

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.226 OF 2016

The State of Maharashtra
through Police Station Officer,
Police Station Umred,
Tah. Umred, District Nagpur

...APPELLANT

VERSUS

1. Sudhakar s/o Nana Choudhary
Aged about 46 years, Occ. Labour,
R/o. Tambekhani, Tah. Umred,
District Nagpur
2. Baban s/o Nana Choudhary
Aged about 49 years, Occ. Labour,
R/o Amgaon, Tah. Umred,
District Nagpur
3. Govind s/o Nana Choudhary
Aged about 34 years, Occ. Labour,
R/o. Amgaon, Tah. Umred,
District Nagpur
4. Sou. Benubai w/o Sudhakar Choudhary
Aged about 40 years, Occ. Labour,
R/o. Tambekhani, Tah. Umred,
District Nagpur
5. Sou. Kachrabai w/o Baban Choudhary
Aged about 34 years, Occ. Labour,
R/o. Tambekhani, Tah. Umred,
District Nagpur

...RESPONDENTS

Shri M.K. Pathan, Additional Public Prosecutor for the appellant.
Shri A.C. Jaltare, Advocate for the respondents.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATED : NOVEMBER 30, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. The order of acquittal passed by the Ad-hoc District Judge and Additional Sessions Judge, Nagpur in Sessions Trial No.611/2001 dated 31/10/2015 is under challenge in the present appeal.

3. The facts in brief are as under :

A] On 20/06/2001 at about 9.00 a.m. when the informant along with his father Sheshrao Lonbaile and one Purushottam Nagose had been to the agricultural field which was purchased by his father from one Nana Laxman Choudhary who is resident of Amgaon for the consideration of Rs.1,20,000/-. They had been to the said field for the purpose of agricultural operations. As per the allegations in the First Information Report (hereinafter referred to as the 'FIR' for short) when they were carrying out the agricultural operations, all the accused persons with their common object entered into the field and abused them and assaulted them by means of spear and sticks. As per the allegations, the accused No.2-Baban Choudhary assaulted the informant

Mohan Lonbaile by stick and he sustained the injuries on his back, hands and legs. All the accused persons had also assaulted to Purushottam Nagose with a spear and axe and he sustained the injuries on all over his body and died on the spot. The accused persons had also assaulted the father of the informant namely Sheshrao on his hands and legs and thereby Sheshrao sustained fracture injuries on his right hand wrist. At the relevant time, the villagers namely Madhav Lende and Dhanbaji Lende rushed to the spot and they intervened the quarrel and rescued the informant and his father. The informant and his father were immediately taken to the hospital for treatment wherein the police approached to him. He lodged the report. On the basis of said report Umred police have registered the offence against the accused persons for the offences punishable under Sections 147, 148, 149, 342, 307 and 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC' for short).

4. After registration of the crime, the Investigating Officer has visited the alleged spot of incident and drawn the spot panchnama. He collected the simple soil and blood stained soil and also seized stick, one slipper, one match box from the spot of incident. The Investigating Officer has also drawn the inquest panchnama regarding the dead body of the deceased Purushottam who died on the spot. The Investigating

Officer has also seized the cloths of the deceased, cloths of injured and cloths of the accused as well as collected the blood samples of the deceased, injured and the accused persons by drawing the panchnama. During the investigation accused namely Sudhakar Nanaji Choudhary made a memorandum statement and recovery of incriminating articles stick was made by drawing the recovery panchnama. Another accused by name Baban Nanaji Choudhary also made a memorandum statement and at his instance one iron axe and one bamboo stick were recovered. All the incriminating articles and cloths are forwarded to the Chemical Analyzer. The Investigating Officer has collected the injury certificates and post-mortem notes and after completion of investigation submitted the charge-sheet against the accused.

5. The learned Magistrate has committed the case to the Court of Sessions as offence punishable under Sections 302 and 307 of the IPC are exclusively triable by the Court of Sessions. The Additional Sessions Judge has framed the charge vide Exhibit 37. The accused pleaded not guilty and claimed to be tried. In support of the prosecution, the prosecution has examined in all ten witnesses as follows :

- (i) PW-1 – Mohan Sheshraoji Lonbaile (Exhibit 54) - Informant
- (ii) PW-2 – Maroti Mohadu Madavi (Exhibit 57) – Panch on spot of inquest panchnama

- (iii) PW-3 – Rashida Begum Mubeen Khan (Exhibit 77)
- (iv) PW-4 – Dr. Deepa Parshuram Jahagirdar (Exhibit 83) – Medical Officer
- (v) PW-5 – Prabhakar Maroti Dahiwalé (Exhibit 86) – Panch on seizure of cloths and samples.
- (vi) PW-6 – Mahadeo Sitaram Lende (Exhibit 87)
- (vii) PW-7 – Kalawati Sheshrao Lonbaile (Exhibit 88)
- (viii) PW-8 – Dr. Manish Baburao Shrigiriwar (Exhibit 92) – Medical Officer
- (ix) PW-9 – Dr. Smt. Kavita Kashinath Nagrale (Exhibit 95) – Medical Officer.
- (x) PW-10 – Dilip Govindrao Gavai (Exhibit 114)

Besides the oral evidence, Prosecution also relied upon various documents such as :

Oral Report (Exhibit 55), First Information Report (Exhibit 56), Spot Panchnama (Exhibit 58), Inquest Panchnama (Exhibit 59), M.L.C. Report of Sheshrao Jagoba Lonbaile (Exhibit 60), M.L.C. of Mohan Sheshrao Lonbaile (Exhibit 61), Requisition to Medical Officer (Exhibit 62), Chemical Analyzer Reports (Exhibits 64 to 73), Post-mortem Report (Exhibit 74), Injury Certificate of Mohan Lonbaile (Exhibit 84), Injury Certificate of Sheshrao Jagoba Lonbaile (Exhibit 85), Query Report (Exhibit 96), Seizure Memos (Exhibits 115 to 125), Memorandum Statement of accused Madhukar (Exhibit 126), Recovery Panchnama (Exhibit 127), Memorandum Statement of accused

Sudhakar (Exhibit 128), Recovery Panchnama (Exhibit 129), Memorandum Statement of accused Baban (Exhibit 130), Recovery Panchnama (Exhibit 131), Requisition to C.A. (Exhibit 133), Requisition to C.A. (Exhibit 136).

6. The defence of the accused is of total denial as well as the contention of the accused is that the agricultural field is owned by the accused persons and the informant and the injured were trespassers in the said field. The informant and the injured persons attempted to obtain the forceful possession of their agricultural field and in the scuffle informant and his father sustained injury and Purushottam Nagose succumbed to the death. It is further the contention of the accused persons that regarding the said incident, accused No.1-Sudhakar has also lodged the report for the offence punishable under Sections 448 and 324 of the IPC bearing Sessions Trial No.395/2009. It is the defence of the accused persons that the informant and his father along with the deceased entered into their field and committed the offence of trespass. They opposed the act of the informant, and therefore, alleged incident has taken place.

7. Heard Shri M.K. Pathan, learned Additional Public Prosecutor for the appellant/State. Shri A.C. Jaltare, learned Counsel for the respondents.

8. Shri M.K. Pathan, learned Additional Public Prosecutor submitted that admittedly cross complaints are lodged by the parties against each other. However, the accused persons have exceeded the right of private defence and caused the death of Purushottam. Therefore, they are not entitled for the benefit of right of private defence. He submitted that the learned trial Court has erroneously held that the evidence of the prosecution shows that there was a dispute in respect of agricultural land. It is further erroneously held by the learned trial Court that the prosecution has suppressed the genesis and origin of the occurrence and had not presented true version. He further submitted that the observation of the learned trial Court that none of the witnesses has stated that any of the accused person exceeded their right of private defence. Thus, the observation of the learned trial Court has no support from the evidence hence, the judgment of the trial Court deserves to be set aside and accused to be convicted for the said charges.

9. On the other hand, Shri A.C. Jaltare, learned Counsel for the respondents has submitted that the informant has admitted that at the time of incident, registered sale-deed in respect of agricultural field in which incident took place was not registered in their name. He further admitted that as per the revenue record of the said agricultural field the name of the accused and their father is appearing. This fact itself is

sufficient to show that the informant, his father Sheshrao and deceased Purushottam were the aggressors in the agricultural field. The evidence of PW-1 – informant further shows that they were carrying out the agricultural operations due to which accused persons constrained to enter into the agricultural field and the alleged incident has taken place. The informant, his father Sheshrao and the deceased Purushottam attempted to obtain the forceful possession of the agricultural land which is owned by the accused, and therefore, to protect the property accused entered and resisted the informant and his father. Thus, the accused persons acted in the right of private defence to protect their property. The learned trial Court has rightly observed that the accused persons have not exceeded their right of private defence, therefore, no interference is called for.

10. Heard both the sides and perused the record.

11. Before entering into the merits of the appeal we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C.' for short) while deciding the appeal by this Court. In recent judgment in the case of ***Jafarudheen and others vs. State of Kerala, (2022) SCC Online SC 495***, wherein it is held that while dealing with an appeal against acquittal by invoking Section

378 of the Cr.P.C, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that ensures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

12. Section 378 of Cr. P.C. enables the State to prefer an appeal against an order of acquittal, whereas Section 372 speaks of the rights of the victim to file an appeal against the acquittal. As a consequence the onus on the prosecution is to prove the guilt of the accused. It is well settled that the Appellate Court is expected to scrutinize the evidence and is duty bound to satisfy itself whether the decision of the trial Court is both possible and plausible view. When two views are possible, then one taken by the trial Court in case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses.

13. In the case of *Babu vs. State of Kerala (2010) 9 SCC 189*, it is held by the Apex Court that the findings of fact recorded by a Court can

be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

14. In the light of well settled principles, if the evidence in the present case is taken into consideration, the prosecution case has come with a case that the death of deceased Purushottam Nagose is homicidal death. To prove the homicidal death of deceased Purushottam, the prosecution mainly relied upon the evidence of post-mortem report which is admitted by the defence. As per the post-mortem report deceased Purushottam has sustained following injuries on his person which are mentioned in column No.17 are as follows :

- (i) Incised wound over left frontal region 5cm x 1½cm x bone deep, bleeding with underlying fracture left frontal bone transverse in direction along with hair line left frontal region.
- (ii) Incised wound over vertex scalp oblique in direction, 5cm x 2cm x bone deep bleeding.
- (iii) Incised wound right scapular region bleeding int. 7cm x 2cm x bone deep with fracture scapula right along with wound transverse in direction.
- (iv) Incised wound over back left middle part 8cm x 2cm x muscle deep, transverse in direction bleeding.

- (v) Contusion over right side abdomen, oblique, 10cm x 3cm, bluish colour.
- (vi) Incised wound left elbow anterior 10cm x 2cm x muscle deep, obliquely, bleeding.
- (vii) Contusion over lower part of chest. 3 in number, with bluish colour boundaries, overlapping each other 12cm x 2cm each with fracture ribs 8, 9, 10th right side and fracture ribs 9, 10th right.
- (viii) CLW right frontal region 2cm x 1cm x ½cm bleeding
- (ix) CLW right leg m/3 anterior 2cm x ½cm x ½cm bleeding
- (x) Multiple contusion marks, over both wrist transverse in direction each 4cm x 2cm.

15. In internal examination Medical Officer has observed incised wound over left frontal region transverse 5cm x 1½cm x bone deep and incised wound over vertex scalp oblique in direction 5cm x 2cm x bone deep. He also observed compound fracture left frontal bone 4 cm in length transverse in direction along hair line left frontal region. Haematoma left cerebrum underlying fracture bone is also seen. On the basis of above said examination, the cause of death determined is haemorrhagic shock due to multiple injuries with head injury.

16. The defence has admitted the cause of death as well as injuries sustained by the deceased. Besides the medical evidence, evidence regarding the inquest panchnama Exhibit 59 is on record. The contents of the inquest panchnama are admitted by the defence hence it

is exhibited. The inquest panchnama also shows the injuries on the person of the deceased. Thus, post-mortem report as well as the inquest panchnama sufficiently shows that as deceased has sustained multiple injuries which resulted into haemorrhage and he succumbed to the death. Thus, the prosecution's evidence regarding the cause of death remained unchallenged which is sufficiently establishes that the deceased died due to homicidal death.

17. As per the prosecution story, PW-1 Mohan had been to his agricultural field on 20/06/2001 at about 9.00 to 9.30 a.m. along with his father and Purushottam Nagose and were carrying the agricultural operations. All the accused with their common object came in the agricultural field along with weapons like stick, spear and axe and assaulted the informant Mohan, his father Sheshrao and Purushottam. To prove the said allegation, the prosecution mainly relied upon the evidence of PW-1 Mohan who is the injured in the alleged incident. Besides this evidence, the prosecution also relied upon the evidence of PW-3 – Rashida Begum Mubeen Khan vide Exhibit 77. PW-1 has come with a case that the agricultural land in which they entered and were carrying out the agricultural operations was purchased by his father, and therefore, they are the owners of the said agricultural land. He further come with a case that as the said land was owned by them they went in

the agricultural land and were cultivating the said land. But the accused persons came there and assaulted them with a deadly weapons like sphere and axe. The sum and substance of his evidence is that they are abused and assaulted by the accused persons and in the said assault Purushottam sustained injuries and died on the spot as well as he and his father also sustained the injuries and they underwent the medical treatment. The evidence of PW-1 is tested on the touchstone of credibility. He admitted during the cross-examination that he is also prosecuted on the basis of report lodged by the accused No.1 – Sudhakar under Section 448 and 324 of the IPC i.e. the criminal trespass.

18. It is further elicited from his cross-examination that it is alleged against them that they have caused hurt with a spear to accused No.1- Sudhakar. It is specifically came on record that the agricultural field in which the incident took place is not in their name but it is in the name of the accused and their father. He further admitted that at the time of incident, accused Sudhakar was residing in his house near the said village and at the time of incident he and his father deceased Purushottam were ploughing the field. Thus, the cross-examination of PW-1 clarifies that the agricultural field wherein the alleged incident has taken place was not owned by them as registered sale-deed was not executed in their name. It also clarifies that though the agricultural field

was not on their name they entered into the field and were carrying out the agricultural operations.

19. The prosecution has also examined PW-3 – Rashida Begum Mubeen Khan who appears to be an independent witness regarding the alleged incident. She deposed vide Exhibit 77 that on 20/06/2001 at about 9.30 a.m. quarrel was taken place between the accused and injured Sheshrao and his son Mohan. From her evidence, it is further revealed that the victim i.e. deceased Purushottam with the help of PW-1 and injured Sheshrao were ploughing the field, in the result assault was taken place in between them and the accused had beaten the deceased and PW-1. PW-1 and his father also beaten the accused. The accused Nos.1 to 4 were having an axes in their hand. During her cross-examination it is specifically came on record that she is not aware whether the accused were in possession of the agricultural field. She admitted that Nana Choudhary was the owner of the said agricultural field. She specifically admitted that she heard the noise of the quarrel but she had not gone to the spot. She further admitted during the cross-examination of accused Nos.2, 3 and 5 that at the time of incident, she alone was residing at Tembekhani. The incident took place in the field adjacent to the road. Thus, her admission shows that she has not visited the spot. Whether she had really seen the incident or not is the material question.

20. The prosecution case is also rested on the evidence of PW-6 – Mahadeo Sitaram Lende who according to PW-1 – Mohan has intervened in the scuffle but he has not supported the prosecution case and left the loyalty towards to the prosecution. PW-7 Kalavati Sheshrao Lonbaile is the wife of the Sheshrao injured who admittedly reached at the spot after the incident. Therefore, her evidence is not the direct evidence. Her evidence is only to the extent that she saw the deceased lying in the injured condition on the ground. She also witnessed that her husband Sheshrao and son Mohan were also in the injured condition.

21. Besides the oral evidence of these witnesses, prosecution also relied upon the evidence of Medical Officer namely PW-4 – Dr. Deepa Parshuram Jahagirdar who has examined PW-1 – Mohan Lonbaile. She testified vide Exhibit 83 that the patient namely Mohan Lonbaile was admitted in the hospital in ward No.10, Bed No. 2 through Police Constable 1182. Said patient was admitted on 21/06/2001 till 26/06/2001. The history was narrated that trauma was on left shoulder, back and head. He was initially examined by C.M.O. and then was referred to right shoulder surgery. He had sustained fracture on right parietal region with subdural hemorrhage, X-Ray was done suggestive of dislocation of left shoulder. There was an evidence of

lacerated wound on right parietal region size 3 cm in length it was stitched. There was multiple abrasion over left shoulder. Such type of injuries can be possible by hard and blunt object. Those injuries are sufficient to cause death. Accordingly, the injury certificate was issued by lecturer Forensic Department, G.M.C., Nagpur. She specifically stated that she is unable to identify the signature of the signatory. Thus, her evidence shows that she neither issued the certificate nor the certificate is in her hand writing or bears her signature. She has deposed on the basis of bedhead ticket. She also deposed regarding the injury certificate of the patient namely Sheshrao Jagoba Lonbaile. As per her evidence, he was admitted on account of assault. As per the record, he had sustained lacerated wound on the right forearm 2 x 1cm underline both bones fracture. Second lacerated wound stitched over right parietal region 3cm. Third lacerated wound over occipital region 6cm and fracture over the left lower end radius with abrasion over right infra-scapular region. There was suggestive of linear undisplaced fracture of left frontal and left temporal bone with displaced fracture of both parietal bone with cortical contusions in parietal region. She stated that she treated both the patients but she has not issued the said certificates.

22. To prove the injuries on the person of Sheshrao, prosecution also examined PW-8 – Dr. Manish Baburao Shrigiriwar who testified vide

Exhibit 92 that she was attached as a Lecturer in the Government Medical College, Nagpur. Patient by name Sheshrao Lonbaile was admitted in ward No.10 on 21/06/2001. He prepared the injury certificate on the basis of bed head ticket. On his examination he found following injuries on the person of Sheshrao :

- (i) Lacerated wound over right forearm 2cm x 1cm underlying both bones fractured.
- (ii) Lacerated wound (stitched) over right parietal region 3cm x 2cm.
- (iii) Lacerated wound over occipital region 6cm x 0.5cm
- (iv) Contusion seen over left wrist fractured lower end of radius.
- (v) Abrasion present over right infrascapular region 2cm x 1cm.

23. He further testified that the injuries are possible due to hard and blunt object. He prepared the injury report which is at Exhibit 85. On 10/09/2001, he also received requisition from Police Station Umred. He was requested to examine the weapon and opined whether the said injuries are possible by the weapon like wooden rod and he opined that the injuries Nos.1 to 6 and fracture of right radius are possible with this weapon. Said report is at Exhibit 93. During his cross-examination he admitted that he had no occasion to see the patient. He further stated that it is not necessary to draw the sketch to examine the weapon. Thus, his cross-examination is regarding the healing process in different types of contusions.

24. PW-9 – Dr. Smt. Kavita Kashinath Nagrale who working as an Assistant Lecturer issued the medical certificate in respect of the injuries sustained by the informant. She testified that the injury certificate Exhibit 84 bears her signature and in her handwriting contents are correct as per the bed head ticket. The weapon was referred to her for opinion. The weapons were one axe, one wooden stick and she opined that injury Nos.1 and 2 sustained by Mohan is possible with a weapon like wooden stick. The query report is at Exhibit 96. Her entire cross-examination is regarding the nature of injury whether it is simple or grievous which is not mentioned by her in the certificate. General cross-examination is taken by the defence regarding the nature of injuries and said injuries are possible by any hard and blunt object which is admitted by the Medical Officer. It is pertinent to note that there is no dispute regarding the fact that the alleged incident has occurred. Only dispute is that as per the prosecution, the accused persons have exceeded their right of private defence and cause of the death of Purushottam whereas it is the case of the accused that they acted while exercising their private defence while protecting their property.

25. Besides the oral evidence and medical evidence, prosecution also relied upon the evidence of witnesses who acted as a panch of various panchnamas. PW-2 - Maroti Mahadu Madavi vide Exhibit 57 is

examined to prove the spot panchnama as well as inquest panchnama but he has not supported the prosecution case and resiled. PW-5 – Prabhakar Maroti Dahiwalé also acted as a panch on seizure of the samples and various seizure memos of various articles. He has also not supported the prosecution case, therefore, the prosecution relied upon the evidence of Investigating Officer PW-10 – Dilip Govindrao Gavai. He testified about the investigation carried out by him. As per his evidence after registration of the crime, he visited the alleged spot of incident and prepared the spot panchnama. From the spot he seized simple soil, blood stained soil, one stick, one slipper, one wooden prick by drawing the seizure memo which is marked as Exhibit 115. He also drawn the inquest panchnama Exhibit 59. He seized the cloths of deceased by drawing seizure memo Exhibit 116. He also seized the cloths of injured as well as accused persons by preparing the panchnamas. He seized the shirt and lungi of accused Madhukar Choudhary by drawing seizure memo Exhibit 117. He seized baniyan, full-pant and T-shirt stained with blood from the person of accused Baban Choudhary by preparing seizure memo at police station which is at Exhibit 118. He seized the cloths of accused Sudhakar Choudhary consisting white baniyan and sky colour full pant by drawing seizure memo Exhibit 119. From his further evidence it reveals that on 24/06/2001, accused Madhukar made a voluntary statement in the form of memorandum and his memorandum

was reduced into writing vide Exhibit 126. Thereafter accused Madhukar led them at the house of accused Sudhakar and produced bamboo stick and rope which was seized by drawing seizure panchnama Exhibit 127. On 24/06/2001, accused Sudhakar Choudhary showed his voluntariness to point out a place with spear and axe and agreed to produce the same. Accordingly, memorandum statement was reduced into writing which is at Exhibit 128. As per the said statement, accused Sudhakar led them at his house and produced one spear and axe. Accordingly, panchnama was drawn which is at Exhibit 129. He further deposed that on 24/06/2001, accused Baban had also made a memorandum statement that the axe and stick were concealed by him and he will produce the same. Accordingly, his statement was recorded and panchnama Exhibit 130 was drawn.

26. As per the evidence of Investigating Officer, all the incriminating articles are forwarded by him to Chemical Analyzer and after completion of investigation, he submitted the charge-sheet against the accused. The Chemical Analyzer reports are at Exhibits 64 to 73. As per Exhibit 64, the articles i.e. blood stained soil, simple soil, cloths of the deceased Purushottam, cloths of the injured Sheshrao and Mohan and cloths of the accused are forwarded to Chemical Analyzer. The articles at serial No.15 and 16 i.e. lungi and T-shirt are the cloths of the

accused Madhukar. Cloths of accused Baban at serial Nos.17 and 18 labelled as E-1 are the cloths of accused Baban and article full pant and torn baniyan at serial No.19 and 20 labelled as F-1 are the cloths of accused Sudhakar. The analysis report shows that no blood stains are found on the cloths of accused Kacharabai Baban Choudhary, Venubai Sudhakar Choudhary and Govind Nana Choudhary but blood detected on full pant and shirt of accused Baban which is human. Human blood stains are also determined on the cloths of accused Sudhakar at serial No.19 and 20. Admittedly, no blood group is determined regarding the blood stains appearing on the cloths of accused Baban and accused Sudhakar. As per the Chemical Analyzer report Exhibit 65 blood group of deceased is 'A'. Blood group of accused Madhukar is not determined as per Exhibit 66.

27. As per Exhibits 67 and 68, the blood group of accused Baban and Sudhakar is also not determined. It is an admitted position that in the alleged incident accused Sudhakar had also sustained the injuries and cross complaint is lodged by the Sudhakar regarding the said incident. PW-1 – Mohan has specifically admitted that in the alleged incident Sudhakar has sustained the injuries. He admitted in the manner that in the cross complaint filed against them, the allegation was made that they have caused hurt with a spear to accused No.1- Sudhakar.

28. After appreciation of the evidence on record it is an admitted position that the scuffle has been taken place between the injured Mohan, Sheshrao and deceased Purushottam and accused Nos.1 to 4. It is also an admitted position that the scuffle has been taken place between the deceased, injured and the accused persons on account of agricultural land. The evidence of injured witness PW-1 – Mohan as well evidence of PW-3 – Rashida Begum shows that the alleged incident has taken place in the agricultural field which is owned by one Nana Choudhary. Though PW-1 has alleged that his father has purchased the said land from one Nana Choudhary but he admitted that registered sale-deed is not executed in respect of the said agricultural field in their name and as per the revenue record, said agricultural field is in the name of the accused and their father. Thus, the accused are the legal owners of the said agricultural field. It is apparent from the evidence that the scuffle took place as the informant, his father and deceased Purushottam entered into the agricultural field and were carrying out the agricultural operations. Thus, it reveals from the evidence that the informant Mohan, his father and deceased Purushottam were trespassers in the agricultural field as the agricultural field was not legally owned by them. It is evident from the evidence that PW-1 Mohan, his father Sheshrao and deceased Purushottam not only entered the field but they

were carrying out the agricultural operations in the said field. As the field is legally owned by the accused persons it was an obvious act on the part of the accused persons to resist the agricultural operations which are carried out by the informant and his family members though they were not the owners of the said agricultural field. Now only question is whether the accused persons have exceeded their right of private defence? Admittedly, during the cross-examination specifically the right of private defence is not pleaded by the accused persons. Section 96 of the IPC speaks about the defence of right of private defence. The Section does not define the expression “right of private defence”. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. It is not necessary for the accused to plead in so many words that he acted in self defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such plea. In a given case, the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 97 of the IPC every person has a right, subject to the restrictions contained in Section 99 to defend his properties against any attack which is an offence falling under the

definition of theft, robbery, mischief or criminal trespass. Admittedly, this right is not available to an aggressor.

29. The informant and his father are prosecuted for the criminal trespass on the basis of report lodged by the accused Sudhakar. From the cross-examination, it is clear that PW-1 Mohan or his father Sheshrao were not the owners of the agricultural land but at the relevant time they were cultivating the agricultural land. As per the revenue record, the accused persons and their father are the true owners of the said agricultural land. It is apparent that while protecting their possession, the alleged incident has occurred and in which deceased Purushottam sustained injuries and succumbed to the death. The accused persons who are the true owners has every right to dispossess while the trespassers is in the act or process of trespassing.

30. It is held by the Hon'ble Apex Court in the case of ***Bhagwan Singh Vs. State of Punjab 1994 SCC (Cri) 1473*** that right of self defence is not available to aggressor. In the present case, admittedly, the informant and his father were the aggressors. They were not the owners of the property wherein the alleged incident has taken place. While protecting the property, the alleged incident has taken place wherein not only deceased and the injured Mohan and Sheshrao but the accused

Sudhakar has also sustained the injuries. As the accused persons who were the true owners has every right to dispossess or throw away the trespassers and while protecting the land from the said trespassers the alleged incident has taken place. After scrutinizing the evidence of the prosecution witnesses it reveals that cross complaints are filed against each other. There was a dispute in respect of agricultural land in between the informant and the accused persons. The cross-examination of the informant shows that either he or his father were not the owners of the property but they entered into the said property which is sufficiently shows that they had trespassed in the agricultural land for taking the possession. The revenue record is in the name of the accused persons and accused persons were in possession to the agricultural land and to dispossess the accused persons, the informant and his father and the deceased Purushottam went to the agricultural land and started ploughing the land. It is apparent that the accused persons entered into the agricultural field to protect the land and while exercising the right of private defence the injuries are caused to the deceased and the accused. The evidence nowhere shows that the accused persons exceeded their right of private defence by acting by taking undue advantage and assaulted the deceased or the injured brutally. From the evidence of PW-1 it is clear that the alleged incident has occurred suddenly as they entered into the agricultural field and started agricultural operations.

31. The only question which needs to be considered is the alleged exercise of right of private defence. Section 96 of the IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The section does not define the expression “right of private defence”. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No statistical formula or test in the abstract for determining such a question can be laid down. The Court has to consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in a self defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. The right of private defence is defensive right. It is neither a right of aggression nor reprisal. There is no right of private defence where there is no apprehension of a danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger which is not self created. Necessity must be present, real or apparent. The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger an immediate

aid from the state machinery is not readily available, that individual is entitled to protect himself and his property.

32. In the present case, even if the accused has not taken the right of private defence but apparently it is the defence of the accused that as the informant and his father and the deceased Purushottam entered in their field though they are not the owners. Therefore, the accused persons went there and the alleged incident occurred. Under Section 105 of the Indian Evidence Act, 1872 the burden of proof is on the accused. In absence of proof it is not possible for the Court to presume the truth of the plea of self defence. The accused are not required to prove the defence i.e. the right of private defence beyond reasonable doubt. But accused to place necessary materials on record either by themselves adducing positive evidence or by eliciting necessary facts from the witnesses examined from the prosecution. The accused taking the plea of the right of private defence is not necessarily required to call evidence. They can established their plea by reference to circumstances transpiring from the prosecution evidence itself.

33. In the words of Russel (Russel on Crime, 11th Edition Volume I at page 49) :

“.....a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to

commit a known felony against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them he happens to kill his attacker, such killing is justifiable.”

34. Thus, the right of private defence is essentially a defensive right circumscribed by the statute available only when the circumstances clearly justified it. It is a right of defense, not of retribution, expected to repel unlawful aggression and not as a retaliatory measure. In the present case, the cross-examination of PW-1 – Mohan itself shows that either he or his father are not the owners of the agricultural land wherein the alleged incident has occurred. He admitted that as per the revenue record the accused persons are the owners of the said agricultural land. From his evidence it further reveals that the informant and his father and deceased Purushottam were carrying out the agricultural operations, therefore, the accused persons went there and scuffle took place between them. In the said scuffle, the death of deceased Purushottam was caused. As per the evidence of prosecution witnesses, the weapons like axe and spear are used which are the agricultural implements. Admittedly, in the alleged incident, accused Sudhakar had also sustained the injuries. The injuries on the person of accused Sudhakar are not explained by the prosecution. It is not denied

that there was scuffle between the accused persons and prosecution witnesses. Thus, there is sufficient evidence to show that the accused persons acted in exercise of right of private defence and while protecting the property, injuries were caused to the deceased as well as injured persons.

35. In our view, in the present case having regard to the nature of injuries allegedly suffered by the deceased, injured and the accused Sudhakar are caused in the scuffle which took place between both the parties. The learned trial Court had considered the same, the reasons assigned by the learned trial Court in paragraph No.20 clearly shows that the learned trial Court has considered that there was a dispute in respect of agricultural land in between the complainant and the accused persons. The complainant Mohan, deceased Purushottam, father of the informant namely Sheshrao and others had trespassed in the agricultural land for taking the possession. The admission during the cross-examination of PW-1 shows that the revenue record of this field are in the name of the accused persons and the accused persons were in possession of this agricultural land. It also reveals that to oust the possession of the accused persons, the informant and others entered into the agricultural field and started cultivating the said land, and therefore, the dispute arose between them. The observation of the learned trial Court shows that none of the witnesses has stated that any of the

accused persons exceeded their right of private defence. Admittedly, none of the witnesses have stated that the accused persons have taken disadvantage of the circumstances and acted brutally and exceeded the right of private defence.

36. In our view, the plea of self defence has been properly considered by the learned trial Court. In our view, in the present case, having regard to the nature of the circumstances in which alleged incident has taken place, we have no hesitation to observe that the accused persons acted in exercise of the right of private defence. Therefore, there is no merit in the appeal of State and appeal deserves to be dismissed.

37. For the aforementioned reasons, we do not find any merit in the appeal and the same is dismissed accordingly.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*