

**(1993) 02 BOM CK 0024**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 234 of 1982**

|                                       |            |
|---------------------------------------|------------|
| Pandurang Dnyandeo Hatkar and Another | APPELLANT  |
| Vs                                    |            |
| State of Maharashtra                  | RESPONDENT |

**Date of Decision :** 04-02-1993

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 307, 34

**Citation :** (1993) CriLJ 1381

**Hon'ble Judges :** N.P. Singh, J;K. Jayachandra Reddy, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

K. Jayachandra Reddy, J.—This is an appeal filed under the provisions of Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act.

2. The two appellants herein were tried for offences punishable under Sections 302 and 307 read with 34, I.P.C. and they were acquitted by the trial Court. The State preferred an appeal to the High Court which set aside the order of acquittal and convicted the appellants under Sections 302 read with 34, I.P.C. and sentenced each of them to undergo imprisonment for life. They are further convicted under Sections 307 read with 34, I.P.C. and sentenced to five years" R.I. The sentences are directed to run concurrently.

3. The prosecution case is as follows :

The deceased Piraji Hari Hatkar, the two accused-appellants and the material witnesses belong to Village Turambe. The deceased was residing there with his wife and other members of the family. The appellants are full brothers and are distant cousins of the deceased and they shared land in which only grass was grown and all of them used to cut the grass and share it. Some dispute arose regarding the cutting of the grass and sharing the same. On 13th December, 1976 at about 8 a.m. a fresh dispute arose in the field. There was an exchange of words between womenfolk. Indu, daughter of the deceased, P.W. 15 went and

informed the deceased about the quarrel and suggested that all of them should go to the land. Accordingly they went there and were cutting grass till about 1.30 p.m. The deceased thereafter went to his another piece of land along with Balu, P.W. 9 on a bullock-cart. They met one Shankar Dayanu Kudalkar, P.W. 11 on the way who was driving his she-buffalo. At that juncture, A-1 and A-2 emerged from behind some bushes. A-1 was carrying a sword and a stick and A-2 was carrying an axe. They asked the deceased and P.W. 9 to come down from the bullock-cart. The deceased and P.W. 11 told them not to raise a quarrel. However, they insisted that the deceased and P.W. 9 should come down from the bullock-cart. They accordingly came down. Then A-1 went up to him and gave a blow with the sword. P.W. 9 raised cries and tried to intervene A-2 gave an axe blow and P.W. 9 fell down. A-1 again attacked him. Meanwhile A-2 went near the deceased and gave an axe blow. The assault was watched by P.W. 11 and he told the accused that the deceased was almost dead and that they should leave the place. But he was chased by A-1. P.W. 11 ran for some distance and came back to the scene of occurrence. In the meantime the accused had left the place. P.W. 11 found the deceased and P.W. 9 injured. He tied the deceased head with his turban cloth. P.W. 14 Annappa Hatkar, the second son of the deceased learnt about the occurrence at the school and reached the scene of occurrence and he met P.W. 11 there who told him about the occurrence. He brought a bullock-cart in which P.W. 11 put both the injured and took them to Village Sarawade where there is a police outpost. Finding the same closed, they took the injured to the bus stop to take them to Radhanagari, about 10 miles away. By the time he reached the bus-stop with the injured and the bullock-cart, the other family members of the deceased came there. In the meantime a bus came along in which both the injured were put and all of them proceeded to Radhanagari. On the way the deceased died. The bus was first taken to Zilla Parishad dispensary and then to the Police Station. S.I. Jadhav, in-charge of the Police Station held the inquest on the dead body and recorded the report given by P.W. 9 and commenced the investigation. He arrested the accused and at their instance the respective weapons were recovered. The Doctor who conducted the post-mortem found a penetrating incised wound at the centre of the head of the deceased which resulted in fracture. There was another incised wound on the forehead which resulted in the fracture of the frontal bone. There were two other incised wounds on the body. On internal examination he found fractures of frontal and parietal bones and brain was torn. The Doctor opined that all the injuries were ante-mortem and were sufficient to cause death in the ordinary course of nature. The Doctor who examined P.W. 9 found on him as many as eight incised wounds, two on the head and others on the hand. The Doctor opined that they could have been caused by sharp and cutting instruments. After completion of the investigation, the charge-sheet was laid. The prosecution mainly relied on the evidence of P.Ws. 9 and 11, the eye-witnesses and other circumstantial evidence. The accused pleaded not guilty. They admitted the dispute regarding cutting of the grass. Now coming to the occurrence, their plea is that on that day they were working in the land allotted to them but on being questioned by Indu, P.W. 15

and others, the accused told them that they cut the grass which came to their share. But the deceased was not satisfied and he picked up a sword from his bullock-cart and rushed towards A-1 and gave a blow but he managed to avoid it but in doing so his left thumb received an incised injury. When the deceased tried to give another blow, A-1 dodged and to save his life he gave two blows to the deceased with the axe which he was carrying and that in the meanwhile, P.W. 9 who was sitting in the bullock-cart picked up the sword and advanced towards A-1 and to save himself A-1 gave a counter axe blow to P.W. 9 and that A-2 who was nearby tried to intervene and subsequently both of them left the scene of occurrence. In short their plea was that they caused the injuries to the deceased and P.W. 9 in exercise of their right of private defence.

4. The trial Court accepted the plea and acquitted the accused. The trial Court, however, rejected the evidence of P.W. 11 on the ground that he was a chance witness and also was not prepared to accept the version given by P.W. 9, the injured witness on the ground that he has not come out with the whole truth. The High Court, after a careful consideration of the evidence of the entire case particularly the evidence of P.Ws. 9 and 11 held that the reasons given by the trial Court are highly unsound and that the only possible view was that the accused committed the offence in the manner stated by the P.Ws. 9 and 11 and that the accused had no right of private defence as pleaded by them.

5. In this appeal, Shri Bhasme, learned senior counsel appearing for the appellants strenuously contended that the injury on the thumb of A-1 establishes that he was attacked with a sword by the deceased and therefore A-1 had the right, of private defence and could go to the extent of causing the death of the deceased and also causing injuries to P.W. 9 who tried to attack him inasmuch as he had a reasonable apprehension that they would cause grievous hurt or his death.

6. From the above narrated facts, it can be seen that the place and time of the occurrence are not in dispute. The presence of P.W. 9, the injured witness is admitted. A-1 has taken a specific plea and presence of A-2 at the scene of occurrence is also admitted. Under these circumstances, the only question that arises for consideration is whether the genesis of the occurrence and the attack by the accused as spoken to by the prosecution witnesses are true or whether the defence version in that context is probable and whether the accused are entitled to right of private defence?

7. The defence, no doubt, examined D.Ws. 1 to 3. D.W. 1 was examined only to show that A-1 tried to give a complaint and similarly the evidence of D.Ws. 2 and 3 does not in any manner improve the defence case.

8. We have examined the evidence of P.Ws. 9 and 11 carefully. There are a number of injuries both on the deceased and P.W. 9 and the injury found on A-1 is a superficial one. Further the conduct of the accused also shows that their plea is not at all acceptable. It is not at all a case of right of private defence. The

prosecution has established beyond all reasonable doubt that the two appellants intentionally caused the death of the deceased and also caused serious injuries to P.W. 9 and no other view is possible. Therefore the High Court has rightly convicted the appellants and we see no reason to interfere. The appeal is accordingly dismissed.