

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 619 OF 2012
 WITH
 CRIMINAL APPEAL NO. 679 OF 2012
 WITH
 CRIMINAL APPEAL NO. 151 OF 2013
 WITH
 CRIMINAL APPEAL NO. 162 OF 2013
 WITH
 CRI. REVISION APPLICATION NO. 210 OF 2012

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CRIMINAL APPEAL NO. 619 OF 2012

1	Datta s/o Kishan Bismille, Aged 55 years	APPELLANTS
2	Rama s/o Kishan Bismille, Aged 40 years	
3	Ganpati s/o Kishan Bismille, Aged 45 years	
4	Laxman s/o Kishan Bismille, Aged 35 years	
5	Madhav s/o. Kishan Bismille, Aged 33 years	
6	Budhaji s/o Kishan Bismille, Aged 50 years All Occupation Agriculture and R/o Village Bondhar, Taluka and District Nanded	

V E R S U S

The State of Maharashtra, Through Limbgaon Police Station, Taluka and District Nanded	RESPONDENT
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Mr. R.N. Dhorde, Sr. Counsel i/b. Mr. V.R. Dhorde, Advocate for the appellants.
 Mr. S.P. Sonpawale, A.P.P. for respondent/State.
 Mr. M.V. Ghadge h/f. Mr. B.N. Gadegaonkar, Advocate to assist A.P.P.

WITH

CRIMINAL APPEAL NO. 679 OF 2012

1	Devidas Potlaji Wadde, Aged 45 years, Occupation Agriculture, R/o. Bondhar (Nerli), Taluka & District Nanded	APPELLANT
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V E R S U S

1	The State of Maharashtra, through Limbgaon Police Station, Taluka and District Nanded	RESPONDENTS
2	Datta s/o Kishan Bismille, Aged 55 years.	
3	Rama s/o Kishan Bismille, Aged 40 years,	
4	Ganpati s/o Kishan Bismille, Aged 45 years,	
5	Laxman s/o Kishan Bismille, Aged 35 years,	
6	Madhav s/o. Kishan Bismille, Aged 32 years,	
7	Budhaji s/o Kishan Bismille, Aged 50 years,	
8	Khandu s/o Budhaji Bismille, Aged 27 years,	
9	Govind s/o Ganpati Bismille, Aged 24 years,	
10	Pandit s/o Ganpati Bismille, Aged 25 years,	
11	Purushottam s/o Datta Bismille, Aged 24 years, Respondent Nos. 2 to 11 Occupation Agriculture, R/o. Bondhar, Taluka and District Nanded	

Mr.M.V. Ghadge h/f. Mr. B.N. Gadegaonkar, Advocate for appellant.

Mr.S.P. Sonpawale, A.P.P. for respondent/State.

Mr.R.N. Dhorde, Sr. counsel i/b. Mr. V.R. Dhorde, Advocate for respondent Nos. 2 to 11.

WITH

CRIMINAL APPEAL NO. 151 OF 2013

1	Datta s/o Kishan Bismille, Aged	APPELLANTS
	55 years,	
2	Budhaji s/o Kishan Bismille,	
	Aged 50 years,	
3	Laxman s/o Kishan Bismille, Aged	
	35 years,	
4	Rama s/o Kishan Bismille, Aged	
	40 years,	
5	Ganpati s/o Kishan Bismille,	
	Aged 45 years,	
6	Madhav Kishan Bismille, Aged 33	
	years,	
	All Occupation Agriculture, R/o.	
	Bondhar, Taluka and District	
	Nanded	

V E R S U S

1	Devidas s/o Potlaji Wadde, Aged	RESPONDENTS
	35 years,	
2	Dharba s/o Potlaji Wadde, Aged	
	40 years,	
3	Maroti s/o Potlaji Wadde, Aged	
	50 years,	
4	Baliram s/o Potlaji Wadde, Aged	
	56 years,	
5	Madhav s/o Chandu Wadde, Aged 22	
	years,	
6	Santosh Chandu Wadde, Aged 20	
	years,	
7	Venkati s/o Chandu Wadde, Aged	
	23 years,	
8	Ramchandra Chandu Potlaji, Aged	
	25 years,	

Respondent Nos. 1 to 8
 Occupation Agriculture, R/o.
 Bondhar, Taluka and District
 Nanded

9 The State of Maharashtra

Mr. R.N. Dhorde, Sr. Counsel i/b. Mr. V.R. Dhorde, Advocate for the appellants.
 Mr. M.V. Ghadge h/f. Mr. B.N. Gadegaonkar, Advocate for respondent Nos.1 to 8.
 Mr. S.P. Sonpawale, A.P.P. for respondent/State.

WITH
CRIMINAL APPEAL NO. 162 OF 2013

- . The State of Maharashtra, through
Police Limbgaon, Taluka and
District Nanded

APPELLANT

V E R S U S

- 1 Datta s/o Kishan Bismille, Aged
50 years,
- 2 Rama s/o Kishan Bismille, Aged
35 years,
- 3 Ganpati s/o Kishan Bismille,
Aged 40 years,
- 4 Laxman s/o Kishan Bismille, Aged
30 years,
- 5 Madhav s/o Kishan Bismille, Aged
28 years
- 6 Budhaji s/o Kishan Bismille,
Aged 45 years,
- 7 Khandu s/o Budhaji Bismille, Aged
22 years,
- 8 Govind s/o Ganpati Bismille, Aged
19 years,
- 9 Pandit s/o Ganpati Bismille, Aged
20 years,
- 10 Purushottam s/o Datta Bismille,
Aged 19 years

RESPONDENTS

All Occupation Agriculture, R/o
Bondhar, Taluka and District
Nanded

Mr.S.P. Sonpawale, A.P.P. for appellant/State.

Mr.M.V. Ghadge h/f. Mr. B.N. Gadegaonkar, Advocate for
respondent No.1 to 6.

Mr.R.N. Dhorde, Sr. Counsel i/b. Mr. V.R. Dhorde, Advocate for
respondent Nos.7 to 10.

WITH
CRIMINAL REVISION APPLICATION NO. 210 OF 2012

- . Devidas s/o Potlaji Wadde, Aged
45 years, Occupation
Agriculture, R/o. Bondhar
(Nerli), Taluka and District
Nanded

APPLICANT

V E R S U S

- 1 The State of Maharashtra,
through Limbgaon Police Station,
Taluka and District Nanded
- 2 Datta s/o Kishan Bismille, Aged
50 years,
- 3 Rama s/o Kishan Bismille, Aged
40 years,
- 4 Ganpati s/o Kishan Bismille,
Aged 45 years,
- 5 Laxman s/o Kishan Bismille,
Aged 35 years,
- 6 Madhav s/o Kishan Bismille,
Aged 32 years
- 7 Budhaji s/o Kishan Bismille,
Aged 50 years,
- 8 Khandu s/o Budhaji Bismille,
Aged 27 years,
- 9 Govind s/o Ganpati Bismille,
Aged 24 years,
- 10 Pandit s/o Ganpati Bismille,
Aged 25 years,
- 11 Purushottam s/o Datta Bismille,
Aged 24 years

RESPONDENTS

Respondent Nos. 2 to 11
Occupation Agriculture, R/o
Bondhar, Taluka and District
Nanded

Mr. M.V. Ghadge h/f. Mr. B.N. Gadegaonkar, Advocate for the
applicant.

Mr. S.P. Sonpawale, A.P.P. for respondent/State.

Mr. R.N. Dhorde, Sr. Counsel i/b. Mr. V.R. Dhorde, Advocate for
respondent nos. 2 to 7.

**CORAM : A.V. NIRGUDE &
INDIRA K.JAIN, JJ.**
RESERVED ON : 15.02.2016
PRONOUNCED ON : 07.04.2016

J U D G M E N T : [PER : A.V. NIRGUDE, J.] :-

1. All these appeals/revision can be disposed of
by this common judgment. These proceedings arise from

judgments and orders passed by the learned Additional Sessions Judge, Nanded, in Sessions Case No.19 of 2007 and Sessions Case No.23 of 2010. In Sessions Case No. 19 of 2007, Datta Bismille and his nine companions were accused. In Sessions Case No.23 of 2010, Devidas Wadde and his eight companions were accused. Both these cases arose out of one incident of rioting etc. that took place on 15th July, 2006, at about 3.15 p.m., in land Survey No. 14 of village Bondhar, Taluka and District Nanded. Most of the accused in both these cases sustained injuries. One Chandu Wadde subsequently died due to multiple injuries which he had sustained during the incident.

2. After trials of both Sessions cases the learned Judge convicted accused Nos.1 to 6 of Sessions Case No.19 of 2007 for the offences punishable under Sections 147, 148, 323, 324, 326, 304 Part-II read with Section 149 of the Indian Penal Code. They were also convicted for the offence punishable under Section 135 of the Bombay Police Act. Accused Nos.7 to 10 were acquitted. On the other hand, all the accused in Sessions Case No.23 of 2010 were acquitted.

(i) As against the conviction, accused Nos. 1 to 6 in Sessions case No.19 of 2007 have filed **Criminal Appeal No.619 of 2012.**

(ii) As against the judgment in Sessions Case No.19 of 2007, the State of Maharashtra has filed **Criminal Appeal No.162 of 2013**. It sought conviction of all accused for offence punishable under sections 302 & 307 read with 149 of the I.P.C.

(iii) **Criminal Appeal No.679 of 2012** is filed by complainant Devidas against judgment in in Sessions Case No.19 of 2007

(iv) Datta and others, complainants & victims in Sessions case No.23 of 2010 also filed **Criminal Appeal No.151 of 2013** against acquittal of all accused in Sessions Case No.23 of 2010.

(v) **Criminal Revision Application No.210 of 2012** is filed by complainant in Sessions case No.19 of 2007 seeking enhancement in sentence awarded to the accused Nos.1 to 6.

3. Submissions for all the appeals/revision are heard together. The facts leading to this case can be narrated as under and the parties to these proceedings are referred to by their status in lower Court.

4. Land Survey No.14 (disputed land), situated at village Bondhar belonged to one Kisan Satwaji Arate. He sold this land to Rama Bismille (accused

No.2 in S.C.No.19 of 2007) and Madhav Bismille (accused Nos.5 in S.C.No.19 of 2007), in August, 2004. Devidas (accused No.1 in Sessions case No.23 of 2010) and his family members, who are other accused were keenly interested in buying this land from Kishan Arate. They claimed that Kishan had given this land to them for cultivation long back in exchange of their land at village Pardi. According to them, there was barter deal between them and Kishan. They also asserted that they were in settled possession of the disputed land. But, admittedly no revenue record could be shown in support of their claim of possession and cultivation. They felt aggrieved due to the sale transaction. Soon after the sale-deed was executed, Devidas Wadde (accused No.1 in S.C.No. 23 of 2010) and others filed a civil suit against Kishan Arate, Rama Madhav Bismille for getting the sale-deed executed in their favour cancelled. They also claimed that they were in possession of the land and their possession should be protected by an order of temporary injunction. The Civil Court, however, rejected their application for temporary injunction. The Civil Court obviously accepted the probability of the case of Rama and Madhav Bismille (accused Nos.2 & 5 in S.C.No.19 of 2007), the purchasers, that they are in possession of the land etc.

5. Despite the fact that sale-deed took place in 2004, yet, application for mutation entry in revenue

record filed by Rama and Madhav Bismille (accused Nos. 2 & 5 in S.C. No.19 of 2007) remained pending and their names were not mutated as cultivators of land till July, 2006, when the incident took place. There was no documentary proof coming from Revenue Department indicating that either Ram and Madhav Bismille (accused Nos.2 & 5 in S.C. No.19 of 2007) on one hand or Devidas Wadde (accused No.1 in S.C. No. 23 of 2010) and his brothers on the other hand were cultivating land and were in settled possession. The only document that existed then was the sale-deed executed in favour of Ram and Madhav Bismille (accused Nos.2 & 5 in S.C.No.19 of 2007). The other circumstance in their favour was that till July, 2006 they could resist a suit filed by Devidas Wadde (accused Nos.1 in S.C. No.23 of 2010) and others for injunction etc. In this background, one must appreciate the facts of this case. The allegations are made by both the sides against each other.

6. First we would take a bird's eye view of evidence in Sessions Case No.19 of 2007.

6-i. Devidas Wadde is the complainant and P.W.1 in Sessions Case No.19 of 2007. He stated that he had five brothers namely; Chandu, Sambhaji, Maroti, Baliram and Dharba. He added that Chandu had two grown-up sons namely; Santosh and Venkati (during the pendency of the Sessions Case, one brother by name

Sambhaji died). Wife of Devidas was Kuntabai and his mother's name was Gangabai. Devidas reiterated that since last 20 years, there was barter deal between his family and Kishan Arate, who was son of his paternal aunt. Devidas asserted that they had a piece of land at village Pardi. This was given for cultivation to Kishan Arate. In exchange, Kishan Arate gave his land Survey No.14 of village Bondhar to him for cultivation. He admitted that there was no documentation of this transaction. He said, this was based on oral agreement. Devidas then admitted that Kishan Arate sold Survey No.14 of village Bondhar to Rama and Madhav Bismille. He said that, despite the sale-deed, he and his brothers continued cultivation of the land. He also admitted that the dispute in respect of the land survey No.14 had reached Civil Court.

. He said that about 4 to 5 days prior to 15th July, 2006, he and his brothers cultivated the disputed land with hybrid jowar.

. At about 03.15 to 03.30 p.m. on 15th July, 2006, while he was at home in village Bondhar, Chandu's son Santosh came to him and informed that Datta, his five brothers i.e. Rama, Ganpati, Laxman, Madhav and Budhaji (accused in sessions case No. 19 of 2007) and others had come to the disputed land in a tractor. They were armed with sticks, iron bar and

axes. Hearing this, Devidas, his brothers and their sons proceeded to the disputed land. He obstructed Datta and others from sowing seeds in the disputed land. But, Datta and others started assaulting them with sticks and axes. Due to the assault, he sustained fracture injuries on both his hands and an injury on his head. He said that Madhav (accused No.5) and Datta (accused No.1) delivered blow of axe on his head. He further mentioned that his companions Sambhaji, Maruti, Baliram, Dharba, Ramchandra, Venkat, Madhav, Santosh and Chandu also sustained injuries due to the assault. He said that Chandu sustained more injuries and fell unconscious. His mother Gangabai tried to intervene and wanted to save him and other from the assault. His mother sustained a blow of axe on her head. His wife Kuntabai also tried to intervene and was also assaulted. She sustained a blow of stick on her knee.

6-ii. P.W.2 is Kuntabai, wife of P.W.1 Devidas. She stated that she and her mother-in-law were working in her agricultural land where sugarcane crop was standing. Chandu and Santosh were present in the same field. At that time accused Nos.1 to 9 (S.C. No.19 of 2007) came there with others in a tractor. They were also armed with sticks, iron bar and axes. They started sowing jute seeds in the disputed land. They also disturbed the cultivation made earlier in the disputed land utilizing tractor. Seeing this she sent

Santosh to the village. Santosh came back with Devidas, Maruti, Sambhaji, Arjun, Venkati and Ramchandra. She said that she and others then tried to convince accused No.1 to 9 not to disturb sowing in the field. The accused then started assaulting Devidas, his brothers and nephews. Ganpat (accused No.3) dealt a stick blow on her knee. She suffered fracture injury to her knee. She also stated that she sustained one blow of stick on her head. She said that accused Nos.1, 2 and 6 had axe in their hands and others were having sticks and iron bars.

6-iii. P.W.6 is Madhav. He said that on 15.07.2006 the incident took place. He said that he was present in his house. At about 03.00 p.m. he came to know that quarrel took place between members of Bismille family and Wadde family in agricultural land. He, therefore, went to Police Patil's House and gave information to him. Police Patil asked him to go further and assured him that he would come after him. Thereafter, he and other two witnesses went to the disputed land and found that persons were gathered there. He saw members of Wadde family had sustained bleeding injuries. He also noticed Chandu was lying down in injured condition. He saw that accused No.2-Ram, accused No. 6-Budhaji and accused No.1-Datta had axe in their hands. He saw that these persons were assaulting Chandu with axe and were asking him whether he wanted the disputed land. He also noticed that Chandu's

mother fell on his person to shield him from the assault. He also noticed that wife of Devidas, namely, Kuntabai had also sustained injury by stick on her legs and hands.

6-iv. P.W.9 is one Baban who stated that before the incident deceased Chandu had sown seeds in the disputed land. On the day of incident he said that he was working in agricultural land of one Dattapure. He said that he saw Dattu, his son Madhav, Santu and two women working in the field. He said that at that time all accused came in tractor and trolley. They started sowing the field which was already sown by deceased Chandu. At that time Santosh went to village and came back with all his uncles and brothers. All of them then argued with the accused. Thereafter, quarrel took place between both these groups. He said that Chandu sustained injuries all over his body. His mother and brother's wife also sustained injuries. He did not give details of the incident.

6-v. P.W.10 is Maruti who is one of the injured in this case. He said that at about 03.00 p.m. while he was at his village, his nephew Santosh came and told him that accused Datta and others had disturbed crops in disputed land. He said that he, his brothers Sambhaji, Baliram, Dharba, Devidas went to the disputed land. He said that they all told Datta and others not to destroy the crop etc. He said that the

accused assaulted them with stick, iron bar and axe. He specifically mentioned that accused No.6 delivered one blow of axe on his head. He sustained bleeding injury on his head. He also added that accused No.1 Datta, Madhav and Ram delivered stick blows and iron bar blows on his back. He fell down. He also added that accused No.1-Datta, accused No.6-Budha and accused No.2-Rama delivered sticks and axe blows on Chandu's person. Chandu sustained number of injuries all over his body. He then said that accused No.1 Datta, accused No.2-Rama, accused No.6-Budhaji and others assaulted Sambhaji, Baliram, Dharba, Devidas, Kuntabai and Gangabai. They used sticks, axes and iron bars. He said that Madhav, Deorao and Baban came and rescued him and others. Thereafter, accused left the land. He said that he was then taken to hospital. This witness pin-pointedly assigned role to accused Nos.1, 2, 5 and 6 who delivered blows on his person. He then added that accused Nos.1, 2, and 6 delivered blows of axe, sticks etc. on the person of Chandu and others. He said that Chandu sustained grievous injuries and subsequently died in the hospital.

6-vi. P.W.11 is Dharba. He said that on the day of incident he was at his house. At about 02.45 p.m. Santosh came to call him. Santosh told him that accused were destroying hybrid jowar sown by them in the disputed field. He said that he tried to request the accused not to disturb their field. He said that

accused then started to beat them with axe, sticks and iron bars. He specifically mentioned that accused No.2 Rama and accused No.10 Purushottam delivered blows of sticks on his head and back. He sustained injuries. He said that accused No.2-Rama, accused No.1-Datta and accused No.6-Budhaji delivered blows of axe on Chandu's person. Chandu fell down after he sustained injury on head, hands and legs. Chandu's mother Gangabai tried to shield Chandu from the assault but accused No.1-Datta delivered one blow of axe on Gangabai's head. She sustained bleeding injury on her head. Accused No.2-Rama then gave blow of axe on the left leg of Kuntabai, due to which she sustained fracture injury. This witness tried to give more details in respect of the incident.

6-vii. P.W. 12 is Santosh. He said that on 15.07.2006 he was present in his field. At that time the accused came there and started to sow disputed field which was already sown by them. His father-Chandu told him to go to village and call his uncles and brothers and thereafter he went to village and called them. He said that all his uncles, brothers and cousins came to the disputed land. Accused then started assault with sticks, iron bars and axes. He specifically mentioned that accused No.6-Budhaji delivered a blow of axe on right side of his leg. Accused No.4-Laxman delivered a blow of stick on his hand and legs. He said that he sustained bleeding

injury on his head. He then added that accused No.6 Budhaji, accused No.2-Rama and accused No.1-Datta gave blows of axe on the person of Chandu who sustained number of injuries all over of his body. Accused No.1-Datta gave one blow of axe on the hands of his grand-mother Gangubai. Accused No.3-Ganpati gave one blow of stick on right leg of Kuntabai. She suffered injury on her leg. He said that his uncles also sustained bleeding injuries but he did not mention as to who delivered blows on their person except what is stated above.

6-viii. P.W.13-Madhav stated that he was present in disputed land on 15.07.2006. At about 02.45 p.m. accused came there with axes, sticks and iron bars, travelling in a tractor. They started destroying the crop sown by them. He said that he sent his nephew Santosh to the village. His brothers and uncles came with him. He said that accused No.6-Budhaji delivered axe blow on his head. He sustained bleeding injury. He said that accused No.4-Laxman and accused No.5-Madhav used sticks on his back, hands and legs. He stated that accused No.2-Rama, accused No.6-Budhaji and accused No.1-Datta delivered axe blows on Chandu-his father. His father sustained injuries on his person. His grand-mother also sustained injuries. Accused No.6-Budhaji delivered axe blow on her head. Accused No.3-Ganpati delivered a stick blow on Kuntabai, who suffered fracture.

6-ix. Witness No.3 is one Deorao. At the relevant time he was Police Patil of the village. He said that at the time of incident he was in his house. He said that he heard shouts and saw that some persons were running towards the disputed land. He said that he also went to the spot. When he reached the spot, he said that the incident was already over. He said that he then helped the injured persons including Chandu and in a bullock-cart brought them to hospital. He saw Chandu lying on the ground. He also added that he saw accused Nos.1-Datta, accused No.2-Rama & accused No.6-Budhaji present near Chandu who was lying on the ground. He also saw accused Nos.7-Khandu & accused No.8-Govind present on the spot. He added that he also saw injuries on persons of Maruti, Dharba, Baliram, Devidas, Venkati, Madhav & Santosh. This witness apparently did not state that he witnessed the assault taking place.

6-x. P.W.4 is Kishan Shinde. He is a Panch witness of scene of offence Panchanama. He said that on 16.07.2006 he went to the disputed land alongwith police for drawing panchanama. He said that he saw sticks lying in the land. He also noticed some bloodstained soil. He said that Police took in charge the bloodstained soil and sticks. The panchanama of scene of offence indicated that the land was of black cotton soil and certain agricultural work was already

done there. There were nine sticks stained with blood.

6-xi. P.W.5 is Vasant Rathod. He attended inquest panchanama of dead body.

6-xii. P.W. No.7 is Dr.Shubhangi, who stated that on 15.07.2006 while she was on duty in casualty ward of Civil Hospital, she examined Gangabai, Deorao, Sambhaji and others. She gave details about the injuries they had sustained. She also admitted that on the very same day, she examined accused Nos.1 to 6 and issued certificates in respect of the injuries sustained by them also.

6-xiii. P.W. 8 is Dr.Subhash Deshmukh. He gave details of injuries suffered by witness Devidas and others.

7. The gist of prosecution evidence in Sessions Case No.23 of 2010 can be stated as under :-

7-i. P.W.1 is Datta, the complainant, who is also accused No.1 in Sessions Case No. 19 of 2007. He stated that after his brothers purchased the disputed land, Devidas and others started disputing as to why they had purchased the land. On 15.07.2006 at about 3.30 p.m., he was in the disputed land and was sowing boru crop using a tractor. His brothers Budhaji, Ganpati, Rama, Laxman, Madhav and nephews Pandit and

Khandu were also present. At that time accused in Sessions Case No.23, namely, Sambhaji, Maroti, Baliram, Devidas, Ramchandra, Venkati, Santosh and Madhav came with sticks, axes and iron rods. They stopped their sowing operation. They said, why Datta had purchased the land. They started beating them with sticks, axes and iron rods. Budhaji, Laxman, Ganpat, Rama, Madhav and Khandu sustained injuries on their heads, hands and legs. He sustained injury on head by stick blow. He took his injured brothers to Pasadgaon by a tractor and thereafter his brothers were taken to Government Hospital, Nanded. He lodged complaint.

7-ii. Second eye witness is P.W.2-Madhav Bismile, who stated similarly about the incident that took place on 15.07.2006 at about 3.15 p.m. He also reiterated that what is stated and noted above by witness Datta. In addition, he specifically stated that accused No.1-Devidas, accused No.6-Madhav, accused No.7-Santosh and accused No.9-Ramchandra caused injuries to his head, leg, finger of left hand using stick and iron road. While incident was going on villagers – Baban, Deorao, Madhav, Kerba came there and tried to intervene. They took injured persons to village Pasadgaon, using a tractor. From there the injured were taken to Civil Hospital, utilizing auto-rickshaws. P.W.2 was treated in the hospital for about 2-3 days.

7-iii. Third eye witness is P.W.3-Rama Bismile, who also reiterated what is stated by P.W.1-Datta. He stated that his companions Datta, Khandu, Madhav, Laxman, Purshottam, Govind, Pandit and Budhaji sustained injuries. He stated that he sustained injuries on the hands by accused No.2-Dharba, accused No.8-Venkati and accused No.9-Ramchandra. They delivered blows of axe on his head and all over his body etc. He sustained injuries and was taken to hospital.

7-iv. P.W.4-Ganpati was the next eye witness, who also stated about the incident that took place on 15.07.2006 at about 3.15 p.m. He specifically mentioned that accused No.8-Venkati and accused No.4-Baliram delivered blows of sticks and axe on his person. He sustained bleeding injuries. He was taken to hospital.

7-v. P.W.5-Laxman also reiterated more or less in similar fashion. He specifically mentioned that he was beaten by accused No.7-Santosh, accused No.8-Madhav, accused No.2-Dharba. He sustained injuries to his head and right hand fingers. He was then taken to hospital.

7-vi. P.W.6-Budhaji also reiterated what is stated above. He in particular stated that Chandu (deceased), accused No.9-Ramchandra and accused No.1-Devidas used

sticks, iron road and axe to beat him. He sustained injuries and was taken to hospital.

7-vii. P.W.7-Khandu reiterated as to how the incident took place on 15.07.2006 at about 3.15 p.m. He mentioned specifically that accused No.5-Sambhaji and accused No.2-Dharba assaulted him with stick and iron rod. He sustained injuries and was sent to hospital.

7-viii. In both these cases, in addition to these eye witness account in Sessions Case No.23 of 2010, the prosecution also examined Medical Officer P.W.8-Dr.Shubhangi Karadkhedkar, who stated that she examined witnesses Laxman, Datta, Rama, Budhaji, Ganpat, Madhav and Khandu. She mentioned that witness – Laxman sustained three injuries. All of them were caused by sharp weapon. Witness Datta, according to her, sustained one injury on his head caused by hard object. Witness Rama sustained injury on his head caused by hard and sharp weapon. He was admitted to hospital. Witness Budhaji sustained four injuries. Out of them, three were on his head. These injuries were caused by sharp weapon. One injury was on index finger, which was caused by hard weapon. Witness Ganpat suffered one injury on his head. Witness Madhav suffered two injuries on his head and two injuries on his limbs. Witness-Khandu suffered one injury on his head.

7-ix. The prosecution also recorded deposition of P.W.11-Deorao, who stated that the incident took place on 15.07.2006 at about 2.30 p.m. He was in the village at that time and as soon as he came to know that there occurred some incident, he went to the disputed land. He noticed that beyond river the disputed land was situated and two groups were having fight. He also noticed that one Baban was trying to intervene and pacify the members of quarreling groups. He further mentioned that members of both the parties sustained injuries. He further mentioned that he did not notice that as to who assaulted whom.

7-x. P.W.12 is Baban. He stated that the incident took place on 15.07.2006 at about 3.30 p.m. He was working in his field, which was situated near the disputed land. He saw that witness-Datta came in the field and started sowing boru utilizing tractor. At that time there occurred some quarrel. At that time accused No.2-Baliram, deceased-chandu, accused No.3-Maruti, accused No.2-Dharba and accused No.7-Santosh came there. They obstructed Datta's tractor. There occurred some talk between them. Thereafter, there was fight. He did not see as to who particularly beat or assaulted whom. Deceased-Chandu and one old woman fell down due to the assault. He went to the spot. He also saw witness Dattu, Budhaji, Ganpat and Rama on the spot.

8. Learned Judge of the Lower Court upheld the defence of accused in Sessions Case No.23 of 2010 that they were in settled possession of the disputed land and that accused in sessions Case No.19 of 2007 assaulted them with deadly weapons. They retaliated and tried to protect themselves. They thus acted in self-defence at the time of incident, whereas the accused in Sessions Case No.19 of 2007 were aggressors. They committed criminal trespass and then caused injuries and also death of one of the victims. The learned Judge of Lower Court acquitted the accused in Sessions Case No.23 of 2010, as said above and convicted six accused in Sessions Case No.19 of 2007.

9. We have heard submissions at length. We also perused the judgment as well as evidence, which came on record. We are required to decide following questions.

9-i. First question is - Who was in settled possession of the disputed land? Both the sides asserted that they were in settled possession and they were trying to protect the same at the time of incident. We do not accept both these contentions. On one side, Datta Bismille and his brothers (accused in Sessions Case No.19 of 2007) have claimed title to the disputed property. But, we are not inclined to hold that they had settled possession of the disputed land.

There is nothing on record to show that they cultivated the land from 2004 onwards. On the other hand, Devidas Wadde and his brothers do not even have title to the land. They pleaded a case of barter etc. with Kishan Arate. But, there is no documentary proof for such arrangement/agreement. All that they have is depositions of prosecutions witnesses, who stated that they knew that Devidas and his brothers have cultivated this land. We do not give any importance to such depositions. People in villages tend to lie on such issues. That is why in our Country we have strong Revenue Record system and we depend on the entries in it. In absence of revenue record we reject case of possession of Devidas and his brothers.

9-ii. We also take note of the fact that though Datta Bismille and his brothers could purchase the disputed land, they could not enter in the same prior to 15th July, 2006 most probably because of rival claim of Devidas Wadde and his strong brotherhood. Both these groups consisted of six brothers on each side. These brothers in turn have several grown-up children. They both thus formed strong groups having almost equal muscle power. A tension between such groups would certainly lead to physical violence. We hold that both the groups were in the process of seizing up strength of the opponents and were making preparation to invade the disputed land and hold on to it despite resistance. Each group wanted to establish dominion on

the land in dispute. So both the groups would fail in their attempt to establish that they were exercising right of private defence.

9-iii. Second question of our consideration is - (i) whether all the accused in both the Sessions Cases formed unlawful assembly and attacked each other? (ii) If the answer is in affirmative whether the attacks were simultaneous or whether any one group was aggressor?

9-iv. The first precipitative action took place 4-5 days prior to the date of incident. Ganpati and his brothers entered the disputed land and sown hybrid jawar. This was apparently an overt act on their part. We believe that part of their case, though we strongly reject their case of settled possession. In retaliation to it on 15th July, 2006, Datta Bismille and his brothers and nephews launched their aggression. This time, they went to the disputed land armed with weapons as well as tractor for tilling. As soon as they entered the land, they started use of tractor for tilling. This part of the case is almost admitted by both the sides. This was an unexpected move. Devidas and his brothers were caught unaware. They were not prepared for this aggression. But within few minutes, all of them gathered and arrived at the disputed land. The first question that we asked ourselves is, with what preparation Devidas and his brothers and nephews

would arrive at the disputed site? They already knew that Datta and others had come there with weapons like sticks, axes and iron bar. So, it was natural for them to come there equally prepared. We have no hesitation to hold that Devidas and his brothers were also armed with similar weapons. Looking to the muscle power of both the groups, this was the beginning of armed conflict. dmittedly within few minutes of altercation, both the groups started assaulting each other. The prosecution witnesses have clearly stated so. In the melee almost all sustained injuries. Most of the injuries were sustained on heads. Most of the injuries looking to the dimension indicated that sticks and similar objects were utilized as weapons. There was even possibility of use of axes from blunt side. (In some cases sharp aged weapons were also used. But, the injuries caused by them were simple in nature.)

10. In view of this, we have no hesitation to hold that all accused in both these cases formed unlawful assemblies and attacked each other almost simultaneously. Strength of both sides was almost equal. This eruption of violence was not unexpected but was almost a sudden occurrence. Both the groups were equally prepared. In the heat of passion, it soon became a free fight. Both sides resorted to violence but did not act in cruel manner. Number of persons from both sides suffered injuries.

11. List of injuries suffered by both the sides is given under for comparison :-

1. **Gangabai Potlaji Wadde**

i. CLW on right parietal area on scalp – 4 x 1 cm simple in nature caused by rough and hard object.

2. **Sambhaji Potlaji Wadde**

i. CLW – 4 x ½ cm on right parietal area caused by rough and hard object.

ii. Fracture of acromion process of scapular left. Grievous in nature.

iii. Fracture of 3rd and 4th rib posteriorly on right side – grievous in nature – caused by rough and hard object.

iv. Fracture lower 1/4th ulna right.

3. **Ramchandra Chandu Wadde**

i. Contusion 3 x 4 cm simple type, caused by hard and blunt weapon.

ii. Contusion 12 x 2 cm on left thigh caused by hard and blunt object of simple type.

iii. Contusion 4 x 1 cm on left forearm caused by hard and blunt object of simple type.

iv. Contusion 3 x 1 cm on back caused by hard and blunt object of simple type.

4. **Kuntabai Devidas**

i. Contusion 2 x 2 cm on forehead right side caused by rough and hard object.

ii. Linear Fracture of patella caused by rough and hard object, grievous in nature.

5. **Devidas Potlaji Wadde**

i. CLW over occipital region 2"x1/2" upto bone, caused by hard and blunt object.

ii. Contusion over right elbow joint slight swelling 2" x 1" caused by hard and blunt object.

iii. Contusion over right palm, dorsal side 1" x 1" caused by hard and blunt object simple in nature and

iv. Contusion over left palm (dorsal side) 2" x 1" caused by hard and blunt object.

6. **Madhav Chandu Wadde**

- i.CLW over occipital region 3" x ½" upto bone, caused by hard and blunt object.
- ii.Contusion over back (oblique in direction) 3" x 2", caused by hard and blunt object.
- iii.Contusion over left thigh (lateral aspect) 4" x 2", caused by hard and blunt object, simple in nature.

7. **Santosh Chandu Wadde**

- i.CLW over right parietal area 3" x ½" x up to bone, caused by hard and blunt object.
- ii.Contusion over left side of back 5" x 2" (oblique in direction) caused by hard and blunt object.

8. **Dharba Potlaji Wadde**

- i.CLW over right forehead 2 x ½" upto bone, caused by hard and blunt object.
- ii.CLW over occipital area 2" x ½" up to bone, caused by hard and blunt object.
- iii.CLW over parietal area 3" x ½" up to bone, caused by hard and blunt object.
- iv.Abrasion over right hand right finger ½" x ¼", caused by hard and blunt object.
- v.Contusion over left calf area (left leg) 3" x 3", caused by hard and blunt object.
- vi.Contusion over left shoulder and swelling 2"x2",caused by hard and blunt object.
- vii.CLW over left forehead, 2" x 2" upto bone, caused by hard and blunt object.

9. **Maroti Potlaji Wadde**

- i.CLW over occipital region 3" x 1" x upto bone, caused by hard and blunt object.

10. **Baliram Potlaji Wadde**

- i.CLW over right frontal region 1" x ½" x upto bone.
- ii.Contusion over right forearm, swelling at lower side 3" x 2".
- iii.Contusion over left thigh (lateral aspect) 4" x 3".
- iv.Abrasion over occipital region 1" x ½"
- v.CLW over right palm with fracture of 1st meta carpal bone 2" x 1".
- vi.CLW over right ankle joint 3" x 2" upto bone.
- vii.Contusion over left knee joint, swelling plus 4" x 3".

viii. Contusion over back 4" x 3".

11. **Injuries of Chandu the deceased are as under:-**

i. Swelling over right temporal region and occipital region, spread over 6 x 4 cm and 14 x 5 cm respectively.

ii. Healed abrasion with blackish scab present over superior aspect of right shoulder 4 x 3 cm, right arm laterally over upper third spread over 3 x 2 cm.

iii. Contusion over right arm over middle third region antero laterally spread over 8 x 3 ½ cm.

Medical Officer also found fracture right humerus, right tibia, fibula, left radius-ulna.

On internal examination he found following injuries.

Under scalp, haematoma in right temporalist muscle and over occipital region, brownish black about 6 x 3 cm and 12 x 4 cm respectively. There was fissure fracture of the base of skull in right middle cranial fossa, extending to pituitary fossa. Extra vassation are seen. The meninges were congested and intact. There was hemorrhagic contusion to right cerebellar hemisphese on ventral aspect.

12. **Laxman Kishanrao Bismille**

i. CLW three number each measuring 4x1 cm on parieto occipital region right side.

ii. CLW 4 x 1 cm. on left parieto occipital region and

iii. CLW 2 in number 6 x 1 cm and 3 x 1 cm on left parietal region

13. **Datta Kishanrao Bismille.**

i. CLW measuring 1 x 1 cm on right parietal area.

14. **Rama Kishanrao Bismille**

i. CLW measuring 3 x 1 cm. and 4 x 1 cm on top of vertex.

15. **Budhaji Kishanrao Bismille**

i. CLW measuring 15 cm x 2 cm on head parietal area right side.

ii. CLW measuring 1 x ½ cm on right index finger.

iii. CLW two in number 7 x 1 on left parietal area.

iv. CLW 6 x 1 cm and 4 x 1 cm on right parietal area.

16. **Ganpati Kishanrao Bismille**

CLW measuring 7 x 1 cm on left parietal area.

17. **Madhav Kishanrao Bismille**

- i. CLW measuring 5 x 1 cm on occipital region.
- ii. CLW measuring 7 x 1 cm on right parietal region.
- iii. Contusion measuring 2 x 2 cm on left leg lower 1/3.
- iv. CLW measuring 2 x ½ on right index fingure.

18. **Khandu Budhajirao Bismille**

- i. CLW 6 x 1 cm on top of vertex.

12. On comparison of number and nature of injuries found on the person of the victims, it is clearly indicated that members of Devidas's group sustained more injuries. On the other hand Datta and six others from his group sustained injuries, which were mostly simple in nature. It can, therefore, be said that the attack of members of Datta's group was more fierce compared to the attack of group belonging to Devidas. But the description of the incident given by eye witnesses belonging to group of Devidas does not indicate that members of group of Datta targeted any one or two members of group of Devidas utilizing more power and indicating cruelty.

13. We have, therefore, no hesitation to hold that members of both these groups were members of unlawful assembly with deadly weapon and all of them used force and violence. All the accused in both cases have committed offence of rioting with deadly weapons. They should be convicted for offences under Sections 143, 144 & 148 of the Indian Penal Code.

14. The third question that arises for our consideration is - what was the common object of both these assemblies? From the evidence on record, it can safely be said that the common object of unlawful assemblies was to cause injuries to their opponents. Looking to the nature of injuries caused to witnesses in Sessions Case No.19 of 2007, we have no hesitation to hold that the common object of unlawful assembly of Datta (accused in Sessions Case No.19 of 2007) and his associates was to cause grievous injuries to their victims and to deter them from cultivation of disputed land.

15. On the other hand, the common object of unlawful assembly formed by Devidas (accused in sessions Case No.23 of 2010) and his associates was to cause simple injuries to their opponents and to stop them from cultivating disputed land.

16. The fourth question required to be asked is, whether Datta and others - accused in sessions case No.19 of 2007 had common object of causing death of the opponents? The answer has to be in negative.

17. Chandu, the injured victim, who ultimately succumbed to death, had suffered five injuries. All of them were grievous in nature. He suffered fractures

of bones of both the limbs. In addition, he also sustained two injuries on his head. His death occurred after nine days from the incident. All that we can say is that the common object of Datta and his unlawful assembly was to cause grievous hurt to Chandu.

18. The learned Judge of the Lower Court held that they did not commit murder but committed culpable homicide not amounting to murder. It is caused under exception (4) of Section 300 of the Indian Penal Code. All ingredients of exception (4) of Section 300 of the Indian Penal Code are clearly established in this case.

19. As said above, there was strong reason for both the parties to attack each other. Sudden fight took place and in the heat of passion injuries were caused to the deceased. But it does not appear that Datta and others targeted Chandu by cornering him. It does not appear that they had taken undue advantage of their position. It is not the prosecution case that before the Chandu's brothers Devidas and others came on the spot, they caught Chandu unprepared and attacked him. The prosecution witnesses stated that the armed struggle started only after Devidas and his brothers reached the disputed spot and in the melee, injuries were caused.

20. We therefore, hold that accused Nos.1 to 6 in Sessions Case No. 19 of 2007 could be held guilty for the offence punishable under Section 304 Part-II read with Section 149 of the Indian Penal Code. We are inclined to accept the argument that other accused Nos.7 to 10 should also be convicted for similar offence. The learned Judge of the Lower Court analyzed the evidence quite painstakingly and held that accused No.7 onwards were present but were silent spectators. We do not wish to disturb the said finding. On the other hand, we are inclined to hold that accused Devidas Wadde and seven others could be convicted for the offences punishable under Sections 323, 324 read with Section 149 of the Indian Penal Code and other allied offences like rioting.

21. The gist of above discussion can be summarized as under :-

Sessions Case No.19 of 2007.

I. Accused Nos. 1 to 6 were members of unlawful assembly.

II. The prosecution further proved against them that accused Nos. 1 to 6 were members of unlawful assembly in prosecution of the common object of the assembly.

III. The prosecution could further prove that accused Nos.1 to 6 voluntarily caused simple hurt to complainant – Devidas.

IV. The prosecution could also prove that accused Nos.1 to 6 in furtherance of their common object caused grievous hurt to their victim.

V. The prosecution could also prove that the accused Nos. 1 to 6 in furtherance of their common object, caused culpable homicide not amounting to murder of their victim – Chandu.

Sessions Case No. 23 of 2010.

I. On the other hand, the prosecution proved that accused Nos. 1 to 9 were members of unlawful assembly.

II. The prosecution could also prove that being members of such unlawful assembly, accused Nos. 1 to 9 were also armed with deadly weapons.

III. The prosecution could further prove that they in furtherance of their common object, caused simple hurt to the complainant and other witnesses by means of sticks, axe,

iron bar etc.

22. In view of above conclusions Criminal Appeal No. 151 of 2015 filed against the order of acquittal in Sessions Case No. 23 of 2010 would succeed partly.

23. We would now consider as to whether accused Nos.1 to 6 in Sessions Case No. 19 of 2007, who were sentenced to suffer rigorous imprisonment for seven years for offence punishable under section 304 Part-II read with section 149 of the Indian Penal Code, which is longest term of sentence awarded to them deserves any leniency. They are in custody since 2012. We are of the view that the period of imprisonment they have undergone so far would be sufficient sentence for offence punishable under section 304 Part-II read with section 149 of the Indian Penal Code. Obviously, therefore, they also deserve reduction in the length of sentence awarded to them. For offence punishable under section 326 read with 149 of the Indian Penal Code, earlier they were sentenced to suffer rigorous imprisonment for four years and to pay a fine of Rs.1000/- each. We reduce this sentence to a period of two years and fine of Rs.1000/-, in default, rigorous imprisonment for six months. We do not intend to make change in the length of sentence awarded to them for offence punishable under section 324 read with section 149 of the Indian Penal Code and other sentences awarded to them for offence punishable

under sections 323 & 324 both read with section 149 and sections 147 & 148 of the Indian Penal Code.

24. As said above, accused in Sessions Case No. 23 of 2010 also deserve to be convicted for offence punishable under sections 147 & 148 and 324 read with section 149 of the Indian Penal Code. However, we are not inclined to send them back to jail. We sentence them to the term of imprisonment which they have already undergone while in custody pending the trial.

25. In the result, we pass following order :-

O R D E R

(A) Criminal Appeal No. 619 of 2012 is partly allowed.

(A-i) The conviction of appellants/accused Nos.1 to 6 in Sessions Case No. 19 of 2007 is not disturbed for offence punishable under section 304 Part-II read with section 149 of the Indian Penal Code, but their sentences are modified. They are sentenced to suffer rigorous imprisonment for the period which they already undergone in jail with fine of Rs.1000/- (Rupees One Thousand) each, in default, to suffer rigorous imprisonment for one year.

(A-ii) The appellants/accused Nos.1 to 6 are convicted for the offence punishable under section 326 read with section 149 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years and to

pay a fine of Rs.1000/- (Rupees One Thousand) each, in default, to suffer rigorous imprisonment for six months.

(A-iii) Rest of the conviction and sentence shall remain unchanged.

(A-iv) All the sentences shall run concurrently.

(A-v) In case, fine is deposited by the appellants/accused Nos.1 to 6, they be released from custody, if not required in any other case.

(B) Criminal Appeal No.162 of 2013 filed by the State is dismissed.

(C) Criminal Appeal No.679 of 2012 filed by complainant-Devidas against judgment in Sessions Case No.19 of 2007 is also dismissed.

(D) Criminal Appeal No. 151 of 2013 filed against acquittal of all accused in Sessions Case No.23 of 2010 is partly allowed.

(D-i) The accused/respondent Nos.1 to 8 are convicted for the offence punishable under sections 147, 148 and 324 read with 149 of the Indian Penal Code. They are sentenced to suffer rigorous imprisonment for the period which they have already undergone in the custody during the trial for all the offences proved against them.

(D-ii) The accused/respondents Nos.1 to 8 are not sentenced to pay any fine.

(D-iii) Their bail bonds stand cancelled.

(E) Criminal Revision Application No.
210 of 2012 filed against judgment in
Sessions Case No.19 of 2007 seeking
enhancement in sentence is also dismissed.

[INDIRA K. JAIN, J.]

[A.V. NIRGUDE, J.]