



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

**CRIMINAL APPEAL NO.672 OF 2021**

- 1) Arun s/o Gyandev Pujari @  
Arun s/o Gyandev Birajdar  
Age 54 years, Occupation :  
Agriculture & Labour,  
Resident of : Tadola, Ambajoga,  
Tal.Ambajogai, Dist. Beed (Maharashtra)  
Permanent Resident of  
Opp. Manjara Sakhar Karkhana Get,  
Railway Gate, Shamnagar, Latur,  
Dist. Latur, PIN – 413 531 (Maharashtra)  
Aadhar No. 3187 2556 8918  
Mobile No. 9175133419
  
- 2) Baliram s/o Gyandev Pujari @  
Baliram s/o Dnyandeo Birajdar,  
Age 39 years, Occupation :  
Agriculture & Labour,  
Resident of Tadola, Ambajoga,  
Tal. Ambajogai, Dist. Beed (Maharashtra)  
Permanent Resident of  
Modi Nagar, Murud, Murud Bu., Latur  
Dist. Latur, PIN – 413 510, Maharashtra  
Aadhar No. 6656 8426 8536  
Mobile No. 9175133419

... **APPELLANTS**

(Orig. Accused No.5 & 6)

**VERSUS**

The State of Maharashtra  
At the instance of Police Station Officer,  
Police Station, Bardapur  
Tal. Ambajogai, Dist. Beed, Maharashtra  
(Copy to be served on the office of the  
Public Prosecutor, Criminal Appellate  
Side, High Court, Aurangabad Bench,  
Aurangabad)

... **RESPONDENT**

.....  
Mr. A.D. Ostwal, Advocate for appellant  
Mrs. S.N. Deshmukh, A.P.P. for respondent  
.....

**WITH**

**CRIMINAL APPEAL NO.80 OF 2022**

- 1) Rajkumar s/o Gyandev Pujari @  
Rajkumar s/o Gyandev Birajdar  
Age 52 years, Occupation :  
Agriculture & Labour,  
Resident of : Tadola, Ambajoga,  
Tal.Ambajogai, Dist. Beed (Maharashtra)  
(address as mentioned in impugned judgment)
- 2) Ankush s/o Gyandev Pujari @  
Ankush Dnyandeo Birajdar,  
Age 60 years, Occupation :  
Agriculture & Labour,  
Resident of Tadola, Ambajoga,  
Tal. Ambajogai, Dist. Beed (Maharashtra)  
(address as mentioned in impugned judgment)

... **APPELLANTS**

(Orig. Accused No.3 & 4)

**VERSUS**

The State of Maharashtra  
At the instance of Police Station Officer,  
Police Station, Bardapur  
Tal. Ambajogai, Dist. Beed, Maharashtra  
(Copy to be served on the office of the  
Public Prosecutor, Criminal Appellate  
Side, High Court, Aurangabad Bench,  
Aurangabad)

... **RESPONDENT**

.....  
Mr. A.D. Ostwal, Advocate for appellant  
Mrs. S.N. Deshmukh, A.P.P. for respondent  
.....

**WITH**

**CRIMINAL APPEAL NO.81 OF 2022**

- 1) Madan s/o Gyandev Pujari @  
Madan s/o Dyandev Pujari  
Age 44 years, Occupation :

Agriculture & Labour,  
Resident of : Tadola, Ambajoga,  
Tal.Ambajogai, Dist. Beed (Maharashtra)  
(address as mentioned in impugned judgment)

- 2) Mahadev Alias Pappu s/o Gyandev Pujari  
Age 51 years, Occupation :  
Agriculture & Labour,  
Resident of Tadola, Ambajoga,  
Tal. Ambajogai, Dist. Beed (Maharashtra)  
(address as mentioned in impugned judgment)

... **APPELLANTS**

(Orig. Accused No.1 & 2)

**VERSUS**

The State of Maharashtra  
At the instance of Police Station Officer,  
Police Station, Bardapur  
Tal. Ambajogai, Dist. Beed, Maharashtra  
(Copy to be served on the office of the  
Public Prosecutor, Criminal Appellate  
Side, High Court, Aurangabad Bench,  
Aurangabad)

... **RESPONDENT**

.....  
Mr. A.D. Ostwal, Advocate for appellant  
Mrs. S.N. Deshmukh, A.P.P. for respondent  
.....

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

**Date of reserving judgment : 30th July, 2024**

**Date of pronouncing judgment : 30th August, 2024**

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

This group of three appeals is decided by this  
common judgment and order since the challenge therein is to

one and the same judgment passed by the Court of Additional Sessions, Ambajogai (Trial Court) on 23/11/2021 in Sessions Case, No.87/2012.

2. Eleven persons including the appellants herein were charged and prosecuted for various offences under the Indian Penal Code. The Trial Court acquitted the original accused Nos.7 to 11 (all women) of all the offences they were charged with. Neither the State nor the victim/s preferred appeal against their acquittal.

3. Although the main offences under the Indian Penal Code were particularly punishable under Sections 302, 326, 324 and 323, alleged to have been committed in prosecution of a common object of an unlawful assembly formed by the original accused Nos.1 to 11, the Trial Court was pleased to observe it to have not been a case of formation of an unlawful assembly and commission of the offences in prosecution of common object thereof. Original accused Nos.1 to 6 have preferred these three appeals (one appeal by two each). The order of conviction and consequential sentence imposed against them is given in a tabular form below :-

| Appeal No.                                                        | Name of appellant (Accused No.)                                                                                                         | Convicted under Section                                             | Sentence                                                                              |
|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| 81/2022                                                           | 1) Madan s/o Gyandeo Pujari @ Madan s/o Dnyandeo Pujari<br><u>AND</u><br>2) Mahadev Alias Pappu s/o Gyandev Pujari                      | 302 r/w 34 IPC for committing murder of Vasantrao Mukund Karad      | Imprisonment for life and fine of Rs.10,000/-, each in default R.I. for 2 months each |
| 80/2022                                                           | 3) Rajkumar s/o Gyandev Pujari @ Rajkumar s/o Gyandeo Birajdar<br><u>AND</u><br>4) Ankush s/o Gyandev Pujari @ Ankush Dnyandev Birajdar | 302 r/w 34 IPC for committing murder of Laxman s/o Narhari Gambhire | Imprisonment for life and fine of Rs.10,000/- each, in default R.I. for 2 months each |
| 672/2021                                                          | 5) Arun s/o Gyandev Pujari @ Arun s/o Gyandev Birajdar<br><u>AND</u><br>6) Baliram s/o Gyandev Pujari @ Baliram s/o Dnyandev Birajdar   | 324 r/w 34 IPC                                                      | R.I. for 1 year each and fine of Rs.1000/- each, in default, R.I. for 1 month each    |
|                                                                   |                                                                                                                                         | 326 r/w 34 IPC                                                      | R.I. for 2 years each and fine of Rs.1000/- each, in default, R.I. for 1 month each.  |
| The substantive sentences have been directed to run concurrently. |                                                                                                                                         |                                                                     |                                                                                       |

4. The gist of the prosecution case, as is appearing from the evidence adduced before the Trial Court, is as under :-

There are agricultural lands bearing Gut Nos.137 and 146 within the limits of village Tadola, Taluka Ambajogai, District Beed. Ganesh (P.W.1) lodged the First Information

Report (F.I.R. - Exh.72), while he was in hospital on 16/4/2012. Sangita was one of his sisters. She was a wife of one of the sons of Vasantao Karad (deceased). Sangita was blessed with a child. Vasantao had two grand-children including son of Sangita. He (Vasantao) purchased two and half acres of land forming part of both the aforesaid Gut Numbers from Haralkar brothers way back in 2009. Since the day of purchase, Vasantao was cultivating the land purchased in the names of the grand-children.

5. It is also the case of the prosecution that, Vasantao had raised sugarcane in his land in the year 2012. Since the day of purchase, there have been disputes between Vasantao on one hand and the appellants on the other, over boundary/ possession of those lands. Vasantao learnt the appellants to have been engaged in harvesting sugarcane on 15/4/2012. He (Vasantao), therefore, along with Ganesh, Laxman (deceased), Balasaheb, Babasaheb and Sheshrao Karad (relatives of each other) went to the agricultural field by 4.30 p.m. on 16/4/2012. The appellants, their wives and some unknown persons were engaged in harvesting the sugarcane and loading the same in a truck. The appellants were armed with sickles and axes while the women were armed with sticks.

Vasantrao (deceased) asked the appellants as to why did they cut the sugarcane from his field and transport the same. The appellants and others thereupon started abusing Vasantrao and his companions. They threatened them of dire consequences. Appellants Madan and Mahadev assaulted Vasantrao with sickle and axe. Appellants Rajkumar and Ankush assaulted Laxman with the similar weapons while appellants Arun, Baliram and women assaulted Ganesh (informant) and Babasaheb with sticks. The informant was lame in one of his legs. He was lying on the field. Babasaheb (P.W.2) brought all the injured and the informant in his vehicle to Government Hospital, Ambajogai. On examination, the Medical Officer declared Vasantrao dead. Laxman breathed his last during treatment.

6. Since the police had learnt about the incident, might be from the hospital authorities, they rushed to the hospital. P.W.1 Ganesh lodged the F.I.R. (Exh.72).

7. A crime vide C.R. No.78/2012 was registered for various offences under the Indian Penal Code against 11 persons. The appellants were arrested. Inquests were drawn. Autopsy (Exhs.115 and 116) were conducted on the mortal

remains of both, Vasantrao and Laxman. A crime scene panchanama (Exh.95) was drawn. Sticks were seized from the crime scene. Appellants Rajkumar, Ankush Madan and Mahadev Alias Pappu made disclosure statements, pursuant to which axes and sickles came to be seized under the panchanamas. Injury certificates of the injured were obtained. Clothes on the person of the deceased were seized. All the seized articles were sent to Forensic Science Laboratory (FSL), Aurangabad for analysis and report. Statements of persons acquainted with the facts and circumstances of the case were recorded.

8. Upon completion of the investigation, a charge sheet was filed. The Trial Court framed the Charge (Exh.34). The prosecution examined 7 witnesses and adduced in evidence certain documents to establish the charge.

9. On appreciation of the evidence in the case, the Trial Court convicted the appellants and consequently sentenced them as stated above in paragraph No.3.

10. Heard. Learned Advocate for the appellants, although initially reiterated the defences raised before the Trial Court, ultimately came around to submit it to be a case of

exercise of private defence of person and property. According to him, the appellants belonged to Gurav community while the deceased, injured, their witnesses and even investigating officer belonged to one caste. All of them teamed up together to ensure the appellants were dispossessed of their agricultural land, Gut No.137. According to him, the said land was ancestral property of the appellants. Vasantrao (deceased) or his so called predecessors-in-title of land Gut N.137 did not have right, title and interest in the said land. The crime scene panchanama (Exh.95) would indicate that, the witness thereto admitted in cross-examination the boundaries described therein were not correct. On the eastern side of the land, there was sugarcane raised by the appellants. It was ripe for harvesting. The 7/12 extract of the said land would indicate existence of only one well therein, belonging to the appellants. An electric motor was installed by the appellants on the well to fetch water to irrigate sugarcane crop. Our attention was adverted to, to suggest that there was only one well in land Gut No.137. With the very well water the sugarcane was raised by the appellants. Neither the deceased nor the prosecution did prove existence of any other well/ borewell or irrigation facility for raising sugarcane crop by

Vasantrao. According to him, during the lifetime of Gyandeo, Vasantrao did not dare to enter his field Gut No.137.

11. Our attention was adverted to Exh.84, an application moved by Vasantrao to the concerned Police Station. It was a got up document. Not less than 20 persons had accompanied Vasantrao to the land. On their arrival, a tense situation arose. Some of them assaulted sugarcane harvesters, sent by the concerned sugar factory for cutting of cane and transporting it to the factory. Vasantrao and those persons were armed with weapons. There was no evidence to indicate one of the vehicles wherein the village Sarpanch and others had arrived, was damaged by any of the appellants. A host of documents were placed on record on behalf of the appellants indicating existence of well, electric motor thereon and payment of electricity bill.

12. Certain omissions amounting to contradictions in the evidence of the informant and the other injured witness were sought to be brought on record. We do not propose to refer thereto since it has little relevance to decide the appeal in view of right of private defence of person and property to have been raised. It was also brought to the notice that, lands Gut

No.137 and 146 were at a distance of 1500 ft. from each other. Certain evidence elicited during the cross-examination of P.W.1 Ganesh (informant) was also adverted to. The said witness admitted that, before leaving for the land Gut No.137, they had no apprehension that there would be dispute there. They had not even accompanied Vasantrya for his protection. In our view, this evidence has been invited by the appellants against themselves. P.W.1 Ganesh denied to have assaulted the persons present there. An admission given by other eye witness Babasaheb (P.W.2) that no women were involved in the incident, was specifically adverted to. Based on the same, it was suggested that, the witnesses did not speak truth.

13. The learned Advocate then referred to the evidence of P.W.2 Babasaheb, who admitted that it was Sheshrao who stopped him and asked to accompany them to go to the place with regard to the dispute filed by Vasantrya. The persons who had come to the land were not less than 15 in number. A first group of persons namely Vasantrya, Ulhas, Pandit Karhad, Ramesh, Sheshrao, Amol had come in one vehicle. Before they reached, Ganesh (P.W.1) and Babasaheb (P.W.2), Laxman and Vasantrya and some others were already present. He claimed ignorance of the conversation took place between

Vasantrao and the appellants before they reached there. A specific attention was adverted to evidence of this witness, who testified that, there was fearful atmosphere and apprehension of assault. There was no fight before he went. It is true to say that, if Vasantrao and they had not gone there, no incident would have occurred. Contents of crime scene panchanama (Exh.95) were read out. Our attention was adverted to the sketch of the crime scene drawn in the panchanama itself.

14. Learned Advocate then adverted our attention to the evidence of investigating officer, P.W.7 Sopan. He would submit that, he was such a police officer who asked Vasantrao and others to proceed towards the field and they would follow them. When the police officer had received an application expression apprehension of assault, what a negligent police officer he was, is the submission of the learned Advocate for the appellant. It was submitted to the investigating officer that they had asked the appellants not to go to the field as there was danger to their lives. This suggestion appears to be a trouble inviting suggestion. P.W.7 Sopan admitted that the place shown in Exhs.146 and 147 was in the field of appellants Madan and Ankush and his Gut Number was 137. According

to him, there was field of father of the appellants on three directions of the place mentioned in both Exhs.146 and 147. He would further submit that Scorpio was seized at the police station and not on the spot. The description indicates that, only there was a dash to the vehicle. A map of the spot (Exh.163) drawn by Circle Officer was confronted to this witness, wherein, towards eastern side of Gut No.137, existence of sugarcane crop has been shown.

15. Learned Advocate then adverted our attention to the written submissions put up before the Trial Court by the appellants during their examination under Section 313 of the Cr.P.C. We have also perused the same.

16. In short, according to learned Advocate, the land Gut No.137 belonged to the appellants. It was their ancestral property. There was only one well therein. The appellants had raised sugarcane crop in the said land (specifically onto eastern portion). The crop was raised on the water of the very well on which there is electric motor installed. Pipeline was laid. 7/12 extract of Gut No.137 was relied on to indicate existence of well. According to him, the prosecution could not place on record anything to indicate Vasantrao had ever been

in possession of the land Gut No.137 and he raised sugarcane crop therein. He would further submit that, the crop is registered with a nearby sugar factory. The factory deputed labourers for cutting/ harvesting sugarcane and transporting it from the field to the factory. There were sugarcane cutters sent by the sugar factory. Deceased Vasantrao and his companions had assaulted some of the sugarcane cutters. Vasantrao and others were not less than 15 in number. A tense situation was arose. Vasantrao had arrived at the land, creating a false evidence in the nature of submitting application (Exh.84) to the police station. The object of his arrival was to dispossess the appellants from the land Gut No.137. He then adverted our attention to the provisions relating to right of private defence. He then relied on the following judgments :

- (1) Ajmer Singh & ors. Vs. State of Haryana  
2023 SCC OnLine SC 395
- (2) Ex-Ct. Mahadev Vs. Director General, Border Security  
Force & ors. [ (2022) 8 SCC 502 ]
- (3) Sukumaran Vs. State Represented by the Inspector of  
Police [ (2019) 15 SCC 117 ]
- (4) Pathubha Govindji Rathod & anr. Vs. State of Gujarat  
(2015) 4 SCC 363
- (5) State of Rajasthan Vs. Manoj Kumar etc.  
(2014) 5 SCC 744

- (6) Arjun vs. State of Maharashtra [ (2012) 5 SCC 530 ]
- (7) Darshan Singh Vs. State of Punjab & anr.  
(2010) 2 SCC 333
- (8) Mohd. Ramzani Vs. State of Delhi [1980 Supp SCC 215]
- (9) Salim Zia Vs. State of Uttar Pradesh (1979) 2 SCC 648
- (10) Deo Narain Vs. The State of U.P. [ (1973) 1 SCC 347 ]

17. The learned Advocate ultimately urged for allowing of the appeals since according to him, the exercise of right of private defence cannot be weighed in a golden scale. He would ultimately submit, if the Court finds the appellants to have exceeded their right of private defence, the case would come within Exception (2) to Section 300 of the Indian Penal Code. Four of the appellants are behind the bars for little over 12 years. He, therefore, alternatively urged for scaling down the conviction from offence punishable Section 302 to Section 300 Part I of the Indian Penal Code.

18. The learned A.P.P. would, on the other hand, submit, the deceased and the injured had been to their field. None of them was armed with any kind of weapon. None of the appellants even suffered a scratch. There was no scuffle at all or even oral wrangle. The deceased had only enquired with the appellants as to why did they cut the sugarcane from

their field. Although the appellants denied the deceased to have any share in the land Gut No.137, she adverted our attention to certain suggestions given in the cross-examination indicating the deceased Vasantrao had purchased some portion in land Gut Nos.137 and 146 in the name of his grandchildren. There was a dispute over a Bandh. There was no question at all to dispossess the appellants of the lands they owned and possessed in Gut No.137. Application (Exh.84) reinforces the case of the prosecution that the appellants were cutting the sugarcane from the portion of the lands held by the deceased Vasantrao and his family members. Learned A.P.P. took us through the evidence on record to submit that no case of exercise of right of private defence or exceeding the same has even been made out on the basis of preponderance of probabilities. She, therefore, urged for dismissal of the appeals.

19. Considered the submissions advanced. Perused the impugned judgment and the authorities relied on by both the sides.

20. Before adverting to appreciation of the evidence to find whether the appellants have made out a case of exercise

of right of private defence of body and/or property, and if yes, have they exceeded the said exercise of their right, relevant provisions of the Indian Penal Code need to be adverted to.

21. Chapter IV of the Indian Penal Code speaks of general exceptions. Sections 96 to 106 speak of right of private defence. We propose to reproduce provisions of certain Sections thereof as below :

**96. Things done in private defence.**—Nothing is an offence which is done in the exercise of the right of private defence.

**97. Right of private defence of the body and of property.**—Every person has a right, subject to the restrictions contained in section 99, to defend—

First.— His own body, and the body of any other person, against any offence affecting the human body;

Secondly.— The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

**Extent to which the right may be exercised.**— The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

*Explanation :-* . . . . .

**100. When the right of private defence of the body**

**extends to causing death**— The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

First.— Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.— Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.— . . . . .

Fourthly.— . . . . .

Fifthly.— . . . . .

**101. When such right extends to causing any harm other than death.**— If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

**103. When the right of private defence of property extends to causing death.**— The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

First.— . . . . .

Secondly.— . . . . .

Thirdly.— . . . . .

Fourthly.— Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

**104. When such right extends to causing any harm other than death.**— If the offence, the committing of which, or the attempting to commit which occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

**105. Commencement and continuance of the right of private defence of property.**— The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

. . . . .

. . . . .

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

22.           The right of private defence of body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though

the offence may not have been committed and it continues as long as such apprehension of danger to the body continues.

23. Section 105 of the Indian Evidence Act, 1872 reads thus :

**“105. Burden of proving that case of accused comes within exceptions.—**When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.”

24. In Vijayee Singh & ors. Vs. State of U.P. [AIR 1990 SC 1459], it has been observed :

“The general burden of establishing the guilt of accused is always on the prosecution and it never shifts. Even in respect of the cases covered by S.105 the prosecution is not absolved of its duty of discharging the burden. The accused may raise a plea of exception either by pleading the same specifically or by relying on the probabilities and circumstances obtaining in the case. He may adduce the evidence in support of his plea directly or rely on the prosecution case itself or, he can indirectly introduce such circumstances by way of cross-examination and also rely on the probabilities and the other circumstances. Then the initial presumption against the accused regarding the non-existence of the circumstances in favour of his plea gets displaced and on an examination of the material if a reasonable doubt arises the benefit of it should go to the accused. The accused can also

discharge the burden under S.105 by preponderance of probabilities in favour of his plea. In case of general exceptions, special exceptions, provisos contained in the Penal Code or in any law defining the offence, the Court, after due consideration of the evidence in the light of the above principles, if satisfied, would state, in the first instance, as to which exception the accused is entitled to, then see whether he would be entitled for a complete acquittal of the offence charged or would be liable for a lesser offence and convict him accordingly.

The phrase “burden of proof” is not defined in the Act. in respect of criminal cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt.

The maxim that the prosecution must prove its case beyond reasonable doubt is a rule of caution laid down by the Courts of Law in respect of assessing the evidence in criminal cases. S. 105 places ‘burden of proof’ on the accused in the first part and in the second part we find a presumption which the Court can draw regarding the absence of the circumstances which presumption is always rebuttable. Therefore, taking the Section as a whole the ‘burden of proof’ and the presumption have to be considered together. It is axiomatic when the evidence is sufficient as to prove the existence of a fact conclusively then no difficulty arises. But where the accused introduces material to displace the presumption which may affect the prosecution case or create a reasonable doubt about the existence of one or other ingredients of the offence and then it would amount to a case where prosecution failed to prove its own case beyond reasonable doubt. The initial obligatory presumption that the Court shall presume the

absence of such circumstances gets lifted when a plea of exception is raised. More so when there are circumstances on the record (gathered from the prosecution evidence, chief and cross-examinations, probabilities and circumstances, if any, introduced by the accused, either by adducing evidence or otherwise), creating a reasonable doubt about the existence of the ingredients of the offence. In case of such a reasonable doubt, the Court has to give the benefit of the same to the accused. The accused may also show on the basis of the material a preponderance of probability in favour of his plea. If there are absolutely no circumstances at all in favour of the existence of such an exception then the rest of the enquiry does not arise in spite of a mere plea being raised. But if the accused succeeds in creating a reasonable doubt or shows preponderance of probability in favour of his plea, the obligation on his part under S.105 gets discharged and he would be entitled to an acquittal.”

25. Admittedly, the incident took place by little past 4.30 p.m. on 16/4/2012 at land Gut No.137, situated within the limits of village Tadola, Taluka Ambajogai, District Beed. Two persons namely Vasantrao and Laxman lost their lives while the informant (P.W.1) Ganesh and P.W.2 Babasaheb suffered injuries.

26. P.W.5 Dr. Vishwajeet conducted autopsy on the mortal remains of both Vasantrao and Laxman. He noticed following injuries on the person of Vasantrao :-

- 1) Avulsion of skin over scalp at parietal region present exposing the underline skull bone (coping), varying in direction, 16x 11 cm. in size, reddish black in colour, edges inverted, margins clean cut and regular.
- 2) Contusion present over the frontal region 17 x 3.4 cm. in size, horizontal in direction, 1 cm. above to glabella, bluish in colour.
- 3) Contusion present over the left forearm, lateral size 7 x 1.3 cm., 6 cm. below to the elbow joint, vertical in direction, bluish in colour

All the above injuries were ante-mortem in nature.

On internal examination, he found sub-scapular haematoma with haemorrhage present all over scalp. Linear fracture as well as signature ala fracture present all over the vault at parietal, temporal and occipital region, sub-dural, sub-arachnoid, intra-cerebral haemorrhage present all over the brain.

P.W.5 Dr. Vishwajeet noticed following injuries on their person of Laxman :-

- 1) Stitch would present over right parietal bone, 4 x 1 cm. in size, vertical in direction, 11 cm. from glabella, on opening margins regular, edges inverted, clean cut, four stitches were present.

- 2) Stitch wound present over left temporal region, 5 x 1.3 cm. in size, vertical in direction, 12 cm. from left mastoid process, on opening margins regular, edges inverted, clean cut, six stitches were present.
- 3) Stitch wound present over right parietal region, 2 x 1.2 cm. in size, vertical in direction, 1.4 cm. from injury No.1, 13 cm. from glabella, on opening margins regular, edges inverted, clean cut, two stitches were present.
- 4) Contusion present over right arm, 3 x 1.4 cm., vertical in direction, bluish in colour, 6 cm. below the tip of shoulder joint laterally.
- 5) Blackening of right eye present.

All the above injuries were ante-mortem in nature.

On internal examination, he found sub-scapular haematoma with haemorrhage present all over scalp. No fracture at vault or base of skull seen, sub-dural, sub-arachnoid, intra-cerebral haemorrhage present all over the brain.

In thoracic cavity and abdominal cavity on cut section organs were pale.

27. The post mortem reports (Exhs.115 and 116) indicate both of them died of haemorrhagic shock due to injury

to vital organ – brain due to chop wound, unnatural. His evidence in the cross-examination that, “It is possible that a person may go into shock because of fear of sudden imminent self death, is a general proposition.

28. P.W.6 Dr. Pradeep had examined Ganesh (P.W.1) and noticed following injuries on his person.

- 1) Contused lacerated wound over right elbow joint admeasuring 2 x 1 cm.
- 2) Contused lacerated wound over left upper back,
- 3) Blunt trauma over chest and upper back
- 4) Blunt trauma swelling in occipital and left parietal

29. The injury certificate of Ganesh (P.W.1) is at Exh.26. The injuries suffered by Ganesh (P.W.1) were simple in nature.

P.W.6 Dr. Pradeep also examined Babasaheb (P.W.2). The injuries suffered by Babasaheb indicate him to have suffered two simple and two grievous injuries. The grievous injuries were in the nature of fracture or dislocation of ulna lower one third.

30. Admittedly, there was a dispute between the family of the appellants on one hand and that of deceased Vasantrao

on the other since 2009. The dispute pertained to Bandh/ weir of their respective land in Gut No.137. Although the appellants claimed to have exclusively owned the land Gut No.137, it was suggested to the investigating officer Sopan (P.W.7) that there was field of father of the appellants on three directions of the place mentioned in Exhs.146 and 147. It was a specific case of the appellants that, eastern portion of the land Gut No.137 belonged to them. They had raised sugarcane crop therein. A number of documents have been placed on record including 7/12 extract thereof to indicate that only one well was there in the land Gut No.137. Electricity bills have also been tendered in evidence to indicate the appellants to have paid the bills towards electric motor installed on the well. The appellants meant to say that the sugarcane that was harvested at the material time was raised by them in their field. The 7/12 extract of the lands Gut No.137 and 146 indicate deceased Vasantrao had purchased 64 and 32 R land respectively in the said Gut Numbers. He thereby became co-owner of those lands along with others including Gyandev (father of the appellants). It appears that, no partition had been effected among the co-owners of these two lands. It was therefore, difficult from the evidence on record to hold that the specific

eastern portion of the land Gut No.137 was exclusively owned and possessed by the appellants. This Court is not deciding a civil dispute. It is true that, generally sugarcane is sent to sugar factory. The factory deputed sugarcane harvesters to a particular field registered with them. Cut sugarcane is transported to the sugar factory in vehicles or even in bullock carts. The crime scene panchanama (Exh.95) indicates that a truck was stationary at the crime scene. It was short of filled up with sugarcane.

31. Exh.84 was an application moved by Vasantrao to the Police Station, Badrapur in the morning of the very day on which the incident took place. This application was brought on record by the appellants. The entries thereon indicate that it was received by the Police Station by little past 10.00 in the morning. A station diary entry, No.108/2012 was effected pursuant thereto. It was been averred in the application that, way back in 2009, Vasantrao purchased 64 and 32 R land in Gut Nos.137 and 146 in the name of his grand-children. It has also been specifically noted therein that, crops like Sugarcane, Soyabean, Jawar, Wheat were being raised therein. In the year 2012, sugarcane was raised in his field. It was a specific complaint of Vasantrao that the adjoining land owners

(necessarily the appellants) were cutting the sugarcane raised by him (Vasantrao) and while an attempt was made to prevent them from cutting sugarcane, they threatened them of dire consequences. The names of the appellants have been stated in the said application as the adjoining land owners. We do not find any evidence on record to indicate the said application to have been moved after the incident to make out a case helpful for the prosecution. When the investigating officer was confronted with this application, it was his response that he had asked the concerned (Vasantrao) to proceed to the field and they (police) would follow them. Learned Advocate for the appellants has much harped upon the conduct of the investigating officer. According to him, when Vasantrao allegedly perceived threat to his life and makes an application, how the police official with whom not less than 27 police staff was working, could say, "You go ahead, we will follow you." According to the investigating officer, on the very day he had to move to Talegaon-Tanda as there was information of a fight in a marriage at Talegaon-Tanda.

32. True, as per the admitted evidence on record Vasantrao along with 4-5 persons had already reached the land, Gut No.137. He was joined by P.W.2 Babasaheb along

with 3-4 others later on. Close reading of the evidence on record would indicate that there is no shred of material to suggest the deceased, informant Ganesh (P.W.1), Babasaheb (P.W.2) and others, who were in their company, were armed with any kind of weapon. Although it was suggested that they assaulted sugarcane harvesters (labourers), none has been examined. Admittedly, none of the appellants suffered even a scratch nor was there even a scuffle between the appellants on one hand and Vasantrao and others on the other. True, P.W.2 Babasaheb admitted in his cross-examination that there was fearful atmosphere and apprehension of assault. However, even no manhandling did take place. Not a single prosecution witness was suggested on behalf of the appellants that either Vasantrao or his companions had made any attempt to remove them from the field. As such, it was not a case of Vasantrao to have attempted to commit encroachment/ trespass on the land. It is reiterated that, Vasantrao was one of the co-owners of land Gut Nos.137 and 146 as well. The distance between the two lands was stated to be 1500 ft. It is a common knowledge that, no land could be identified on the spot with its particular number given in the revenue record. The evidence of P.W.1 Ganesh and P.W.2 Babasaheb, the

injured witnesses great weight. At the cost of repetition, it is observed that, no scuffle or even hurling of abusive word or exchange of heated arguments did take place between the two groups preceding the incident, since there is no evidence to even infer the same. as per the evidence on record, Vasantrao simply asked the appellants to not cut sugarcane from his field. The appellants thereupon started assaulting him, Laxman and others. When the appellants were in the field and work of cutting sugarcane was in progress, the weapon of assault were very much with them only. The injury certificates of the deceased indicate the injuries to have been caused with sharp weapons.

**33. True, the right of private defence of body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed and it even continues as long as such apprehension of danger to the body continues.**

34. Since neither the deceased Vasantrao, Laxman, Ganesh (P.W.1), Babasaheb (P.W.2) or 6 others who were along with them were armed with any weapon nor is there

even any evidence to indicate, they or anyone of them even abused or used force against the appellants or the sugarcane cutting labourers, we have no reason to observe the appellants had any reasonable apprehension of danger to their body when Vasantrao along with his companions went to the land Gut No.137, of which he was one of the co-owners. It was also not the case of the appellants that Vasantrao and others had made any attempt to remove them from the field so as to give them a cause to exercise right of private defence of property. There is, therefore, no question of the appellants exercising their right of private defence or exceeding the same so as to bring the case within exception (2) to Section 300 of the Indian Penal Code, which reads thus :-

*“Exception 2:- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.”*

35. The nature of weapon used by the appellants Rajkumar, Ankush, Madan and Mahadev Alias Pappu, the body part of deceased Vasantrao and Laxman on which the

assault was made, undoubtedly make out a case that the assault was made with an intention to kill them.

36. We have carefully perused the authorities relied on by the learned Advocate for the appellants. Needless to mention, each case has to be decided on the facts and circumstances appearing therein. The facts of Ajmer Singh's case (supra) indicate that it was a fight between two groups. The members of both the groups had suffered injuries. So is not the case herein. While the facts in the case of Ex-Captain Mahadeo (supra) would indicate that the appellant therein was confronted by group of intruders who had come menacingly close to him, were armed with weapons and ready to launch an assault on him. In this factual backdrop, it was held that right of private defence was available for him. He was, therefore justified in opening fire to save his life. The facts in case of Sukumaran (supra) were such that the deceased party tried to flee from the place after seeing appellant/ accused chasing their lorry and they stopped after some time and started pelting stones on jeep of appellants, causing it damage. The deceased party were intruders in the forest area. The forest in question was known for producing sandalwood and people were indulged in smuggling at large

scale in forest area. The deceased party were found to be aggressor as they started pelting stones. Besides stone-pelting, they were shouting, "Fire them." The appellant/accused then rightly sensed apprehension that either death or grievous hurt may be caused to him or his driver.

37. So far as regards judgment in case of Pathubha Govindji Rathod (supra) is concerned, it was a clash between two groups of persons. Several of them had suffered injuries in the incident. There was rampant use of sword like weapons.

38. The facts in case of Manoj (supra) indicate that there was an attempt to dispossess. Construction material had been brought at the site. For taking over possession of the plot, the concerned had sent his brother Anirudh and other brothers. The incident was preceded by verbal altercation.

39. Such kind of material is lacking in the case in hand. The judgment in case of Arjun (supra) speaks of exception (4) to Section 300 of the Indian Penal Code. We find that the facts and circumstances of the case do not even remotely get covered even by any of the ingredients of Exception (4).

40. For the aforesaid reasons, we are not inclined to interfere with the order of conviction and consequential sentences imposed against appellants Rajkumar, Ankush, Madan and Mahadev Alias Pappu.

41. So far as regards appellants Arun and Baliram are concerned, the case dates back to 2012. About 12 years have passed post incident. There is nothing to indicate the sticks with which the informant Ganesh (P.W.1) and Babasaheb (P.W.2) were assaulted were shown to the Medical Officer.

42. Both the appellants Arun s/o Gyandev Pujari @ Arun s/o Gyandev Birajdar and Baliram s/o Gyandev Pujari @ Baliram s/o Dnyandeo Birajdar in Criminal Appeal No.672/2021 were behind the bars for 203 days and 199 days respectively. They faced the prosecution for the offence of Section 302 of the Indian Penal Code for little over 12 years. These facts are themselves sufficient not to send them back to prison. We are, therefore, inclined to partly allow the Criminal Appeal No.672/2021, maintaining the conviction, but reducing the sentence to the period they have already undergone by maintaining the amount of fine imposed with default stipulation. Hence the order :-

**ORDER**

(i) Criminal Appeal No.672/2021 is partly allowed. Conviction of the appellants Arun s/o Gyandev Pujari @ Arun s/o Gyandev Birajdar and Baliram s/o Gyandev Pujari @ Baliram s/o Dnyandeo Birajdar for the offences punishable under Sections 324 and 326 read with Section 34 of the Indian Penal Code are maintained. However, the sentences of imprisonment are reduced to the period they have already undergone. The imposition of amount of fine with default stipulation is also maintained.

(ii) Criminal Appeal Nos.80/2022 and 81/2022 are dismissed.

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

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

fmp/-