth cervical rib fracture in mid clavicular line with haemothorax present. Peritoneal haematoma in sub diaphragmatic region present. Stomach contained semi digested food with fecle matter. The spleen was ruptured with haematoma. In his opinion, the cause of death was hemorrhagic shock due to multiple injuries.

18. During his cross-examination, it has come on record that, he has not given any reason as to on what basis the age of the injuries was ascertained and noted in the certificate. He had not brought with him M.L.C. register and case papers. According to him, if the injured person falls in a well with water therein, he may die due to asphyxia due to drowning. He, however, specifically denied that his findings in regard to the cause of death mentioned in the p.m. notes (Exh.96) were baseless.

19. The appreciation of evidence of the aforesaid four witnesses leads this Court to observe that there was a house site belonging to Pravin and his family. Vinod Waghmare was permitted to stay in a tin shed on the said site. Vinod wanted to make some permanent structure thereon. Deceased Pravin had, therefore, evicted him from the site. Appellant Kailas and Devidas were the brothers-in-law of Vinod. They were, therefore, annoyed over Vinod having been forced to vacate the site. On close scrutiny of the evidence of the eye witnesses, their presence at the site has not been dispute. It is the case of the appellants that there was quarrel between the deceased and his mother. This fact has also been admitted by the witnesses in their examination-in-chief itself. Deceased Pravin was annoyed with his mother since appellant Devidas had assaulted P.W.5 on account of Vinod having been forced to vacate the site. It was suggested to these witnesses that, P.W.5 Raju had a shuffle with the deceased and in that process, deceased accidentally fell into the well. It was also submitted by the learned counsel or the appellants that, the deceased might have died of the injuries suffered by him due to fall into the well.

20. True, P.W.4 Rajendra, P.W.6 Ganesh and P.W.7

Sumanbai were close relations of the deceased. It is also true that no independent witness has been examined. It is reiterated that the presence of these three eye witnesses at the site is undisputed. It is also not in dispute that, Pravin fell into the well. There is no evidence to suggest that he had any reason to jump into a well. The well had a parapet wall. The same rules out accidental fall into the well. True, there may appear to be some inconsistency inter-se evidence of these three eye witnesses. The same is bound to be there. They were not expected to have a photographic memory to reiterate the incident in their evidence before the Court. they were not expected to know number of blows inflicted by the appellants and parts of the body on which the blows fell. The evidence of these three witnesses undoubtedly indicate that, Pravin was mercilessly thrashed by the appellants herein. While he tried to run away with a view to save his life, they chased him near the parapet wall of the well. He was again thrashed there. The evidence undoubtedly suggests that, due to such beating, he fell into the well. Within minutes he was taken out of the well to find to have been no more. The learned counsel for the appellants would suggest that, the deceased might have suffered fatal injuries due to his fall in the well. They, however, forgot that his fall in the wall was as

a result of the beating given by the appellants herein. The trial Court has rightly observed that the deceased died as a result of the injuries suffered at the hands of the appellants. The appellants caused death of Pravin in the presence of his (Pravin's) mother. Needless to mention that, the appellants have also been in relationship with the deceased and the witnesses examined in the case. They, therefore, cannot be heard to say that the prosecution evidence is that of the witnesses related to the deceased. The witnesses were not confronted with their police statements or the F.I.R. to bring on record omissions or contradictions in their evidence. Be that as it may. The evidence undoubtedly makes out a prosecution case that the appellants had mercilessly beaten up deceased Pravin. While he (Pravin) started running away to save himself, they followed him and again beat him up at the parapet wall of the well. As a result of the beating, Pravin fell into the well. The p.m. report indicates he died of haemorrhagic shock due to multiple injuries. The injuries suffered by deceased Pravin were as a result of the beating given by the appellants. He fell in the well as a result of the beating itself. The appellants have, therefore, to be attributed with the knowledge that due to such beating the deceased may die. The trial Court has rightly convicted the

appellants for the offence punishable under Section 304 (Part-II) of the Indian Penal Code.

21. This Courts finds no reason to interfere with the findings recorded by the trial Court. This Court is also not inclined to scale down the quantum of sentences imposed by the trial Court. As such, the appeals fail. Both the appeals are dismissed.

22. Consequently, Criminal Application No.2302/2020 stands disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-