



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

**CRIMINAL APPEAL NO. 841 OF 2015  
AND CRIMINAL APPLICATION NO. 4902 OF 2024**

1. Yahya Khan Kayyum Khan Pathan  
Age: 30 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

2. Shiraj Khan Kayyum Khan Pathan  
Age: 28 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

..APPELLANTS

VERSUS

State of Maharashtra

..RESPONDENT

**AND CRIMINAL APPEAL NO. 846 OF 2015**

1. Shaheenbee Kayyum Khan Pathan  
Age: 45 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

2. Naeembee Nawaj Khan  
Age: 45 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

3. Hameed Khan Daud Khan Copdar  
Age: 52 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

4. Sharookh Hameed Khan  
Age: 19 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

5. Abubakar Jabbar Khan Pathan  
Age: 22 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

6. Husen Khan Nawaj Khan  
Age: 45 years, Occu.: Business,

R/o Near Waluj Jama Masjid,  
Aurangabad

..APPELLANTS

VERSUS

State of Maharashtra

..RESPONDENT

**AND CRIMINAL APPEAL NO. 847 OF 2015**

1. Kayyum Khan Mehtab Khan  
Age: 55 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

2. Ayyub Khan Noor Khan Chopdar  
Age: 46 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

..APPELLANTS

VERSUS

State of Maharashtra

..RESPONDENT

**AND CRIMINAL APPEAL NO. 835 OF 2015**

1. Rizawan Rashid Pathan  
Age: 23 years, Occu.: Service,  
R/o Waluj, Tq. Gangapur,  
Dist. Aurangabad

2. Ejajkhan Asmatkhan Pathan  
Age: 32 years, Occu.: Contractor,  
R/o Ganesh Colony, Aurangabad

3. Shaikh Firoj Shaikh Yusuf  
Age: 33 years, Occu.: Business,  
R/o Indira Nagar, Baijipura,  
Lane No.20, Aurangabad

4. Asiyabegum Rashidkhan Pathan  
Age: 48 years, Occu.: Household,  
R/o Jama Masjid, Waluj,  
Tq. Gangapur, Dist. Aurangabad

5. Aslam Asmatkhan  
Age: 34 years, Occu.: Contractor,  
R/o Rahemaniya Colony,  
Aurangabad

6. Khalilkhan Habibkhan  
Age: 45 years, Occu.: Centering Work,  
R/o Waluj, Tq. Gangapur,  
Dist. Aurangabad

..APPELLANTS

VERSUS

1. Kayyum Khan Mehtab Khan  
Age: 55 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
2. Nawaj Khan Nabab Khan Pathan (Abated)
3. Ayyub Khan Noor Khan Chopdar  
Age: 46 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
4. Shaheenbee Kayyum Khan Pathan  
Age: 45 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
5. Naeembee Nawaj Khan  
Age: 45 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
6. Hameed Khan Daud Khan Copdar  
Age: 52 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
7. Yahya Khan Kayyum Khan Pathan  
Age: 30 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
8. Sheraj Khan Kayyum Khan Pathan  
Age: 28 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
9. Shahrookh Hameed Khan  
Age: 19 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

10. Abubakar Jabbar Khan Pathan  
Age: 22 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

11. Husen Khan Nawaj Khan  
Age: 45 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

12. State of Maharashtra  
Through : Waluj Police Station,  
Waluj, Dist. Aurangabad

..RESPONDENTS

### **AND CRIMINAL APPEAL NO. 880 OF 2015**

State of Maharashtra  
Through Waluj Police Station,  
Dist. Aurangabad

..APPELLANT

VERSUS

1. Kayyum Khan Mehtab Khan  
Age: 55 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

2. Nawaj Khan Nabab Khan Pathan (Abated)

3. Ayyub Khan Noor Khan Chopdar  
Age: 46 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

4. Shaheenbee Kayyum Khan Pathan  
Age: 45 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

5. Naeembee Nawaj Khan  
Age: 45 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

6. Hameed Khan Daud Khan Copdar  
Age: 52 years, Occu.: Business,

R/o Near Waluj Jama Masjid,  
Aurangabad

7. Yahya Khan Kayyum Khan Pathan  
Age: 30 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
8. Sheraj Khan Kayyum Khan Pathan  
Age: 28 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
9. Shahrookh Hameed Khan  
Age: 19 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
10. Abubakar Jabbar Khan Pathan  
Age: 22 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad
11. Husen Khan Nawaj Khan  
Age: 45 years, Occu.: Business,  
R/o Near Waluj Jama Masjid,  
Aurangabad

..RESPONDENTS

....  
Mr. N.S. Ghanekar, Advocate for appellants in APEAL/841/15, 846/15,  
847/15 and APPLN/4902/24

Mr. S.S. Halkude, Advocate for appellant in APEAL/835/15

Mrs. S.N. Deshmukh, A.P.P. for appellant - State in APEAL/880/2015 and for  
respondent – State in all other matters

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|----------------------|----------------------------------------------------|
| <b>CORAM</b>         | <b>: R.G. AVACHAT AND<br/>NEERAJ P. DHOTE, JJ.</b> |
| <b>RESERVED ON</b>   | <b>: 27<sup>th</sup> FEBRUARY, 2025</b>            |
| <b>PRONOUNCED ON</b> | <b>: 07<sup>th</sup> MARCH, 2025</b>               |

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

1. This group of five appeals is decided by this common judgment  
since the challenge therein is to one and the same judgment of conviction

and order of consequential sentence dated 03<sup>rd</sup> October, 2015 passed by the Court of Additional Sessions Judge, Vaijapur ('trial Court') in Sessions Case, No. 116 of 2012. Criminal Appeal Nos. 841 of 2015, 846 of 2015 and 847 of 2015 have been preferred against conviction while Criminal Appeal No. 880 of 2015 by the State and Criminal Appeal No. 835 of 2015 by the victim, have been preferred for enhancement of sentence.

2. The charge (Exh.52) was framed against eleven accused persons. Accused No.2 passed away pending trial. The case, therefore, stood abated against him. The prosecution examined twenty-two witnesses and adduced in evidence certain documents. The appellants/convicts examined seven witnesses in their defence. On appreciation of the evidence in the case, the trial Court convicted the original accused nos. 7 and 8 (Criminal Appeal No.841 of 2015) for offence punishable under Section 302 of the Indian Penal Code (I.P.C.), and therefore, sentenced them to suffer imprisonment for life and to pay fine of Rs.2,000/- each with default stipulation. While rest of the accused were convicted for the offence punishable under Section 324 of the I.P.C., and therefore, sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.1,000/- each with default stipulation. All the accused persons, however acquitted of the offences punishable under Sections 143, 147, 148, 307, 326 read with Section 149 of the I.P.C. Except Accused Nos. 7 and 8, rest have also been acquitted of the offence punishable under Section 302 of the I.P.C. Hence, all these appeals.

3. The facts, in brief giving rise to the present appeals are as follows :-

The appellants were residing near Jama Masjid, Waluj, Aurangabad. PW 2 – Rizwan (informant) alongwith his family members would also reside at Waluj. There is an open plot adjoining residence of the informant. It was the case of the appellants/convicts that there was another plot adjoining the said plot. There was no boundary intervening the two plots so as to identify ownership of the respective plots. On the given day i.e. on 06<sup>th</sup> April, 2011 by little past 12:30 p.m., the informant and his family members brought construction material on the plot. They had already invited their number of relations with a view to ensure that any objection raised to the proposed construction shall be resisted. As such, the informant and his family members and relations, who were more than 10-20 persons, assembled on the plot.

4. Yahya Khan (original accused no.7) came on the plot and asked them not to proceed with construction for erection of a shed. He claimed title to the said plot. The other side did not listen. All the appellants, since have their respective residences adjoining the other plot, came on the site one by one. They were armed with knives, sticks and *kattis*. Oral wrangle took place between the two factions. The appellants mounted attack. The appellants (Yahya Khan and Shiraj Khan) assaulted Mohsin. Other appellants assaulted other injured on the vital parts of the body, either with knives or with sticks. The appellants then left the site. The injured were rushed to

Ghati hospital. Mohsin succumbed to the injuries. PW 2 – Rizwan lodged the F.I.R. (Exh.79).

5. Crime, vide C.R. No.39 of 2011 was registered for the offences punishable under Sections 302, 307, 326, 324, 143, 147, 148 and 149 of the I.P.C. Crime scene panchanama (Exh.77) was drawn. Mortal remains of Mohsin was subjected to inquest and autopsy as well. The appellants were arrested. Clothes on the persons of the appellants and deceased too, were seized. Pursuant to the disclosure statements made by the appellants (Shainbi, Naimbi, Kayyum, Yahyakhan, Siraj, Ayyubkhan and Abubakar), weapons wielded in the incident were seized. All the seized articles were sent to R.F.S.L., Aurangabad. The C.A. reports were received. Statements of the persons acquainted with the facts and circumstances of the case were recorded. On completion of investigation, the appellants were proceeded against by filing the charge-sheet.

6. The charge (Exh.52) was framed. The appellants pleaded not guilty. Initially their defence was of false implication. On appreciation of the evidence in the case, the trial Court convicted and consequently sentenced the appellants as stated above.

7. Learned counsel for the appellants would submit that the evidence on record would indicate that both the factions were the relations of each other. They had cordial relations for long until the time of the incident. The

injured had already summoned their number of relatives with a view to put up resistance. The plot was owned by the appellants. Family of PW 2 - Rizwan (informant) did not have any document of title to the said plot. Post 12:00 noon, the construction material was brought at the site. As such, there were articles like spade, stones, pick axe, iron rods, tin sheets, etc. They did not listen to the request of Yahya Khan. They proceeded with the construction. The quarrel, therefore, ensued. The appellants did not have intention either to kill or cause injury. The incident happened in a spur of moment. It was resulted in exercise of right of private defence of own property. Learned counsel relied on Exceptions 2 and 4 to Section 300 of the I.P.C. and urged for dealing with the appellants accordingly.

8. Learned A.P.P. and learned counsel for the victim would, on the other hand, submit that the appellants suffered no injury. As such, there was no question of fight. No Exception 4 could, therefore, be invoked. The injury certificates of the deceased and the victims indicate them to have suffered injuries on the vital parts. The injuries were caused with sharp weapons. Intention of the convicts was writ large. Learned counsel would submit that for the offence punishable under Section 307 of the I.P.C., it was not necessary that injury should be caused and it should be grievous one. They would submit that nature of weapons and the part of body on which the injury was caused would demonstrate intention of the appellants was attempt to commit murder. All the appellants had come together. The same demonstrates common object was to do away with the rivals (victims).

Learned counsel took us through the definition of the offence of murder and the quoted judgment of the Supreme Court in the case of **Virsa Singh vs. State of Punjab , AIR 1958 SC 465** . They also relied on following set of authorities to ultimately urge for enhancing the sentence of the convicts :-

|    |                                                        |                    |
|----|--------------------------------------------------------|--------------------|
| 1. | Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of A.P. | (2006) 11 SCC 444  |
| 2. | Jai Prakash Vs. State (Delhi Administration)           | (1991) 2 SCC 32    |
| 3. | Anda and Ors. Vs. State of Rajasthan                   | AIR 1966 SC 148    |
| 4. | State of Maharashtra Vs. Balram Bama Patil and Ors.    | AIR 1983 SC 305(1) |
| 5. | Awadhesh Kumar Vs. State of UP and Anr.                | (2019) 10 SCC 323  |
| 6. | State of UP Vs. Faquirey                               | (2019) 5 SCC 605   |
| 7. | Vasant Vithu Jadhav Vs. State of Maharashtra           | (2004) 9 SCC 31    |
| 8. | Baleshwar Mahto and Anr. Vs. State of Bihar and Anr    | (2017) 3 SCC 152   |
| 9. | State of Rajasthan Vs. Kanhaiya Lal                    | (2019) 5 SCC 639   |

9. Let us advert to the evidence on record and appreciate the same.

PW 19 – Dr. Kailash conducted autopsy on the mortal remains of Mohsin. He noticed following external injuries on Mohsin's body :-

- “(I) Evidence of stab wound over lower front of chest on right side of size 2.5 x 1 x 5 cm. at costal arch, in midclavicular line with medial angle being acute and lateral angle being obtuse, directed straight inwards. Stab wound is situated 7 cm., right lateral to midline.*
- (II) Evidence of stab wound over lower front of chest on left side of size 7 x 2 cm., into cavity deep, situated 1 cm., left lateral to midline, medial angle acute, lateral angle obtuse.*
- Injury Nos. I and II are horizontally oblique with clean cut edges.*
- (III) Lacerated wound over right frontal area of size 2.5x1cm., into bone-deep, contuse margin irregular blood infiltrate, vertical.*
- (IV) Abrasion of size 2.5 x 1 cm., on lower back of left side at intrascapular area, 7 cm., left lateral to midline, blood infiltrated irregular, reddish. All these injuries were antemortem in nature.”*

According to him, Injury nos. 1 and 2 were possible by article

no.39. He issued postmortem report (Exh.153). In his opinion, Mohsin died of haemorrhagic shock due to stab injury to liver and left lung.

10. PW 22 – Dr. Farina was the Medical Officer with Ghati Hospital. She was on duty on 06<sup>th</sup> April, 2011. She examined the injured and issued their medical certificates. We propose to refer to each and every injury certificate, as follows :-

| Name                              | Injury                                                                                                           | Nature | Weapon              |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------|--------|---------------------|
| Aziz Asmat Khan<br>(Exh.184)      | CLW to forehead of size 3x1x1cm.                                                                                 | Simple | Hard object         |
| Rizwankhan Pathan<br>(Exh.185)    | CLW over scalp of size 3x1x1cm.                                                                                  | Simple | Hard object         |
| Khalil Habibkhan<br>(Exh.186)     | CLW over left side abdomen of size 2x1x1 cm.                                                                     | Simple | Hard Object         |
| Aslamkhan Hasmatkhan<br>(Exh.187) | One sharp injury at left side of chest<br>Two stab injuries over left side chest measuring 3x2x2 cm. & 2x2x1 cm. | Simple | Hard & Blunt object |
| Asifabegum<br>(Exh.188)           | Stab injury at neck left side of size 8x2x2 cm.                                                                  | Simple | Sharp weapon        |
| Firoj Qureshi<br>(Exh.189)        | CLW over occipital region of size 3x2x1 cm.                                                                      | Simple | Hard & Blunt object |

11. The appellants did not dispute the incident. Original accused nos. 7 and 8 have come with the defence in the nature of the case falling under Exceptions 2 and 4 to Section 300 of I.P.C. The other appellants are also alleged to have exercised the same right. Admittedly, except accused nos. 7 and 8, no other appellant is alleged or proved to have assaulted the deceased. True, all of them were there when the incident took place. Cross-examination of the injured witnesses, however indicate the appellants arrived at the crime scene one after the other. A quarrel ensued between the two

factions first. Yahya Khan had asked PW 2 – Rizwan not to go ahead with the proposed construction. In the light of this and the other admissions elicited from the cross-examination of the injured witnesses, we have to conclude whether the defence has been made out. Original accused nos. 7 and 8 have been behind the bars for about fourteen years.

12. Since the evidence of the informant and the injured witnesses is consistent with each other, with a view to avoid repetition, we do not propose to reproduce their evidence in the examination-in-chief, except of PW 2 – Rizwan (informant).

13. It is in the evidence of PW 2 – Rizwan that by little past 01:00 p.m. on 06<sup>th</sup> April, 2011, he was cleaning the said plot. Appellant – Yahya Khan came there and told him that he is the owner of the plot and do not clean the same. PW 2, alongwith Jalil Khan went to the police station and lodged the complaint. According to PW 2, the plot was purchased by his brother – Rashid Khan from one Harun Khan, resident of Pune. No registered sale-deed, however was executed. Only a bond paper was executed and appellant – Kayyum signed the same as witness. Since PW 2 and his family members wanted to erect a shed on the said plot, he had asked his brother-in-law, PW 3 - Ejajkhan, who is a contractor, to come with the construction material. He and his brothers had accordingly came to the site with construction material. All of them were engaged in digging the pits and planting a wooden pole for construction of a shed. The pole was even

erected. A few pits were being dug. That time all the appellants armed with sticks, iron rods, *gupti*, knife, etc. arrived. All of them started abusing and beating him and his brothers and others as well. Details of the assault mounted by the appellants were as under :-

- Shaharaz Khan assaulted on the chest of Mohsin with *gupti*;
- Yahya Khan assaulted on the chest and abdomen of Mohsin with knife;
- Hussein Khan assaulted on the head of Rizwan with stick;
- Abu Bakar assaulted on left side rib and forehead of Ejajkhan with knife;
- Shahrukh assaulted on left side rib of Khalil Khan with knife;
- Ayub assaulted on the left side of Aslam Khan with knife;
- Hamid assaulted on the back and legs of Aslam Khan with stick;
- Kayyum assaulted on the head of Firoj with iron rod;
- Nawaz assaulted on the back and leg of Firoj by wooden rod;
- Shainbi assaulted on neck of Asiyabegum by knife;
- Naimbee assaulted on the chest of Asiyabegum by belt;

Villagers gathered on the spot. They took all the injured to Ghati hospital. Mohsin was declared dead on admission to the hospital. PW 2 – Rizwan was discharged within two hours. He approached the Waluj Police Station in the evening and lodged the report of the incident (F.I.R., Exh.79).

14. On the same lines is the evidence of PW 4 - Firoj, PW 6 – Asmat, PW 9 - Asiyabegum, PW 17 - Aslam and PW 18 - Khalilkhan (injured witnesses).

15. All the witnesses were subjected to a searching cross-examination. The gist of the matter elicited during the cross-examination is as under :-

All the appellants and the injured were relatives of each other. The appellants and PW 2 – Rizwan and his family members were residing in the same area. Although initially it was denied that there were two plots, the witnesses came around to admit that there were two plots adjoining each other. One of them was claimed to have been purchased by PW 2 – Rizwan's brother from Harun Khan. Appellant – Yahya Khan claimed title with possession over the adjoining plot. The crime scene panchanama (Exh.77) indicates the site was seen like one plot. A few pits were dug. A wooden pole was erected. There was nothing at the site to distinguish the two plots (no boundary line separating the two plots). PW 2 and his family members had very good relations with the appellants until the incident. Both, the appellants and family of the informant were visiting each other. The informant and his family members had planned to erect a shed on the said plot. They had suspected that someone may raise objection. They had, therefore, invited their relatives residing at Newasa and Aurangabad as well. Informant's brother-in-law was also there with construction material. As such, the injured and their relatives, not less than 10-12 persons, were on the plot by little past 12:00 noon. One of them was Jalil Khan. He was in constabulary. It appears that his presence was also secured to meet all eventualities. One of the injured witnesses admitted that the appellants arrived at the crime scene one after the other. That rules out their

premeditation or formation of common object. It is true that unlawful assembly can be formed in a spur of moment. Admittedly, appellant – Yahya Khan had requested the informant and others not to go ahead with the construction. The crime scene panchanama (Exh.77) indicates they did not listen. They proceeded with the work. Admittedly, quarrel had ensued before the incident of assault. The informant admitted that quarrel and beating lasted for five minutes. Articles like peak axe and wooden rod were already there for construction work. Learned A.P.P. and learned counsel for the victim were right in submitting that none of the appellants had suffered any injury. In our view, however for falling a case under Exception 4 to Section 300 of the I.P.C., incident of manhandling or push and pull may be sufficient. The injured witnesses gave only their side of story. No independent witness has been examined. PW 2 testified that an hour after Yahya Khan arrived at the spot, the assault started. It started no sooner they planted a wooden pole in the pit on the plot. He had been in the Ghati hospital for two hours. In spite of police station having been there, he did not report the matter there. According to him, all the relations were invited since he felt that objection may be raised for the proposed work. He further testified that Siraj, Abu Bakar, Shahruk and Hussain (appellants) came at the site one after the other.

16. PW 3 – Ejaj admitted that there are two plots adjoining each other. He came to know that one of the plots belonged to Kayyum Khan (appellant herein). There were no markings on the plot. Jalil Khan was invited since he

was in police department. Although he claimed to have suffered injury at his waist and ribs, his injury certificate negatives his claim.

17. PW 4 – Firoj and his brother being relatives of PW 2 – Rizwan and in construction business, had brought construction material at the site in an auto.

18. PW 1 - Aman is a witness to the crime scene panchanama (Exh.77). Details thereof have been referred to hereinabove. PW 5, 7, 8, 11 to 16 are the panch witnesses to the seizure of clothes of the deceased, injured and the appellants besides disclosure statements made by the respective appellants and recovery of weapons used. Since the incident is undisputed, we do not propose to refer to the evidence of these witnesses in extenso.

**Conclusion/Appreciation :-**

19. What could be concluded on appreciation of the evidence referred to hereinabove is -

There were two plots adjoining each other. One of them belongs to appellant – Kayyum Khan. The informant claimed to have purchased the another plot from Harun Khan. However, he did not have document of title. At the site, there were no boundary marks to distinctly identify both the plots. The deceased and the injured had all gathered at the site for raising construction of a shed. They even dig-up 3-4 pits and raised one wooden

pole in one of the pits. Appellant – Yahya Khan came there and asked the injured witnesses not to proceed with the work. They appear to have not listened. The appellant admittedly arrived one after the other. Although one of the appellants was said to have wielded *gupti*, the corresponding injury do not justify the same. None of the appellants had come with brandishing sharp weapon. Admittedly, one of the plots belong to appellant – Kayyum Khan. Section 96 of the I.P.C. speaks of exercise of right of private defence, while Section 97 speaks of right of private defence of property, movable or immovable, of himself or any other person against any act which is an offence falling under definition of theft, robbery, mischief or criminal trespass or attempt to commit any of the corresponding offences. Section 441 of the I.P.C. defines criminal trespass to mean whoever enters into the property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property is said to commit criminal trespass. In our view, entering into someone else's property unauthorisedly (trespassing) with an intention to grab the same may be an offence. Every person has a right to protect his property from being unauthorisedly taken over and he should be justified in putting up the resistance to protect the property. It is said that the exercise of right of private defence cannot be weighed in golden scale. Entering upon the plot of the appellants and keeping it in possession by the injured would be nothing short of attributing knowledge to them that they thereby likely to cause wrongful loss or damage to the plot owner/s (the appellants). The ingredients of offence of mischief also thereby get covered.

20. Although Section 300 of the I.P.C. defines the offence of murder, it is not without an exception. Exceptions 2 and 4 to Section 300 of the I.P.C. read 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.*

*Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

In the case of **Surinder Kumar vs. Union Territory, Chandigarh, AIR 1989 SC 1094**, the Supreme Court, with regard to Exception 4 to Section 300 of the I.P.C., has observed as under :-

*“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight ; (ii) there was no premeditation ; (iii) the act was done in a heat of passion ; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”*

21. In the case in hand, the appellants have acted in exercise of their right of private defence of their self property. Accused Nos. 7 and 8 appear

to have exceeded the exercise of their right of defence of their property. Unfortunately, Mohsin lost his life. He suffered two injuries, one of which proved fatal. As such, the appellants could be said, on preponderance of probabilities, to have proven their defence of exercise of right of defence of property and the incident to have occurred in a spur of moment, falling within Exception 4 to Section 300 of the I.P.C.

22. Except original accused nos. 7 and 8 (Criminal Appeal No.841 of 2015), none other appellants admittedly assaulted the deceased. Each of the appellant has his independent victim. Some of the injured suffered injuries to their vital parts, although simple in nature. Had these appellants really intended to commit murder of the other injured, they would not have stopped after each one making a single assault. They could have rained blows to translate their intention into action. The trial Court has convicted them for the offence punishable under Section 324 of the I.P.C. and sentenced them to suffer imprisonment for three years with fine. For over thirteen years have passed post incident. Pendency of these appeals was nothing short of an hanging sword of an apprehension to the other appellants of their sentence being enhanced with conviction for more grievous offence. Since the other appellants are also held to have exercised the right of private defence of property and even if for the sake of assumption and not acceptance, we consider the submissions of learned A.P.P. and learned counsel for the victim that it was an attempt on the life of the other injured. The same would, in view of Exceptions 2 and 4 to Section 300 of the I.P.C.,

be an offence of attempt to commit culpable homicide punishable under Section 308 of the I.P.C. The punishment provided for the said offence is imprisonment of either description for a term which may extend to seven years or even with fine or with both. We, therefore, do not propose to interfere with the impugned order of convicting the other appellants for the offence punishable under Section 324 of the I.P.C. The trial Court has observed that these appellants had already undergone imprisonment during investigation, enquiry and trial as well. The said period appears to have been more than three months against each of such appellants. We, therefore, propose to reduce the quantum of sentence to the period already undergone, without there being any change in the quantum of fine and in default sentence. The entire fine amount be paid to the widow of the deceased as compensation. In the facts and circumstances of the case, prayer for additional compensation cannot be accepted.

23. In view of above, we pass the following order :-

### **ORDER**

- (I) Criminal Appeal No. 841 of 2015 is partly allowed. Order dated 03<sup>rd</sup> October, 2015 passed by the Court of Additional Sessions Judge, Vijapur in Sessions Case, No. 116 of 2012 convicting and sentencing appellants - Yahya Khan Kayyum Khan Pathan and Shiraj Khan Kayyum Khan Pathan is set aside. Instead, they are convicted for the offence punishable under Section 304 Part II of the Indian Penal Code, and therefore, sentenced to suffer R.I. for ten years. These appellants are behind the bars since 2011. As such, they have served of entire

sentence. They, therefore, be released forthwith, if not required in any other case. There is no change in the quantum of fine and default sentence.

- (II) Criminal Appeal Nos. 846 of 2015 and 847 of 2015 are partly allowed. Conviction of these appellants for the offence punishable under Section 324 of the Indian Penal Code is maintained, however the quantum of sentence is reduced to the period for which they have already undergone, without there being any change in the quantum of fine and in default sentence.
- (III) Criminal Appeal Nos. 835 of 2015 and 880 of 2015, filed for enhancement of sentence, stand dismissed.
- (IV) Since Criminal Appeal No. 841 of 2015 is disposed of, nothing survives in Criminal Application No. 4902 of 2024 and same stands disposed of accordingly.
- (V) The entire fine amount deposited by the accused be paid to the widow of the deceased, as compensation.
- (VI) Registrar (Judicial) of this Court to ensure compliance of this order forthwith.

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

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

SSD