IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 331 OF 2019

Balasaheb S/o Laxmanrao Thombre
Age : 52 years, Occ : Agril.,
R/o Renapur, Tq. Pathri,
District Parbhani

...APPELLANT

~VERSUS~

. The State of Maharashtra
Through Police Station Officer,
Police Station Pathri,
Tq. Pathri, Dist. Parbhani

. **...RESPONDENT**

- Mr. P.S. Paranjape, Advocate for appellant (appointed through legal Aid)
- Mr. S.J. Salgare, APP for the respondent/State

CORAM : SANDIPKUMAR C. MORE &
VAISHALI PATIL-JADHAV, JJ.

RESERVED ON : OCTOBER 13, 2026

PRONOUNCED ON : NOVEMBER 20, 2026

J U D G M E N T : [Per Vaishali Patil-Jadhav, J.]

. This appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short “CrPC”) is directed against the judgment and order dated 30.07.2013 passed by the learned Additional Sessions Judge, Parbhani, (hereinafter referred to as “the learned Sessions Judge”), in

Sessions Trial No. 148 of 2011. By the said judgment, the appellant-original Accused No. 1, is convicted under Sections 302 and 324 of the Indian Penal Code, 1860 (for short, "IPC"). For the offence under Section 302, he is sentenced to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default to suffer simple imprisonment for three months. For the offence under Section 324, he is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,500/-, in default to suffer simple imprisonment for one month. Both substantive sentences are directed to run concurrently. Original accused No. 2 – Sunita is acquitted. The appellant has challenged his conviction and sentence.

2. The prosecution case, in brief, is as follows:

The appellant Balasaheb, the injured complainant Arjun Ramrao Thombare (PW-1) and the deceased Bhagwanrao Thombare were closely related. PW-1 and the appellant are cousins, and the deceased was their paternal uncle. They, along with their families, were residing in the same ancestral Wada at village Renapur, Taluka Pathri, District Parbhani. There was a longstanding dispute between them regarding ancestral agricultural

land, particularly the land of one Vithalrao. On account of this dispute, their relations were strained.

3. On 28.07.2011, at about 8:00 a.m., the deceased Bhagwanrao had gone to the temple, and PW-1 Arjun was about to proceed to his field. At that time, the appellant and his wife, original Accused No.2-Sunita, came to the door of PW-1 and obstructed his way. There was an exchange of words and a quarrel, which led to a scuffle between PW-1 and the appellant at the door of the Wada. During the scuffle, the appellant dragged PW-1 towards the house of one Lahu Ramrao Harke and assaulted him with a screwdriver. PW-1 sustained injuries on his chest and back. PW-2 Vijaya, the wife of PW-1, intervened, shouted for help, and with the help of one Shivaji Hatekar took PW-1 inside the Wada. The appellant threatened Shivaji Hatekar not to intervene.

Shortly thereafter, Kausabai informed PW-2 that the appellant made Bhagwanrao to fall down. PW-2 rushed to the spot near the house of Ratnakar Thombre and saw the appellant assaulting the deceased Bhagwanrao with the same screwdriver. The deceased sustained a severe injury on his chest. PW-2 shouted, and some persons gathered

there. The appellant and Sunita went towards the Wada. There was bleeding from the chest of the deceased. The deceased and PW-1 Arjun were taken to the Rural Hospital, Pathri, where Bhagwanrao was declared dead and PW-1 was treated.

The statement of PW-1 was recorded by the police at the hospital. On the basis of the said statement, Crime No. 146 of 2011 came to be registered at Pathri Police Station for the offences punishable under Sections 302, 307 and 452 read with Section 34 of the IPC, against the appellant and his wife, Sunita, who was arrayed as original accused No. 2.

4. During investigation, the Investigating Officer visited the spot of incident, prepared the spot panchnama (Exh.59) and the inquest panchnama (Exh.60), seized the blood-stained clothes of the deceased under seizure panchnama (Exh.64), and sent the dead body for post-mortem examination. A screwdriver, Article-D, was recovered at the instance of the appellant from his house under memorandum panchnama (Exh.42) and seizure panchnama (Exh.42-A). The statements of witnesses were recorded, and the seized articles were sent for chemical

analysis. After completion of investigation, a charge-sheet was filed before the Court of the learned Judicial Magistrate First Class, Pathri. As the offences were exclusively triable by the Court of Session, the case was committed to the Court of Session at Parbhani.

The learned Sessions Judge framed charges under Sections 302, 307 and 452 read with Section 34 of the IPC. The charges were read over and explained to the accused, who pleaded not guilty and claimed to be tried. The appellant took the plea of private defence. He claimed that PW-1 Arjun and the deceased had assaulted him with a stick, that he had fallen down, and that when he moved the screwdriver in the air, it inadvertently hit PW-1 Arjun and the deceased. He also claimed that he had gone to the police station to report the assault on him.

5. To bring home the charge, the prosecution examined ten witnesses. PW-1 Arjun Ramrao Thombare, the injured complainant, was examined at Exh.34, PW-2 Vijaya Arjun Thombare, the wife of PW-1, was examined at Exh.38, PW-3 Dnyanoba Kondiba Thorat, the panch witness to the recovery, was examined at Exh.41, PW-4 Dr.Shaikh Haseebuddin, the Medical Officer who conducted

the post-mortem examination, was examined at Exh.48, PW-5 Baburao Marotrao Pendse, President of the Mahatma Gandhi Tanta Mukti Committee, Renapur, was examined at Exh.51, PW-6 Keshav Ramrao Harke, a neighbour, was examined at Exh.52, PW-7 Dr. Dhananjay Sahebrao Mudgalkar, who examined the injured complainant, was examined at Exh.54, PW-8 Hanumant Bapurao Tengse, the panch witness to the spot and inquest panchnamas, was examined at Exh.58, PW-9 Dilawarkhan Gulabkhan Pathan, Assistant Sub-Inspector attached to Pathri Police Station, was examined at Exh.61 and PW-10 Uttam Keshavrao Tak, the Investigating Officer, was examined at Exh.70. The prosecution also relied upon the post-mortem report (Exh.49), the injury certificate (Exh.55), the panchnamas, the seized screwdriver (Article-D) and the chemical analysis report (Exh.84).

6. Learned advocate for the appellant submitted that the learned Sessions Judge erred in relying on the testimony of PW-2 Vijaya, who was an interested witness being the wife of PW-1, and that her evidence did not conclusively establish that she witnessed the assault on the deceased. It was submitted that PW-6 Keshav did not see

the assault on the deceased and that the medical evidence did not support the prosecution case of intentional stabbing, as the doctor admitted that the screwdriver was not fully inserted and the injuries on PW-1 were superficial. Learned advocate further pressed the plea of private defence, contending that the appellant was attacked by PW-1 and the deceased, that he sustained a head injury in the scuffle, and that the screwdriver injuries were accidental. Lastly, it was submitted that the appellant went to the police station immediately after the incident. He prayed that the appeal be allowed and the conviction and sentence be set aside.

7. *Per contra*, learned APP supported the impugned judgment. It was submitted that the learned Sessions Judge had correctly appreciated the evidence of PW-1 and PW-2, whose presence at the scene was natural and whose testimony was corroborated by the medical evidence and the recovery of the weapon at the appellant's instance. It was submitted that the plea of private defence was an afterthought, raised only during cross-examination, and was unsupported by any complaint. The injuries on the appellant were minor and could have been sustained in the

scuffle that he himself initiated. It was further submitted that the non-examination of certain witnesses named in the FIR was not fatal, as the prosecution had produced credible ocular evidence. Learned APP prayed for dismissal of the appeal.

8. We have heard learned advocate Mr. P.S. Paranjape for the appellant and learned APP Mr. S.J. Salgare for the respondent- State. With their assistance, we have gone through the entire evidence on record, the impugned judgment and the record and proceedings.

9. The only point that arises for our consideration is whether the impugned judgment and order of conviction and sentence passed by the learned trial Court warrants interference by this Court.

10. The case of the prosecution essentially rests on ocular evidence, namely the testimony of PW-1, PW-2 and PW-6. PW-1 is the injured witness to the first assault; PW-2, his wife, claims to have witnessed both, the first assault and the fatal assault on the deceased; and PW-6 saw the first assault and the immediate aftermath, but not the fatal assault.

11. The depositions of the material prosecution witnesses, as are relevant for the adjudication of this appeal, can be summarized thus:

i) PW-1 Arjun Thombre (Exh. 34), deposed that the deceased Bhagwanrao was his paternal uncle and that PW-1, the deceased and the appellant, with their families, used to reside in the same ancestral Wada. He stated that on 28.07.2011 at about 8.00 a.m., his uncle Bhagwan had gone to the temple and he was about to proceed towards his field. At that time, the appellant and Sunita came to his door and obstructed his way. There was a quarrel and the appellant dragged him to the house of Lahu Harke and made one assault on his chest with a screwdriver and two assaults on his back with the same. He sustained bleeding injuries. His wife called Shiva Hatekar and Sakharam Hatekar and took him to his house and made him drink water. As there was noise outside, his wife went out. At that time, the appellant was assaulting Bhagwan with the same screwdriver. His wife, with the help of villagers, rushed him and Bhagwan to the Civil Hospital, Pathri. Bhagwan died in the Civil Hospital, Pathri. PW-1 identified the screwdriver, Article-D, and his blood-stained clothes.

In his cross-examination, PW-1 admitted that the appellant is an electrician and that a screwdriver is used for electrical work. He admitted that there was a dispute between himself, Devidas and the appellant on account of the land of Vithalrao, and that the land of Vithalrao was in the possession of the appellant. He admitted that while lodging the complaint, he had stated that the appellant restrained them from cultivating their land, that in the year 2011 he lodged a complaint against the appellant at the Tanta Mukti Centre, that the dispute was not settled there, and that there used to be frequent disputes between him and the appellant on account of cultivation of the land. He could not assign any reason why several of these facts were not appearing in the complaint, Exh.35. He denied the defence suggestions that he and the deceased had a grudge against the appellant, that they assaulted the appellant with a stick, that he assaulted the appellant on his head with a stick, that the deceased tried to throttle the appellant, that the appellant fell on the ground and sustained bleeding injuries, that the appellant took out the screwdriver in order to save himself and moved it here and there, and that the screwdriver injuries were

sustained inadvertently during the scuffle. He denied colluding with the Investigating Officer to falsely implicate the appellant. His evidence regarding the first assault remained unshaken.

ii) PW-2 Vijaya Arjun Thombare (Exh.38), the wife of PW-1, deposed that on the day of the incident, the appellant obstructed Arjun at the door and a scuffle started between Arjun and the appellant. During the scuffle, the appellant dragged Arjun towards the house of Lahu Harke. The appellant took out a screwdriver from his waist and started assaulting Arjun. She made shouts and ran towards the road. Shivaji Hatekar and Lahu Harke came to the spot and the appellant made two assaults on the back of Arjun in their presence. She intervened, took Arjun inside the Wada, and Sunita gave her a push. She further deposed that when she was in the Wada, Kausabai told her that the appellant had made Bhagwanrao to fall down. She ran to the spot near the house of Ratnakar Thombre. At that time, the appellant was assaulting Bhagwanrao with a screwdriver. She shouted, and some persons gathered there. The appellant and Sunita went away from the spot. There was bleeding from the chest of Bhagwanrao. With the

help of villagers, she rushed Arjun and Bhagwanrao in one auto to the Civil Hospital, Pathri. Dr. Mudgalkar informed her that Bhagwanrao had died. She identified the screwdriver, Article-D, as the weapon used by the appellant.

In her cross-examination, PW-2 admitted that when she reached the spot of the second incident, Bhagwanrao was already lying on the ground. She, however, maintained that she saw the appellant inflicting two blows on the deceased. She admitted that first incident might have lasted for ten to fifteen minutes. She denied the defence suggestions that she was not present at the spot, that the deceased and PW-1 were the aggressors, that Bhagwanrao was throttling the appellant, that Arjun assaulted the appellant on the head with a stick, and that the appellant sustained a head injury. She stated that she did not know whether the appellant had gone to the police station for lodging a complaint. She denied that she and the Investigating Officer had colluded to falsely implicate the appellant. Her presence on both spots is natural and probable. She deposed about the events in a sequence as

they occurred in her presence. Her testimony remained unshaken during the cross-examination.

iii) PW-3 Dnyanoba Kondiba Thorat (Exh.41), the panch witness to the discovery of the weapon of assault, deposed that the appellant, while in police custody, expressed his willingness to produce the screwdriver from his house. The appellant led the police and the panchas to his house, opened the latch, went inside and produced the screwdriver hidden behind a trunk. The seizure panchnama, Exh.42-A, was prepared. He identified the screwdriver, Article-D. In his cross-examination, he admitted that the screwdriver is commonly available in the market. He admitted that he was called from a hotel in Pathri to act as a panch witness and that he did not know the appellant previously. He denied the suggestions that the panchnamas were prepared at the police station or that he signed them at the behest of the police. His testimony regarding the recovery remained unshaken.

iv) PW-4 Dr. Shaikh Haseebuddin (Exh.48), the Medical Officer who conducted the post-mortem on the deceased, deposed that he found four external injuries:

> *i) A penetrating stab wound of size 2 x 1 cm on the left side of the chest between the 3rd*

and 4th ribs, vertical, 5 cm away from the sternum, directed downwards and elliptical. On dissection, the depth of the wound was found to be approximately 10 cm;

ii) An abrasion of 8 x 1/2 cm over the right side, oblique in nature;

iii) An abrasion of 4 x 0.5 cm over the right side of the chest below the right nipple, transverse in direction;

iv) An abrasion of 3 x 2 cm over the right ankle joint, medially;

All the injuries were ante-mortem. On internal examination, he found a stab wound between the 3rd intercostal space on the left side, 1 x 1 cm, depth of the whole thickness of the walls, ribs and cartilages. The left pleural space contained 200 ml blood-stained fluid. The left lung was perforated at the lingula of the upper lobe. The pericardium was filled with 500/1000 ml blood and was perforated. There was a stab wound on the left ventricle of the heart, 1 x 1 cm, depth half the thickness of the ventricle wall. He opined that the cause of death was haemorrhagic shock secondary to stab wound to the heart and lung and that the injuries were possible with the screwdriver, Article-D.

In his cross-examination, PW-4 admitted that the abrasion injuries mentioned against column No.17 were simple in nature and could be caused by a fall on the ground during a scuffle. He admitted that from the nature of the stab wound, it could be said that the screwdriver, Article-D, was not completely inserted or penetrated. He admitted that on 28.07.2011 the police had not shown him any weapon and that the screwdriver was shown to him on 03.08.2011. His core opinion regarding the cause of death and the possibility of the injury being caused by Article-D remained intact.

v) PW-6 Keshav Ramrao Harke (Exh.52), a neighbour of the parties, deposed that a dispute had started between Arjun and the appellant, and both came in front of his house and started quarrelling. He came out after hearing the noise. Vijaya wife of Arjun and the wife of the appellant were present. The appellant was holding a screwdriver. He tried to intervene in the quarrel. The appellant assaulted Arjun with the screwdriver. Five to ten minutes thereafter, he again heard some noise and came out. He found Bhagwan lying down. The appellant, his wife and Vijaya were standing there. Vijaya was shouting that the appellant

had assaulted with the screwdriver. The appellant was running, and his wife was running behind him. He identified the screwdriver, Article-D, as the one in the appellant's hand.

In his cross-examination, PW-6 admitted that the first incident occurred in front of his house and that Arjun and the appellant were beating each other. He admitted that he did not go close to the place where Bhagwanrao was lying. He denied the defence suggestions that PW-1 and the deceased were assaulting the appellant, that the appellant acted in self-defence, and that he had stated to the police that the appellant moved the screwdriver in the air in his own defence. His evidence regarding the first assault and the appellant's conduct immediately thereafter remained unshaken.

vi) PW-7 Dr. Dhananjay Sahebrao Mudgalkar (Exh.54), the Medical Officer who examined PW-1, deposed that he found three stab injuries on PW-1:

> *i) On the left side of the chest of size 1 x 1/2 x 2 cm;*
> *ii) On the left side of the back near the midline of size 1 x 1/2 x 2 cm;*
> *iii) On the left side of the back of size 1/2 x 1/2 x 2 cm.*

All injuries were simple in nature and were caused by a hard and sharp object. The injuries were within six hours of examination. He opined that the injuries were possible with the screwdriver and that the assault on the chest was on a vital part of the body.

In his cross-examination, he admitted that all the injuries on PW-1 were muscle-deep and superficial in nature and could not be said to be dangerous to life. He admitted that PW-1 was oriented and in a fit condition to talk when examined. He admitted that the statement of PW-1 was not recorded in his presence. He denied that the appellant had come to the Rural Hospital, Pathri with bleeding injuries on the same day, or that he and Dr. Shaikh had jointly examined the appellant and issued an injury certificate to him. His evidence corroborates the first assault and the nature of injuries caused to PW-1.

vii) PW-9 Dilawarkhan Gulabkhan Pathan (Exh.61), Assistant Sub-Inspector attached to Pathri Police Station, deposed that on 28.07.2011 at about 8.35 a.m., the appellant came to the police station with an injury on his head and blood-stained clothes. The appellant asked to be

referred to the Hospital but did not lodge a complaint. PW-9 referred the appellant to the Civil Hospital, Pathri under a written letter, Exh.62, but PW-10 informed him that appellant did not reach the Civil Hospital. He made an entry in the station diary, Exh.63, regarding the appellant's visit and the subsequent receipt of two MLCs regarding PW-1 and the deceased. In his cross-examination, PW-9 admitted that when the appellant came to the police station, he stated that he was beaten. He, however, admitted that the station diary entry, Exh.63, did not mention that the appellant stated that he was beaten and denied that appellant had narrated the entire incident of assault. He denied that MLC of appellant was sent to Police Station. He denied the suggestion that he suppressed the details of the assault on the appellant at the behest of the Investigating Officer.

viii) PW-10 Uttam Keshavrao Tak (Exh.70), the Investigating Officer, deposed about recording the statement of PW-1 at the hospital, registering the FIR, preparing the spot and inquest panchnamas, and arresting the appellant. He deposed that on 31.07.2011, the appellant made a disclosure statement leading to the recovery of the

screwdriver, Article-D, from behind a trunk in his house. He collected the medical reports and sent the muddemal for chemical analysis. In his cross-examination, PW-10 admitted that on 28.07.2011 he had recorded the statement of the appellant when the appellant came to the police station in an injured condition, but he did not include that statement in the investigation papers. He admitted that he did not take search of the house of the appellant on 28.07.2011. He admitted that the panch witnesses were called from a hotel in Pathri. He denied the suggestions that the appellant was arrested at the hospital, that the panchnamas were false, or that he colluded with PW-1 to implicate the appellant.

12. Before testing the evidence of PW-1 and PW-2, it will be fruitful to discuss the legal position regarding the evidence of a related/interested witness. The law on the appreciation of the evidence of a related/interested witness is well settled. The Hon'ble Supreme Court in the decision in ***Shahaja alias Shahajan Ismail Mohd. Shaikh*** reported in ***(2023) 12 SCC 558*** held thus:

> *"30. To put it simply, in assessing the value of the evidence of the eyewitnesses,* ***two principal considerations are whether, in the circumstances of the case, it is***

> ***possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence.*** *Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.*
>
> *31. There is nothing palpable or glaring in the evidence of the two eyewitnesses on the basis of which we can take the view that they are not true or reliable eyewitnesses.* ***Few contradictions in the form of omissions here or there is not sufficient to discard the entire evidence of the eyewitnesses.***
>
> *(emphasis supplied)"*

13. The Hon'ble Apex Court, in the recent decision in ***Balku Oram Vs. State of Odisha*** reported in ***2026 INSC 852***, has, after referring to its earlier decisions,

reiterated that mere relationship with the deceased does not render a witness interested or unreliable. A close relative who is a natural witness cannot be equated with an interested witness merely because of such relationship. The term "interested" postulates that the witness must have some direct interest in seeing that the accused is somehow or the other convicted, either because he had some animus with the accused or for some other reason. The Supreme Court further reiterated that direct ocular evidence, if found to be natural, cogent and trustworthy, constitutes the best form of evidence; the court is concerned with the quality and not the quantity of evidence; and a conviction can be sustained on the testimony of a sole reliable witness.

Thus, a close relative is not, for that reason alone, an interested witness. Such a witness is a natural witness. The court has to scrutinise the evidence with care. If on such scrutiny the evidence is found to be reliable, probable and trustworthy, a conviction can be based on it. The term "interested" postulates that the witness has some motive to falsely implicate the accused. Ordinarily, a close relative would be the last person to screen the real culprit and falsely implicate an innocent person. The mere fact of

relationship is not a ground to discard the evidence altogether.

14. In the present case, the presence of PW-2 at the scene of the first assault is natural. She was residing in the same Wada and intervened to save her husband. Her presence at the scene of the second assault is also natural, as she was informed by Kausabai that appellant is assaulting the deceased and so she immediately rushed there. Her testimony regarding the assault on PW-1 is corroborated by PW-1 himself, by PW-6 who saw the appellant with the screwdriver, and by the medical evidence of PW-7. Her testimony regarding the assault on the deceased is corroborated by the medical evidence of PW-4, which established a penetrating stab wound on the chest by screwdriver, and by the recovery of the very weapon at the appellant's instance. No material has been brought on record to show that PW-2 had any motive to falsely implicate the appellant. The fact that she reached the spot after the deceased had fallen does not, by itself, mean that she did not see the blows being inflicted; she specifically stated that she saw the appellant inflicting two blows on the deceased, and this statement remained unshaken in

cross-examination. The learned Sessions Judge was, therefore, justified in relying upon her evidence after exercising the requisite caution. The first contention raised by the learned counsel for the appellant is, thus, devoid of merit.

15. Coming to the recovery of the weapon, the appellant's disclosure statement led to the recovery of the screwdriver, Article-D, from behind a trunk in his own house. PW-3 supported the recovery, and PW-10 proved the memorandum and seizure panchnamas at Exhs. 42 and 42-A. The recovery was from behind a trunk in his house, not from an open or easily accessible area. It is true that a recovery under Section 27 of the Indian Evidence Act cannot, by itself, sustain a conviction. In the present case, however, the recovery is not the sole circumstance. It is a strong piece of corroborative evidence which connects the appellant to the weapon used in the crime. When read with the ocular testimony of PW-1 and PW-2 and the medical evidence, it completes the chain of circumstances. The argument that the panch witnesses were not locals and were called from a hotel does not, in our view, vitiate the recovery. PW-3 was subjected to extensive cross-

examination, but his testimony remained unshaken. The mere fact that PW-8 stated that some screwdriver was shown at the time of inquest does not falsify the subsequent recovery, as he did not identify Article-D as the same weapon, and the recovery is independently proved through the evidence of PW-3 and PW-10.

16. As regards the chemical analysis report, Exh.84, it is only a corroborative piece of evidence. The appellant has not shown that it goes against the prosecution case. Even if the report was neutral, it would not weaken the ocular testimony of PW-1 and PW-2, the medical evidence of PW-4 and PW-7, or the recovery of Article-D at the appellant's instance. The prosecution case does not depend solely on this report.

17. As regards the plea of private defence, the same must be tested on the basis of the evidence on record. The law on the right of private defence is well settled. The Hon'ble Supreme Court in the case of ***Darshan Singh Vs. State of Punjab***, ***Criminal Appeal No.1057 of 2002***, decided on 15.01.2010, has reiterated that the right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending

danger, and not of self-creation. A mere reasonable apprehension is enough to put the right into operation, but the force used must not be wholly disproportionate or much greater than necessary for protection. The accused need not prove the existence of the right beyond reasonable doubt; it is enough for him to show, as in a civil case, that the preponderance of probabilities is in favour of his plea. If the cause for the reasonable apprehension has disappeared and the threat has been put to rout, there can be no occasion to exercise the right of private defence.

18. The plea of private defence/accidental injury is sought to be supported by the appellant's immediate visit to the police station with a head injury and blood-stained clothes, and by the alleged suppression of his MLC and his complaint. The record, however, does not make out that suppression. PW-9 admits that at 8.35 a.m. the appellant came to Pathri police station with a head injury and blood-stained clothes and said that he had been beaten; A.P.I. Tak followed him and informed PW-9 from the Civil Hospital that the appellant had not come there; that the only MLCs received were those relating to PW-1 and the

deceased; and no MLC relating to the appellant was received.

PW-7 Dr Mudgalkar, the Medical Officer at Rural Hospital, Pathri, denied that the appellant had come there on 28.07.2011 with bleeding injuries, that he and Dr Shaikh had jointly examined the appellant and issued an injury certificate, that the appellant had come with a police referral letter, or that he, Dr Shaikh and the Investigating Officer had suppressed the fact of the appellant having come to the hospital. Nothing contrary came out in his cross-examination; and no motive was suggested to PW-7 for falsely denying the appellant's medical examination.

The appellant's own statement under Section 313 says that the police referred him to the hospital and that he went there, but as Dr Mudgalkar was not in the hospital he went back. That explains why he was not medically examined and why no MLC was issued. The learned Sessions Judge was, therefore, right in rejecting the theory of suppression. The appellant's immediate visit to the police station and the head injury are consistent with his participation in the scuffle, but they do not establish that PW-1 and the deceased were the aggressors or that the

screwdriver injuries were accidental; his conduct at that time was to ask for medical referral rather than to give a detailed complaint. In these circumstances, the theory of suppression of MLC and complaint does not assist the appellant and the plea of private defence is also not made out.

19. The injuries on the appellant, as per the medical examination report, Exh.75, were an abrasion on the chest and a contusion on the shoulder. These were minor injuries consistent with a scuffle. The prosecution case is that the appellant was the aggressor who first dragged PW-1 and assaulted him, and then, after a gap, assaulted the deceased. The possibility of the appellant sustaining minor injuries during the scuffle cannot be ruled out, but that does not displace the prosecution case or bring the appellant's act within the right of private defence. The force used by the appellant, a penetrating stab wound to the chest which pierced the heart and lung, is grossly disproportionate to any threat he may have faced. The plea of private defence, therefore, fails.

20. The medical evidence firmly establishes the homicidal nature of the death. PW-4 found a penetrating

stab wound on the left chest, which pierced the heart and lung and opined that the cause of death was hemorrhagic shock secondary to stab wound. He specifically stated that the injury was possible with the screwdriver, Article-D. The suggestion that the screwdriver was not completely inserted does not assist the appellant, for the depth of the wound was 10 cm and the internal damage was sufficient in the ordinary course of nature to cause death. The abrasion injuries on the deceased could be caused by a fall, but the stab wound remains the fatal injury. The injuries on PW-1, though simple, were inflicted with the same weapon and on vital parts, including the chest, which brings the act within the ambit of Section 324. The learned Sessions Judge rightly kept in mind the difference between the injury caused to PW-1 and the fatal injury caused to the deceased, and the intention which could be gathered from the appellant's acts. The submission that the case should fall under Section 300 Exception 2 of the IPC is thus untenable in view of the above evidence on record. The appellant, after assaulting PW-1, went to the spot where the deceased was standing and inflicted a blow on his chest, a vital part of the body, with a weapon capable of

causing, and which did cause, a fatal penetrating injury. The act was not a sudden fight in the heat of passion upon a sudden quarrel. There was time gap between the two assaults, and the appellant had to go to a different spot to attack the deceased. This indicates a determined intention to cause bodily harm.

21. In the wake of the aforesaid evidence brought before the Court by the prosecution, it has established the guilt of the accused beyond reasonable doubt. Since it is concluded that the prosecution has established that it is the accused, who had caused the death of Bhagwanrao by bringing cogent and reliable evidence on record with no scope of any doubt being raised about the involvement of the accused in the offence on the basis of the ocular testimony of PW-1 and PW-2, corroborative statement of PW-6, the medical evidence of PW-4 and PW-7, the recovery of the screwdriver at the appellant's instance, and the failure of the plea of private defence together establish the appellant's guilt under Sections 302 and 324 of the IPC beyond reasonable doubt. The sentence imposed is proportionate to the gravity of the offence. The learned Sessions Judge has given cogent reasons for the conviction,

and we see no perversity or illegality in the impugned judgment.

22. As a consequence thereof, by upholding the impugned judgment dated 30.07.2013 passed by the learned Additional Sessions Judge, Parbhani, in Sessions Trial No.148 of 2011, the present appeal is dismissed.

23. We quantify Rs.10,000/- as fees to be paid to the learned counsel for the appellant so appointed, which shall be paid through the High Court Legal Services Sub-Committee, Aurangabad.

[VAISHALI PATIL-JADHAV]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

sga/