



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

**CRIMINAL APPEAL NO.2 OF 2021**

- 1) Satyasing Mayasing Bavri,  
Age 45 years, Occu. Labour
- 2) Ravising Mayasing Bavri  
Age 27 years, Occu. Labour
- 3) Malingsing Mayasing Bavri  
Age 25 years, Occu. Labour
- 4) Malabai Mayasing Bavri,  
Age 63 years, Occu. Labour
- 5) Kalibai Satyasing Bavri,  
Age 43 years, Occu. Housewife & labour

All are R/o Rajiv gandhi Nagar,  
Zopadpatti, Jalgaon, Taluka and  
District Jalgaon

... **APPELLANTS**

**VERSUS**

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

... **RESPONDENT**

.....  
Mr. N.S. Ghanekar, Advocate with  
Mr. Satwik Waghchaure, Advocate for appellants  
Mrs. Dr. Kalpalata Patil Bharaswadkar, A.P.P. for respondent  
.....

**CORAM : R.G. AVACHAT AND  
NEERAJ P. DHOTE, JJ.**

**DATE : 3rd December, 2024**

**JUDGMENT (PER : R.G. AVACHAT, J.) :**

The challenge in this appeal is to a judgment and order of conviction and consequential sentence, passed by Additional Sessions Judge, Jalgaon on 7/11/2020 in Sessions Case, No.101/2017. By the impugned judgment and order, the appellants have been convicted for various offences and consequently sentenced to various terms of imprisonment as detailed in the tabular form below :

| Section                                                                          | Sentence of imprisonment                                                         |
|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| 302 r/w 149 IPC                                                                  | Imprisonment for life and fine of Rs.1000/- each, in default S.I. for 3 months.  |
| 323 r/o 149 IPC                                                                  | Imprisonment for 6 months and fine of Rs.100/- each, in default S.I. for 8 days. |
| 504 r/w 149 IPC                                                                  | Imprisonment for 6 months and fine of Rs.100/- each, in default S.I. for 8 days. |
| 143 r/w 149 IPC                                                                  | Imprisonment for 1 month and fine of Rs.100/- each, in default S.I. for 8 days.  |
| 147 r/w 149 IPC                                                                  | Imprisonment for 1 year and fine of Rs.100/- each, in default S.I. for 8 days.   |
| 148 r/w 149 IPC                                                                  | Imprisonment for 1 year and fine of Rs.100/- each, in default S.I. for 8 days.   |
| 37(1)(3)<br>punishable u/s<br>135 of Bombay<br>Police Act r/w<br>Section 149 IPC | Imprisonment for 6 months and fine of Rs.100/- each, in default S.I. for 8 days. |

All the substantive sentences were directed to run concurrently.

2. Rahul (deceased) along with his parents would reside at Rajiv Gandhi Nagar, Jalgaon. It was a slum area. The appellants too would reside in the very vicinity. The incident occurred on 12/7/2017 by 10.00 p.m. Rahul was taking dinner alone on the road i.e. at a very short distance from his residence. Appellant Satyasing (A/1) came drunk. He asked Rahul to pay him money for consumption of alcohol. It appears that, A/1 put his hand in a food plate, which was in the hand of Rahul. Rahul got annoyed thereby. A quarrel between the two took place. A/1 caught hold of the collar of Rahul and even hurled expletives at him. Meanwhile, other appellants, the family members of A/1 arrived. All of them allegedly beat up Rahul. A/1 fished out a knife and assaulted therewith on the ribs of Rahul. P.W.7 Mhalsabai, mother of Rahul had intervened. A/1 pushed her against a wall. Her head hit the wall, resulting into blunt trauma. The appellants thereafter fled. Neighbours and family members rushed Rahul to hospital in autorickshaw. Unfortunately, Rahul breathed his last.

3. P.W.3 Ajay, brother of Rahul lodged the First Information Report (F.I.R. - Exh.86) against the appellants. A crime vide C.R. No.97/2017 was registered at Ramanand Nagar Police Station, Jalgaon for offences punishable under Sections 302, 143, 147, 148, 149, 323, 504 of the Indian Penal Code and Section 37(1)(3) of the Bombay Police Act against the appellants. A crime scene panchanama (Exh.81) was drawn. Appellants were arrested. Mortal remains of Rahul was subjected to inquest (Exh.89) and autopsy (Exh.147). The seized articles were sent to Forensic Science Laboratory, Nashik. Statements of persons acquainted with the facts and circumstances of the case were recorded. Upon completion of the investigation, a charge sheet was filed against the appellants.

4. The Trial Court framed the Charge (Exhs.20 and 59). The appellants pleaded not guilty.

5. The prosecution examined 14 witnesses and adduced in evidence certain documents. On appreciation of

the same, the Trial Court convicted and consequently sentenced the appellants as stated above.

6. Heard. Learned Advocate for the appellants would submit that, there was no prior enmity between the A/1 and the deceased. The incident took place in a spur of a moment. It was preceded by a quarrel and hurling of expletives. The appellants would rear pigs. They would eat pork. When the deceased Rahul was taking his dinner, A/1 had come drunk and made a demand for money. He even put his hand in the food plate of Rahul. Since the appellants would eat pork, he got annoyed thereby, and in a hit of passion, A/1 gave one knife blow which ultimately proved fatal.

7. So far as other appellants are concerned, the learned Advocate would submit that there is no injury certificate to indicate the mother of Rahul to have suffered any injury. As usual, all the family members have been roped in. In fact it was a quarrel between A/1 and Rahul alone. He, therefore, urged for converting the conviction of A/1 from the offence punishable under Section 302 of the Indian Penal

Code to Section 304 and urged for acquittal of the other appellants.

8. The learned A.P.P. would, on the other hand, took us through the entire evidence on record to submit that a single blow proved fatal. The same would suggest the nature of weapon and force of assault. Moreover, the body part chosen by A/1 to make an assault with a knife thereon would go long way to indicate him to have intended to kill Rahul. According to her, there could not be injury certificate as regards blunt trauma. The prosecution witnesses have no reason to give false evidence. She reiterated the reasons given by the Trial Court in support of the impugned order. She ultimately urged for dismissal of the appeal.

9. Considered the submissions advanced. Perused the evidence on record. Let us advert to the evidence on record and appreciate the same. The evidence of only 4 witnesses was referred to by learned Advocate for the appellants. P.W.9 Dr. Jitendra Vispute was a Medical Officer with Om Critical Centre, Jalgaon. His evidence indicates that,

one Rahul Sakat (deceased) was admitted to the said Clinic by 11.30 on 12/7/2017. He was initially admitted at Civil Hospital, Jalgaon. As per C.T. Scan report, there was intestine injury.

10. P.W.14 Dr. Nikhil was Additional Civil Surgeon, Civil Hospital, Nasik. His evidence disclose that, on 14 July 2017, a dead body of Rahul was referred for autopsy. He along with other two Medical Officers conducted autopsy and issued the report (post mortem report Exh.147). Evidence of this witness is undisputed before us. Column No.17 of the post mortem report indicates the deceased had suffered following injury :-

“Stitched stab wound of size 3 cm. x 0.5 cm. x 5.5 cm. was present over outer aspect of left side of abdomen, 8 cm. from midline, 11 cm. above anterior superior iliac spine, placed obliquely, One angle was acute and other was blunt. The direction of the wound was backwards, upwards, inwards. The track of the wound was through skin, subcutaneous tissue, wall of abdomen, peritoneum and descending colon. Effusion of blood was present along the tract.”

11. In the opinion of P.W.14 Dr. Nikhil, the probable cause of death of the deceased was perforation peritonitis due to stab injury to abdomen which is sufficient to cause death in ordinary course of nature.

12. It is undisputed that, Rahul met with a homicidal death. It is also not in dispute that the assault with a knife was made by A/1, as a result of which Rahul suffered fatal injury. The question is, whether it is an offence punishable under Section 302 of the Indian Penal Code or 304 Part I or Part II of the Indian Penal Code.

13. Exh.81 is a crime scene panchanama duly proved by P.W.1 Manoj. It is on the road (open space) surrounded by the houses. It's slum like area. P.W.2 Arvind is a witness to the panchanama (Exh.84) relating to seizure of clothes of the deceased.

14. The F.I.R. was lodged by P.W.3 Ajay, brother of the deceased. His evidence disclose that, his brother Rahul (deceased) had gone to take meal in a ground outside the

residence. It was about 14 to 15 ft. away from their residence. A/1 asked Rahul to pay him money to buy booze. Rahul refused to pay him. A/1 therefore started abusing him. A/1 even started beating Rahul. Thereafter other appellants joined A/1. They all started beating up Rahul. So his mother went and intervened to separate them. A/1 pushed her. Her head hit a wall. A/1 thereafter gave a knife blow on the left abdomen of Rahul. Other appellants were present there with him. After assault, all of them ran away. He and others rushed Rahul to the hospital. He then lodged the F.I.R. (Exh.86) at Ramanand Nagar Police Station, Jalgaon.

15. During his cross-examination, it has been brought on record that, Rajiv Gandhi Nagar is also known as slum area. He admitted that, there were neither friendly relations between A/1 and the deceased Rahul nor enmity as well. There was no financial transaction between them also. He denied to have not witnessed the incident. He, however, admitted that, his brother Rahul would drink. At the time of the incident, he (Rahul) was under influence of liquor. According to him, appellants used to rear pigs. They would consume

pork. Due to the same, the people residing around were annoyed with them.

16. P.W.5 Ramesh is another eye witness. His evidence disclose that he was at his house in Rajiv Gandhi Nagar. On hearing commotion, he came out of his house. He saw the appellants were shouting. He also saw A/1 to have pushed Mhalsabai, due to which she suffered blunt trauma to her head. A/1 then removed a sharp weapon and assaulted Rahul therewith. Rahul fell down. The appellants thereafter ran away. Rahul's brother rushed Rahul to hospital in an autorickshaw.

17. During his cross-examination, his attention was drawn to a statement in his police statement, wherein he stated that he was asleep after taking dinner on 12/7/2017. According to him, there was no prior enmity or dispute between A/1 and Rahul.

18. P.W.7 Mhalsabai, mother of deceased Rahul testified that, she was sitting near the door of her house.

Rahul was taking meal outside the house. It was by 7.30 p.m. A/1 came from nearby lane. He was drunk. He demanded money from Rahul for consumption of alcohol. Due to the same, both A/1 and Rahul abused each other. Other appellants arrived. They started beating Rahul. She, therefore, intervened. A/1 pushed her, whereby her head banged against a wall. Her evidence further disclose that, A/1 assaulted Rahul on his abdomen with a knife.

19. The prosecution got exhibited her 164 statement, at 105. The defence, therefore, confronted her therewith. The following matter finds place in her statement under Section 164 of the Cr.P.C.

"राहुलने एक घास खाल्ला. त्यानंतर सत्या शिकलकार ने राहुलच्या ताटात हात घातला. त्यानंतर राहुल त्याला म्हणाला की, तुम शिकलकार डुक्कर खाते हो, मेरे खाणे मी क्यो हात डाला. सत्याने राहुलला शिवी दिली कि, तेरे माँ की च्युत, तेरे बहेन की च्युत. सत्याने राहुलची गचांडी धरली. त्यावेळी सत्याची आई माला देखील तेथे होती . सत्याची आई म्हणाली की, ओ छोरा गरीब है उसे मत मारो. त्यावर मी सत्याच्या आईला म्हणाली की, देख तेरा लडका मेरे छोरे को मार रहा है . सत्याने त्याच्या आईला

भिंतीवर ढकलून दिले. सत्याची आई व बायको मला  
म्हणाली की, तेरेको समजता नाही क्या ? उसने दारू पी  
है. तू तो समजदार है.”

20. Appreciation of the aforesaid evidence would indicate that, only one injury was found on the person of the appellant, which was in the nature of a stab. Had really all the appellants assaulted Rahul, there would have been more than one injury seen on his person. There is no injury suffered by Mhaslabai as well. Mere presence of appellants No.2 to 5 would, therefore, be not sufficient to make them liable criminally with the aid of Section 149 of the Indian Penal Code.

21. What can be seen from the aforesaid evidence is that, deceased Rahul was drunk. He was taking meal in open ground at 15 ft. away from his residence. A/1 came drunk from nearby lane. He demanded money from Rahul for consumption of liquor. He even put hand in the plate of Rahul. The aforesaid matter appearing in 164 statement of the mother of the deceased indicate that it was an incident that took place in a spur of moment. A quarrel had preceded the incident. A/1 was drunk. He fished up a knife and gave its blow on the person of

the deceased, which ultimately proved fatal. There was no previous enmity. As such, the case would fall within exception 4 of Section 300 of the Indian Penal Code, which reads thus :

***Exception 4*** :-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

***Explanation*** : It is immaterial in such cases which party offers the provocation or commits the first assault.

22. For all the aforesaid reasons, in our view, the appeal would partly succeed in terms of the following order :

### **ORDER**

- (i) The Appeal is partly allowed.
- (ii) Conviction of the appellant Nos.1 to 5 for the offences punishable under Sections 302, 143, 147, 148, 323 and 504 read with Section 149 of the Indian Penal Code and for the offence punishable under Section 37(1)(3) punishable under

Section 135 of the Bombay Police Act read with Section 149 of the Indian Penal Code, recorded by Additional Sessions Judge, Jalgaon on 7/11/2020 in Sessions Case, No.101/2017 and the consequential sentences are hereby set aside. The appellant Nos.1 to 5 are acquitted thereof. Fine amount, if paid, be refunded to them. Their bail bonds are cancelled.

(iii) The appellant No.1 – Satyasing Mayasing Bavri is convicted for the offence punishable under Section 304 Part I of the Indian Penal Code and sentenced to suffer rigorous imprisonment for Nine years and directed to pay fine of Rs.2000/- (Rupees two thousand), in default to suffer rigorous imprisonment for three months. Amount of fine, if paid by appellant No.1, be adjusted.

(iv) The appellant No.1 is entitled for set off under Section 428 of the Code of Criminal Procedure.

**(NEERAJ P. DHOTE, J.)**

**(R.G. AVACHAT, J.)**

fmp/-