



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

929 CRIMINAL WRIT PETITION NO. 1108 OF 2024

- 1] Madhav Ramrao Wadje,
Age-42 years, Occu. Agril.,
- 2] Balaji Ramrao Wadje
Age-36 years, Occu. Agril.,
- 3] Shivaji Ramrao Wadje,
Age- 36 years, Occu. Agril.
- 4] Subhash Ramrao Wadje
Age-38 years, Occu. Agril.,
- 5] Prakash Ramrao Wadje,
Age – 39 years, Occu. Agril.

All R/o: Tembhurni, Tal. Naigaon(Kh.)
Dist. Nanded

... PETITIONERS

VERSUS

The State of Maharashtra
Through Naigaon Police Station,
Tq. Naigaon Khairgaon, Dist. Nanded

... RESPONDENT

....
Mr. Anil M. Gaikwad, Advocate for the Petitioners
Mr. S. M. Ganachari, APP for the Respondent

....

CORAM : Y. G. KHOBragade, J.

DATE : 31.01.2025

ORDER :-

1. Rule. Rule made returnable forthwith. With the consent of both sides it is heard finally at the stage of admission.
2. By the present Petition, the Petitioners take exception to the order dated 20.04.2024, passed by the learned Additional Sessions Judge, Biloli, District Nanded, below Exh.84 in Sessions Case No.48 of 2021, wherein prayer for alteration of charge for the offence under Section 149 of I.P.C., turned down.
3. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. It is a matter of record that, on 18.05.2021, the informant lodged a report with Naigaon Police Station, District Nanded alleging that, on 17.05.2021, at about 10.00 a.m., he, his father, brother, and nephew were engaged in agricultural operations. At about 12.00 noon, he was proceeding to switch on the Electric Motor Pump though the field of accused No.1, Madhav Ramrao Wadje, however, at that time, the seven accused persons named in the FIR were gossiping under a tree near the Well, at that time, accused No.1 Madhav Wadje asked him to stop and started quarrel. Therefore, he told the accused No. 1 not to

quarrel with him and requested to allow to go towards the electric water pump to switch on. However, the other accused persons rushed there with sticks and stones and assaulted him, therefore, he sustained injuries. Upon hearing screaming, his father approached him, at that time, the accused persons also assaulted with his father and brother Nagnath. Therefore, his brother Nagnath sustained head injuries and collapsed. Therefore, the injured was taken to the hospital. Based on this report, on 18.05.2021 Crime No.0092 of 2021 was registered with Naigaon Police Station for the offence punishable under Section 307, 324, 323, 143, 147, 148, 506 of I.P.C., later on, the injured died due to head injuries, therefore, offence under Sec. 302 is added in the said crime.

4. It is a matter of record that, following the investigation, the Investigating Officer filed charges against all the accused persons. On 30.09.2022, the learned Additional Sessions Judge, Biloli, framed the charges against the accused persons for the offence punishable under Sections 143, 147, 148, 302 read with Section 149, 324 read with Section 149, 323 read with Section 149, 506 read with Section 149 of I.P.C.

5. The Petitioners filed Exh.84, an application for modification of the charges under Sections 302, 324, 323, 506 read with Section 149 of I.P.C.

6. The learned counsel for the Petitioners submits that, as per statements of prosecution witnesses, all the accused persons were sitting under a tree and gossiping. When the incident allegedly occurred, there were no intention of the accused person to commit the offence with the common object. Therefore, provisions of Section 149 of I.P.C. is not applicable and it may falls within the ambit of Section 34 of I.P.C., hence, prayed for modification of the charge.

7. Needless to say that, Section 141 of I.P.C. defines an “Unlawful Assembly” of five or more persons, if the common object of the persons composing that assembly to overawe by criminal force, or show of criminal force. For the sake of brevity, the provisions of Section 141 incorporated as under:-

“141. Unlawful assembly.—

An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—

(1) To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the

Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(2) To resist the execution of any law, or of any legal process; or

(3) To commit any mischief or criminal trespass, or other offence; or

(4) By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(5) By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.”

8. Needless to say that, in the present case, the common object of every member of the unlawful assembly, cannot conclusively determined at this stage. Based on the material available on record, it shows that prior to incident, the seven accused persons were gathered and were chatting under a tree near the Well. After accused No.1 saw the informant proceeding from his field, he approached the informant and tried to restrain him from proceeding towards the Well. Subsequently, all the accused persons assaulted the informant and when his father and brother arrived at the spot of incident, the accused persons also assaulted them with stones and sticks, causing

head injuries to his brother, who collapsed. Then the injured was taken to the hospital, where he was declared dead. Therefore, it indicates that when the accused persons/petitioners assaulted the victim simultaneously, they certainly gathered with a common intention to assault and two other accused persons appears to be remained mute spectators. Therefore, the conduct of other accused persons can be inferred on the basis of evidence/statement of the witnesses.

9. On 20.04.2024, the learned Additional Sessions Judge, passed the impugned order and considering the nature of assembly and arms carried by the accused persons near the spot of incident and assault at the hands of accused to the deceased, therefore, material is available on record to frame charge u/s 149 of IPC against the accused persons. Therefore, I do not find any substance to interfere with the findings recorded by the learned trial Court. In view of above discussion, the Writ Petition is dismissed. Rule discharged.

[Y. G. KHOBRAGADE, J.]

SMS