



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

CRIMINAL APPLICATION NO.1868 OF 2023

- 1) Rameshsing Khansing Bawri,
(In FIR mentioned as Rameshsing
Darbar Bawri),
Age-40 years, Occupation:Labour,
R/o-Ekta Nagar, Kamgar Vasti,
Manwat, Tq-Manwat, Dist-Parbhani,
- 2) Aayasing Khansing Bawri,
Age-54 years, Occupation:Labour,
R/o-Phule Nagar, Manwat,
Tq-Manwat, Dist-Parbhani,
- 3) Rubansing Khansing Bawri,
(In FIR mentioned as Rubabhsing
Mulagsing Bawri),
Age-52 years, Occupation:Labour,
R/o-Ekta Nagar, Kamgar Vasti,
Manwat, Tq-Manwat, Dist-Parbhani,
- 4) Barsatsing Aayasing Bawri,
Age-28 years, Occupation:Labour,
R/o-Phule Nagar, Manwat,
Tq-Manwat, Dist-Parbhani,
- 5) Balwindarsing Ballusing Bawri,
Age-19 years, Occupation:Labour,
R/o-Phule Nagar, Manwat,
Tq-Manwat, Dist-Parbhani,
- 6) Hardyalsing Joharsing Bawri,
(In FIR mentioned as hardayalsing
Jawaharsing Bawri),
Age-20 years, Occupation:Labour,
R/o-Phule Nagar, Manwat,
Tq-Manwat, Dist-Parbhani,

- 7) Ravindersing Ranjitsing Tak,
Age-22 years, Occupation:Labour,
R/o-Aathvadi Bazar,
Manwat, Dist-Parbhani,
- 8) Lakhansing Jipusing Junni,
(In FIR mentioned as Lakhansing
Dipusing Junni),
Age-32 years, Occupation:Labour,
R/o-Ekta Nagar, Kamgar Vasti,
Manwat, Tq-Manwat, Dist-Parbhani,
- 9) Bhimsing Jipusing Junni,
(In FIR mentioned as Bhimsing
Tipusing Junni),
Age-25 years, Occupation:Labour,
R/o-Ekta Nagar, Kamgar Vasti
Manwat, Tq-Manwat, Dist-Parbhani,
- 10) Dipsing Rubansing Bawri,
Age-28 years, Occupation:Labour,
R/o-Ekta Nagar, Kamgar Vasti,
Manwat, Tq-Manwat, Dist-Parbhani,
- 11) Bhagatsing Aayasing Bawri,
Age-19 years, Occupation:Labour,
R/o-Phule Nagar, Manwat,
Tq-Manwat, Dist-Parbhani,
- 12) Pawansing Gabbusing Bawri,
Age-22 years, Occupation:Labour,
R/o-Ekta Nagar, Kamgar Vasti,
Manwat, Tq-Manwat,
Dist-Parbhani

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Officer In Charge,
Police Station Manwat,
Dist-Parbhani,

2) Harbhajansing Jagdishsing Tak,
Age-15 years, Occupation:Education,
Through his natural guardian and mother
Jeet Kaur w/o Jagdishsing Tak
@ Jugnusing Tak, R/o-Kokar Colony,
Manwat, Dist-Parbhani.

...RESPONDENTS

...
Mr. Sudarshan J. Salunke Advocate for Applicants.
Mr. G.A. Kulkarni, A.P.P. for Respondent No.1.
Mr. Chetan Jadhav Advocate for Respondent No.2 (**Appointed**).
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**CORAM: SMT. VIBHA KANKANWADI AND
R.W. JOSHI, JJ.**

DATE : 19th NOVEMBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present application has been filed under Section 482 of the Code of Criminal Procedure, initially for quashing the First Information Report (for short "the FIR") vide Crime No.126 of 2023 dated 15th April 2023 registered with Manwat Police Station, District-Parbhani and later on for quashing the charge-sheet bearing R.C.C. No. 160 of 2023 pending before the learned Judicial Magistrate First Class, Manwat, District-Parbhani for the offence punishable under Sections 304, 323, 143, 147, 149, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Salunke for the applicants, learned APP Mr. Kulkarni for State and learned Advocate Mr. Chetan Jadhav appointed to represent the cause of respondent No.2.

3. Learned Advocate for the applicants has taken us through the FIR and the contents of the charge-sheet. He submits that the informant is a 15 years old boy, who has stated that around 8.30 p.m. on 14th April 2023, he was proceeding towards his house from main road, Manwat. When he was near a statue, at that time applicant No.11 Bhagatsing and applicant No.12 Pawansing had assaulted him, unnecessarily, therefore, he went running to the house of his uncle Harjeetsing. He then says that thereafter he himself and his uncle went to Pathri Naka, where all the applicants were present. Out of them, applicant No.1 Rameshsing and applicant No.2 Aayasing started quarreling with his uncle Harjeetsing. The informant and his uncle were giving understanding to them and since the uncle was having problem of blood pressure and sugar (diabetes), they were requesting not to quarrel. The informant says that though the applicants were knowing the physical condition of Harjeetsing, yet applicant Nos.1 and 2 started abusing and threatening his

uncle. His uncle's blood pressure shoot up and he fell down and then all of the accused fled. Then the informant called his relatives and took his uncle to Dagdu hospital. But then the doctor told that the uncle should be taken to Government Hospital, Manwat. At Government Hospital, the uncle of the informant was declared dead. The postmortem was conducted and it was opined that Harjeetsing expired due to heart attack. The postmortem report is now collected and is part of the charge-sheet, which shows that there was no external injury to the deceased. The final cause of death is "death due to cardio-respiratory failure due to acute myocardial infarction." The applicants by no stretch of imagination had any intention, even if for the sake of arguments there was some interaction between them and deceased, that their action would amount to culpable homicide not amounting to murder, or in other words, there was any intention in the mind of the applicants to cause death of deceased Harjeetsing. In fact other applicants have not even said anything nor touched the deceased. Only presence cannot be considered as by way of common object or as a common intention.

4. Per contra, the learned APP Mr. Kulkarni as well as learned Advocate Mr. Jadhav appointed to represent the cause of

respondent No.2, submits that respondent No.2 – the informant was only 15 years old boy. There was no occasion for applicant Nos.11 and 12 to assault the informant unintentionally. There was an intention behind their act. The applicants are from the family of Balramsing, whose murder had taken place on 6th October 2022 and in connection with the said murder the informant's father and other relatives were arrested. The applicants had grudge against the informant and his family. There are statements of witnesses who had seen the incident and then took Harjeetsing to hospital. Therefore, there is sufficient evidence for the trial.

5. At the outset it is to be noted that two incidents have been stated in the FIR. The first incident was at 20.30 hours when the informant alone was returning to his home and was assaulted by applicant No.11 Bhagatsing and applicant No.12 Pawansing. For that purpose, definitely, as against them offence under Section 323 of the Indian Penal Code appears to be made out. The second incident is after the informant takes his uncle at the spot. Definitely, informant would have said something regarding the incident which occurred with him and then Harjeetsing would have gone to the said place. It is then stated that all the applicants i.e. 12 in number were present there. When they were

already present, we may not strictly apply the sections for unlawful assembly and the common object.

6. Further, as regards Section 304 of the Indian Penal Code is concerned, the prosecution will have to prove that there was culpable homicide not amounting to murder. For that purpose it will have to be shown, even prima facie also, that if the act by which death was caused is done with the intention of causing death and then that person would be held responsible. We may consider the decision in ***Mahadev Prasad Kaushik vs State Of U.P. and another, AIR 2009 Supreme Court, 125***, wherein it has been observed thus:-

"23. Plain reading of the above section makes it clear that it is in two parts. The first part of the section is generally referred to as "Section 304, Part I", whereas the second part as "Section 304, Part II". The first part applies where the accused causes bodily injury to the victim with intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

24. The Makers of the Code observed;

" The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed".

25. The Makers further stated;

"It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion".

26. Before Section 304 can be invoked, the following ingredients must be satisfied;

- (i) the death of the person must have been caused;
- (ii) such death must have been caused by the act of the accused by causing bodily injury;
- (iii) there must be an intention on the part of the accused (a) to cause death; or (b) to cause such bodily injury which is likely to cause death; (Part I) or
- (iv) there must be knowledge on the part of the accused

that the bodily injury is such that it is likely to cause death
(Part II). ”

7. Here in the present case the entire material in the charge-sheet does not disclose the fact that the present applicants had the knowledge about the physical condition of Harjeetsing. Further it appears that he was suffering from blood pressure and diabetes. Even if it is accepted for a while that the applicants had the knowledge that he was suffering from such diseases; those diseases *per se* will not cause death of the person instantaneously. There are many factors for a sudden cardio-respiratory arrest and therefore, the ingredients of Section 304 of the Indian Penal Code are not at all attracted in the present facts of the case.

8. So far as applicant Nos.3 to 10 are concerned, they were mere present on the spot and their presence at the spot was natural. Further, no role has been attributed to them.

9. As aforesaid, though Sections for unlawful assembly may not be made out but Section 34 of the Indian Penal Code would then come into play for the other acts of applicant Nos.1, 2, 11

and 12. and therefore, we are of the opinion that the Application deserves to be partly allowed. Hence we pass following order:-

ORDER

(I) The Applications stands partly allowed.

(II) The proceedings in R.C.C. No. 160 of 2023 pending before the learned Judicial Magistrate First Class, Manwat, District-Parbhani for the offence punishable under Sections 304, 323, 143, 147, 149, 504, 506 read with Section 34 of the Indian Penal Code arising out of the First Information Report vide Crime No.126 of 2023 dated 15th April 2023 registered with Manwat Police Station, District-Parbhani stands quashed and set aside as against applicant Nos. 3 to 10 i.e. 3) Rubansing Khansing Bawri, 4) Barsatsing Aayasing Bawri, 5) Balwindarsing Ballusing Bawri, 6) Hardyalsing Joharsing Bawri, 7) Ravindersing Ranjitsing Tak, 8) Lakhansing Jipusing Junni, 9) Bhimsing Jipusing Junni and 10) Dipsing Rubansing Bawri.

(III) The proceedings in R.C.C. No. 160 of 2023 pending before the learned Judicial Magistrate First Class, Manwat, District-Parbhani arising out of the First Information Report vide Crime

No.126 of 2023 dated 15th April 2023 registered with Manwat Police Station, District-Parbhani stands quashed and set aside to the extent of the offence punishable under Sections 304, 143, 147, 149 of the Indian Penal Code as against applicant Nos. 1, 2, 11 and 12 i.e. 1) Rameshsing Khansing Bawri, 2) Aayasing Khansing Bawri, 11) Bhagatsing Aayasing Bawri and 12) Pawansing Gabbusing Bawri.

(IV) We clarify that the charge-sheet i.e. proceedings in R.C.C. No. 160 of 2023 would remain in respect of Sections 323, 504, 506 read with Section 34 of the Indian Penal Code as against applicant Nos. 1, 2, 11 and 12.

(V) Fees of learned Advocate Mr. Chetan Jadhav, who is appointed to represent the cause of respondent No.2 is quantified at Rs.5,000/-, to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/NOV24