

(1995) 07 BOM CK 0065

In the Bombay High Court

Case No : Criminal App. No. 150 of 1989

The State of Maharashtra

APPELLANT

Vs

Bhaurao Udan and Others

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 275, 276, 277, 278
Penal Code, 1860 (IPC) — Section 302, 323, 324, 325, 34

Citation : (1995) 97 BOMLR 414 : (1996) CriLJ 673 : (1996) 1 MhLj 214

Hon'ble Judges : R.M. Lodha, J;B.U. Wahane, J

Bench : Division Bench

Advocate : H. Ahamad, app, for the Appellant; Kishore Lambat, for the Respondent

Judgement

B.U. Wahane, J.—The State, by this appeal, has questioned the correctness and legality of the findings of acquittal recorded by the learned Addl. Sessions Judge, Wardha, on 8th December, 1988, in Sessions Trial No. 53/87, for the offences punishable under Sections 302, 325, 324 and 323 read with 34 of the Indian Penal Code, on the grounds that the learned trial Judge has not marshalled the facts and circumstances of the case and not appreciated oral and documentary evidence placed on record in true and correct perspective and recorded the findings which are not only erroneous but perverse, resulting in miscarriage of justice. The learned counsel for the respondents/accused, while supporting the findings, has urged that the reasons as adopted and the findings recorded by the Addl. Sessions Judge, Wardha, are just, proper and in accordance with the evidence on record. By inviting our attention to the ratio laid down by the Apex Court in a case of Tota Singh and Another Vs. State of Punjab, , we are reminded that unless the findings impugned are manifestly illegal and the conclusion as drawn can only be described as perverse, interference in appeal against acquittal is totally unwarranted. Bearing in mind the settled proposition, we propose to deal with the rival contentions.

2. The facts in brief to prosecute the respondents/accused are as follows :

The respondents/accused and the deceased Ganpat Mahadeo Yelore, as well the other members of his family viz. his wife Smt. Bakubai (P.W. 2), sons viz. Shri Vittal (P.W. 1), Baliram (P.W. 3) and Maroti (P.W. 4) are the residents of the village Mouja Khapari, Tah. Seloo, District Wardha. The agricultural land of the accused Homdeo is situated just adjoining to the land of the complainant. On the day of incident i.e. on 21-4-1987 at about 3.00 P.M., Maroti Ganpat Yelore (P.W. 4) had gone in the agricultural land for the purpose of grazing cattle's. The accused/respondent No. 3 Homdeo was informed that the cattle's of Maroti are grazing in his field. Consequently, Homdeo Botre (accused No. 3) with an axe went to assault Maroti Yelore (P.W. 4). Homdeo pulled Maroti and assaulted by slaps. Maroti Yelore took shelter behind Laxman Urkuda. The said Laxman Urkuda intervened and, therefore, Maroti (P.W. 4) could save himself. Maroti (P.W. 4) returned to his home from the field and informed the above incident to his brothers and father. On this Maroti Yelore (P.W. 4) along with his brothers and father went to the agricultural land in order to question Homdeo Botre as to why he assaulted Maroti. They searched for Homdeo but he was not found.

On the same day, according to the prosecution, Smt. Bakubai (P.W. 2) had gone in the field for milking the cows. In the evening at about 7.00 P.M., the deceased Ganpat, his wife Smt. Bakubai, their sons Baliram and Maroti, four in numbers, started returning towards the village. When they arrived near the house of Dhyaneswar Deollikar, according to the prosecution, all the four respondents/accused were seen standing armed with sticks. Bhaurao Doma Udan (respondent/accused No. 1) and Homdeo Mahadeo Botre (respondent/accused No. 3) delivered blows by sticks on the back of Smt. Bakubai. Deceased Ganpat and his sons viz. Baliram and Maroti intervened and tried to save Smt. Bakubai. Accused Bhaurao and Homdeo delivered blows by sticks on the head of the deceased Ganpat. Tukaram Bhaurao Udan (respondent/accused No. 2) and Dilip Bhaurao Udan (respondent/accused No. 4) assaulted Baliram and Maroti by sticks. The deceased Ganpat had sustained bleeding injuries on his head and he had fallen down on the ground and succumbed to the injuries on the spot of incident.

3. On hearing hue and cry, Vitthal Ganpat Yelore (P.W. 1) reached the spot of incident and witnessed all the events of assault. He rushed to the Police Station, Seloo at about 9 or 9.30 P.M. and lodged the oral report (Exh. 34). On the basis of the oral report lodged by Vitthal Yelore, offence was registered on 21-4-87 at 10.30 P.M. against the respondents/accused for the offence punishable u/s 302 read with Section 34 of the Indian Penal Code vide Crime No. 72/87. The F.I.R. in prescribed form is at Exh. 81.

4. In the night itself, the Police went to village Khapri. On the next day i.e. on 22-4-87 at about 8.00 A.M., the Police in presence of the panchas examined the dead body of Ganpat and scribed the inquest panchanama (Exh. 54). The dead body was forwarded to the General Hospital, Wardha for the purpose of post-mortem examination. Dr. Chandak (P.W. 6) effected the autopsy on the dead

body of the deceased Ganpat on 22-4-1987 in between 11.15 A.M. to 12.15 P.M. and found the following injuries described in column Nos. 17 and 18 of the post-mortem report.

(i) Lacerated wound over head 2" x 2" in size bone deep, mid point lies about 1" on left to centre of head.

(ii) Abrasion with surrounding haematoma 1" x 1/2" on posterior lateral surface of right elbow.

(iii) Fracture of clavicle left lateral 1/3rd.

On further examination, Dr. Chandak (P.W. 6) found internal injuries as follows :

Head : Haematoma of size 4" x 3" on left side of skull under bone.

Skull : Fracture extending from elbow to the zygomatic arch on left side directing upwards, medially and backward up to the centre of skull top, about 8" in length.

Brain : Slight extra dural heamatoma over left cerebral hemisphere, coverings normal brain congestion present over left cerebral hemisphere, haematoma present on left side at basal area, introdural of size 3" x 2".

According to Dr. Chandak, the death caused due to head injury, caused by hard and blunt object, leading to cardio respiratory failure. Dr. Chandak (P.W. 6) deposed that the injury No. 1 i.e., lacerated wound over the head was grievous injury and was sufficient in the ordinary course of nature to cause death.

5. The spot of occurrence was inspected by Shri Sadashio s/o Rupchandaji Wasalwar, P.S.I. (P.W. 8) in presence of the panchas. He had drawn the spot panchanama Exh. 82. As the blood was found on earth, the blood mixed earth as also simple earth was collected from the spot and was seized vide seizure memo Exh. 57.

6. The accused were arrested. On the basis of the voluntary statement made by the accused Homdeo, in presence of the panchas, the Police discovered the stick from his house. About the voluntary disclosure of each of the accused, the memorandum panchamas were prepared, as also after the seizure, the seizure memos were also effected.

7. According to prosecution, Smt. Bakubai wd/o Ganpat Yelore (P.W. 2), Baliram s/o Ganpat Yelore (P.W. 3) and Maroti s/o Ganpat Yelore (P.W. 4) had also received injuries. They were referred to the medical officer for examination and treatment. Dr. Taksande (P.W. 9) attached to Primary Health Centre, Borkhedi, on 22-4-87 at about 00.25 A.m. examined Smt. Bakubai wd/o Ganpat Yelore and found the following injuries as described in report Exh. 89.

(i) Fracture of lower end of left humerus, tenderness and deformity present, swelling present, movements restricted. Crepitating present over the left elbow joint.

Doctor opined that the injury could have been caused by hard and blunt object.

On the same day, Dr. Taksande (P.W. 9) examined Baliram Ganpat Yelore and found the following injuries described in Exh. 91-the injury report.

(i) lacerated wound over the scalp in the mid line transversely placed 2" x 1/2" in size.

According to Doctor, the injury could have been caused by hard and blunt object.

On the same day i.e. on 22-4-87, Dr. Taksande (P.W. 9) also examined Maroti Ganpat Yelore and found the following injuries as described in the report Exh. 92.

(i) Abrasion over the left leg 1" x 1" in size.

(ii) Contusion over the upper lip on left side 1" 1/2" in size.

According to the Doctor, the injuries could have been caused by hard and blunt object.

8. On arrest, the Investigating Officer found the accused Bhaurao and Homdeo injured. They too were referred to the Dr. Taksande - the Medical Officer, Primary Health Centre, Selu. Dr. Taksande (P.W. 9) examined the accused Bhaurao (accused No. 1) on 22-4-87 at about 00.25 A.M. and found the following injuries as described in medical report Exh. 90.

(i) lacerated wound over left side of the skull 1/2" x 1/2" in size.

(ii) Contusion over the right left arms.

According to the Doctor the injuries could have been caused by hard and blunt object.

Accused Homdeo Devrao Botre, aged about 30 yrs. was referred to Dr. Taksande - Primary Health Centre Selu, on 23-4-87. Dr. Taksande (P.W. 9) examined the injured Homdeo Mahadeo on 23-4-87 at 6-00 P.M. and found the following injuries as described in injury report Exh. 93.

(i) Abrasion over the left thigh.,

(ii) Abrasion over the right knee;

(iii) Abrasion over the right chest.

According to the Doctor, the injuries could have been caused by hard and blunt object. Doctor Taksande deposed that the injuries might have occurred 48 hours before his examination.

9. The Investigating Officer found that the accused Bhaurao had bleeding injuries and his shirt had blood stained and, therefore, he seized the shirt of the accused as per seizure panchanama Exh. 59. The blood samples of the injured Baliram as also of Maroti were collected. All the incriminating articles were forwarded to the Chemical Analyser, Nagpur for examination and analysis. The report of the

Chemical Analyser is at Exh. 84. As per the report, the blood group of the deceased Ganpat and injured Baliram was of "O" group.

10. On completion of the investigation, the charge sheet was filed in the Court of Judicial Magistrate, First Class, Wardha, who committed the case to the Court of Session for trial according to law.

11. To the charges framed against the accused, they pleaded not guilty and claimed to be tried.

12. In order to bring home the charges in the accused, the prosecution examined as many as 9 witnesses and relied on direct as well as circumstantial evidence. The defence of the accused is that the respondents/accused Nos. 2 and 4 viz. Tukaram Bhaurao Udan and Dilip s/o Bhaurao Udan were not present at all on the spot of incident. According to the accused Bhaurao and Homdeo, they were assaulted by Baliram (P.W. 3) and Maroti (P.W. 4) as also by deceased Ganpat by means of sticks and they sustained injuries on their person. They wielded the sticks in their defence.

13. The learned trial Judge, appreciating the evidence produced by the prosecution, held that the Prosecution failed to bring home the guilt against the respondents/accused and exonerated them of the charges framed against them. The learned trial Judge, has specifically observed in para 25 of the Judgment that;

"the Prosecution has miserably failed to point out as to who was the aggressor".

In the same para, it is observed that;

"the prosecution witnesses made a clear statement that they did not see any assault on the accused persons and injuries on their persons."

According to the learned trial Judge, the prosecution witnesses deliberately suppressed the fact of presence of injuries and fact of assault on accused. The learned trial Judge in para 20 of the Judgment observed that :

"In the fact it appears that on the relevant date scuffle and beating ensued between the two groups i.e., one group of the deceased and the other group of the accused. There is absolutely no investigation on the point as to how the accused persons had sustained injuries, whether in the same quarrel and by whom it were caused. Hence, it would reveal that the genesis and origin of the incident has been shrouded in deep mystery. The dramatic manner in which the assault is said to have started and appearance of all the four accused on the spot of the incident without any rhyme or reason and their assault on Ganpat against whom there was no any concern or animus introduces an element of inherent improbability in the case."

The learned trial Judge further observed in para 21 as follows :

"It is strange to note that the prosecution did not adduce an iota of evidence to

show any motive on the part of the accused in order to commit murder of Ganpat and voluntarily assault on Baliram, Maroti and Bakubai. Therefore, it appears that this is a case where all the four interested witnesses have entered into conspiracy to implicate all the four accused for the offence of murder and, therefore, back-bone of the prosecution is broken. It is difficult for the Court to rely on such evidence and to convict any of the accused particularly when the prosecution does not give any explanation for the injuries appearing on the person of the accused. This is a case where it is not possible to disengage the truth from falsehood, to sift the grain from the chaff. The truth and falsehood are so inextricably mixed together that it is difficult to separate them. Indeed if one tries to do so, it will amount to reconstructing a new case for the prosecution which cannot be done in a criminal case".

14. Shri H. Ahmad, the learned A.P.P. for the State strenuously challenged the acquittal and submitted that the trial Judge has not appreciated the ocular testimony of the eye-witnesses and other circumstances in true and correct perspective.

15. With the assistance of the learned counsel for State and the accused, we have gone through the entire evidence as also the Judgment of the learned trial Court. The learned trial Court has exhaustively dealt with the submissions raised by the learned A.P.P. for the State. We are also of the opinion that the prosecution evidence is not credible and, therefore, the learned trial Court has rightly acquitted the accused.

16. According to the prosecution, Smt. Bakubai (P.W. 2) while returning home with her husband-the deceased Ganpat and sons Baliram and Maroti, was ahead of them. As soon as they arrived near the house of Dhyaneshwar Deollikar, they found the respondents/accused standing armed with sticks. As Bakubai was ahead of others, she was first assaulted by the accused Bhaurao. The accused Bhaurao delivered blows on her back and on the left shoulder. Her husband and sons rushed to save her. The accused Homdeo and Bhaurao also dealt blows of sticks on the person of deceased Ganpat. The accused Dilip and Tukaram assaulted Baliram and Maroti by sticks. One Narayan and Vithhal had intervened. As deceased Ganpat fell on the ground, all the accused left the spot.

17. On examination of the deposition recorded in a vernacular language i.e. Marathi and English we noticed some discrepancies. English recording, are the notes of evidence and as such recording of evidence in Marathi will prevail. This aspect has been dealt by this Court in a case of Jankiram v. State of Maharashtra, reported in 1973 Mah LJ n 34 (B. A. Masodkar, J). This Court observed :-

"In case of difference between English notes of evidence and recording of evidence in Marathi the latter prevails."

18. Chapter XXIII of the Code of Criminal Procedure, 1973, deals with the mode of taking and recording evidence. Section 276 of the Code of Criminal Procedure

deals with the recording of the evidence in trial before the Court of Session. Section 276 reads as under :

"Record in trial before Court of Session -

(1) In all trials before a Court of Session, the evidence of each witnesses shall as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open Court or, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, taken down, or cause to be taken down, any part of such evidence in the form of question and answer.

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record."

19. What could be the language of record of evidence is dealt with in Section 277 of the Code of Criminal Procedure, 1973. The provisions of Section 277 of the Code of Criminal Procedure, 1973 read as under :-

"277. Language of record of evidence -

In every case where evidence is taken down u/s 275 or Section 276 -

(a) If the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, in practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under Cl. (b) evidence is taken down in language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record;

Provided that when under Cl. (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation."

Section 278 of the Code of Criminal Procedure deals with the procedure in regard to such evidence when completed. It reads as under :

"278. Procedure in regard to such evidence when completed -

(1) As the evidence of each witness taken u/s 275 or Section 276 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall if necessary, be corrected.

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or presiding Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by witness and shall add such remarks as he thinks necessary.

(3) If the record of the evidence is in a language different from that in which it has been given and the witness does not understand that language the record shall be interpreted to him in the language in which it was given or in a language which he understands."

19-A. Except the High Court and Criminal Courts in the State, the Government of Maharashtra vide its Notification No. OFL-1066(ii)-M.G.A.D., Sachivalaya, Bombay-32, dt. 30th April, 1966, in exercise of the powers conferred by Section 558 of the Code of Criminal Procedure, 1898 (V of 1898) in its application to the State of Maharashtra and in supersession of all previous notifications issued in this behalf w.e.f. 1st day of May 1966, determined Marathi to be the language of all Criminal Courts in the State.

20. Where a witness deposed in Marathi which is the language of the Courts in mofussil and that evidence is read over to the witness and was admitted by him to be correct and the memorandum of evidence was made the Judge in English, in such a case, when a question arises as to what exactly the witness had stated in his evidence, it is the Marathi deposition of the witness that has to be taken into account and not the memorandum in English prepared by the Judge. Again in a case of State of Maharashtra v. Vilas Dashrath 1976 UCR (Bom) 195, it is observed that :

"When a question arises as to what exactly the witness had stated in his evidence, it is the Marathi deposition of the witness which had to be taken into account".

21. On perusal of the evidence of Smt. Bakubai (P.W. 2) recorded in vernacular i.e. in Marathi language, there is no whisper that the accused Bhaurao that blows by stick on her person. According to her deposition in vernacular, she had seen all the accused with sticks in their hands. It is thus, clear that she had not named any of the accused much less the accused Bhaurao, dealt blows on her person causing injury and fracture.

22. Though, Shri H. Ahmad, the learned A.P.P. strenuously argued that as there is a direct evidence of Bakubai, it need not to explain why the respondents/ accused assaulted initially Smt. Bakubai, Admittedly, when the earlier incident of assault by accused Homdeo to Maroti Yelore (P.W. 4) took place in the field at about 3.00 P.M., Smt. Bakubai (P.W. 2) was not present in the field. On information given by Maroti Yelore, Bakubai (P.W. 2) deceased Ganpat and her two sons had gone to the field in search of Homdeo but he was not found. Maroti (P.W. 4) has specifically deposed in para 4 of his deposition that;

"Homdeo had assaulted by slaps on my cheeks. Homdeo had pulled me when I

concealed behind the back of Laxman. Because of that I sustained injury on my leg and swelling on my mouth."

In view of the assault on Maroti by Homdeo, it is but natural that the parents and brothers of Maroti had developed a grudge against Homdeo. They being aggrieved, they had gone to the field in search of Homdeo. It is not a case of the prosecution that the complainant party came to the village, sighting the respondents/accused, any member of the complainant party including Smt. Bakubai or deceased Ganpat accosted accused Homdeo. There was no exchange of hot words or altercation. Maroti (P.W. 4) deposed that the accused Bhaurao had assaulted his mother by stick. However, in cross-examination in para 7 of his deposition, Maroti (P.W. 4) admitted that he did not see as to who had given stick blow to his mother Smt. Bakubai. In view of this, it does not stand to reason that the respondents/accused or any one of them, assaulted elderly lady of 55 years of age, viz. Bakubai.

23. Maroti s/o Ganpat (P.W. 4) has deposed that he was assaulted by accused No. 4 Dilip by stick. However, he has admitted in para No. 4 of his deposition that the injuries which were on his person were sustained in the field at about 3.00 P.M.

P.W. 1 Vitthal s/o Ganpat deposed that he has seen accused Dilip delivering two blows by a stick to Maroti. Similarly, P.W. 3 Baliram also deposed that the accused Dilip and Tukaram assaulted him and Maroti. However, the doctor who examined them found no injuries other than described. Thus, the witnesses by exaggerating the role, even if not played by the respondent/accused, tried to involve them.

24. It is specifically submitted by the defence that the accused Bhaurao and Homdeo were assaulted by the deceased Ganpat and his sons Baliram, Maroti and Vithhal and they sustained injuries. Dr. Taksande (P.W. 9) deposed that the injuries found on the person of the accused Bhaurao and Homdeo, were simple, and were caused by stick blows. Dr. Taksande further admitted in the cross-examination that the injuries could not be self inflicted injuries. The prosecution witnesses viz. P.W. 1 Vithhal, P.W. 2, Smt. Bakubai, P.W. 3, Baliram and P.W. 4 Maroti pleaded ignorance regarding the presence of injuries on the person of the accused persons. The prosecution witnesses specifically denied that they assaulted the accused Bhaurao and Homdeo. The prosecution witnesses also denied that they were armed with sticks. According to Smt. Bakubai (P.W. 2), her husband the deceased Ganpat had stick, because he being a cripple by one leg, he used to carry a stick with him.

Considering the facts and circumstances of the case it is aptly clear that the respondents/accused had no grudge against the deceased Ganpat, his wife Bakubai and sons. The accused Homdeo had settled the score in the field itself at 3.00 P.M. assaulting Maroti as his cattle's being found in his field. Thus, giving conscious thought to the facts and circumstances of the case, the learned trial

Judge has rightly observed that the prosecution has suppressed the genesis and origin of the occurrence and has, thus, not presented the true version.

25. The defence of the accused is that there being danger to their life or at least to receive grievous hurt, in self defence they wielded the sticks and, therefore, they have committed no offence. Admittedly, the accused persons have received injuries. Dr. Taksande, deposed that though the injuries sustained by the accused were simple, they were caused by stick blows. P.w. 2 Bakubai admitted that the deceased Ganpat had a stick with him. The defence of the accused is that they wielded sticks in self defence and hence, they have committed no offence. A reliance has been placed on a case of *Puran Singh and Others Vs. The State of Punjab*, in which it is observed that :

"The right of private defence of person or property is to be exercised under the following limitations :

(i) that if there is sufficient time for recourse to the public authorities the right is not available;

(ii) that more harm than necessary should not be caused;

(iii) that there must be a reasonable apprehension of death or of grievous hurt to the person or damage to the property concerned.

It is not the law that a person when called upon to face an assault must run away to the police station and not protect himself or when his property has been the subject matter of trespass and mischief he should allow the aggressor to take possession of the property while he should run to the public authorities. Where there is an element of invasion or aggression on the property by a person who has no right to possession then there is obviously no room to have recourse to the public authorities and the accused has the undoubted right to resist the attack and use even force if necessary. The right of private defence of property or person, where there is real apprehension that the aggressor might cause death or grievous hurt to the victim, could extend to he causing of death also, and it is not necessary that death or grievous hurt should actually be caused before the right could be exercised. A mere reasonable apprehension is enough to put the right of private defence into operation. *Jai Dev Vs. The State of Punjab*, and *Amjad Khan Vs. The State*, , Rel. on.

The question whether a person having a right of private defence has used more force than is necessary would depend on the facts and circumstances of a particular case.

The prosecution party was the aggressor in the sense that they went armed with gun an deadly weapons on the disputed land in possession of the accused who had grown wheat crop thereon, with the devout object of destroying the wheat crop and taking back possession of the land forcibly from the accused party who were similarly armed, with the result that a mutual fight ensued in which two of the accused received injuries and two persons of the prosecution party died and

others were injured. The prosecution however, did not explain how the accused persons received the injuries.

Held on the facts and circumstances of the case the accused were fully justified in causing the death of two persons from the complainant's party and had not in any event exceeded the right of private defence of person and property. They were therefore, protected by the right of private defence. If the prosecution did not come out with the true version of the nature and origin of the occurrence, they cannot blame the Court if the entire version presented by them is rejected. In any event, the prosecution case had not been proved beyond reasonable doubt."

26. Shri H. Ahmad, the learned A.P.P. for the State vehemently argued that the complainant party received more injuries and serious injuries in comparison to the accused. This circumstance, according to the learned A.P.P. is sufficient to hold that the accused were aggressor. The learned A.P.P. for the State further submitted that it is not a universal rule that merely because some injuries are found on the person of the accused, presumption of the exercise of the right of private defence at once springs up. In the instant case, there is a great disproportion between the number of injuries inflicted on the victims and sustained by some of the accused and hence those who had inflicted the graver and the larger number of injuries were the aggressors. To substantiate his submission the learned A.P.P. for the State has placed reliance on a case of Ajayab Singh and Others Vs. State of Rajasthan, .

The facts of the case relied upon being altogether different, the case cited is of no assistance to the State. In the case cited supra the victim Bacchansingh had 10 incised wounds and deceased Mahendrasingh had 8 incised wounds and 2 abrasions. Another victim Surjeetsingh (P.W. 1) had two incised wounds and one lacerated wound. The accused were armed with Gandasies, Barchis and lathis. The accused Mangal alias Mangi, Bagusingh and Bikarsingh had also injuries on their person but the injuries were simple in nature and bruise with abrasions. One accused had one incised wound and another accused had one lacerated wound. Considering the injuries on the person of the deceased and other victims as also of the accused. Their Lordships rightly observed that;

"there being a great disproportion between the number of the injuries inflicted on the victims and sustained by some of the accused, the disproportion indicates that those who had inflicted the graver and the larger number of injuries were the aggressors".

Therefore, in the case cited supra Their Lordships rightly rejected the right of private defence. While dealing with this aspect, Their Lordships observed as under :

"There is, no universal rule that merely because some injuries are found on the person of the accused, presumption of the exercise of the right of private defence at once springs up. There is no invariable proposition of law of universal

application that as soon as it is found that there were some injuries on the person of the accused, the inference should be that the complainant party was the aggressor and the plea of private defence established. The presence of injuries on the person of the accused is only a circumstance to be taken into consideration. If the facts and circumstances show that the accused party was the aggressor, the mere presence of injuries on some of the accused does not show that they acted in self defence. In order to find out whether the right of private defence is available to the accused, the entire incidence must be examined with care and viewed in its proper setting. One has to consider all the surrounding circumstances in which the incident had taken place.

A plea of right of private defence cannot be based on surmises and speculations. There must be material on record to establish the circumstances which necessitated the exercise of such right. The right of private defence should not be assumed simply because some trivial injuries are found on the person of the accused".

27. Shri Lambat, the learned counsel for the respondents/accused submitted that the prosecution deliberately has not examined any independent witness though from the record it reveals that the alleged incident has occurred near the house of one Dhyaneswar and the place is surrounded by houses. The prosecution witnesses are relations and thereby interested. Though the accused Bhaurao and Homdeo sustained injuries in the same incident at the hands of the complainant party, suppressed the part played by them. Shri Lambat, the learned counsel further submitted that it being the State appeal against acquittal of the respondents/accused, no interference is called for unless manifest illegality and perversity is shown from the findings of the learned trial Court. It needs mention. The Hon'ble Apex Court has observed that the Appellate Court should be slow in disturbing the findings of acquittal unless findings of learned trial Court found manifestly illegal and perverse. A reliance has been placed on a case of Tota Singh and Another Vs. State of Punjab, wherein it has been observed that :

"The mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its

consideration of the evidence is erroneous."

28. Shri Lambat, the learned counsel for the respondent/accused further submitted that though immediately after the occurrence, the accused disclosed about the altercation taken place in between accused Bhaurao and accused Homdeo on one side and the deceased Ganpat, P.W. 4 Maroti and others on the other side which resulted in scuffle, in which the accused Bhaurao and accused Homdeo sustained injuries by sticks used by P.W. 4 Maroti, deceased Ganpat and others, no investigation was made at all. It is thus, rightly submitted by the learned counsel for the respondents/accused that the investigation is one sided.

29. Shri H. Ahmad, the learned A.P.P. for the State further submitted that as injuries were simple and the prosecution witnesses having attended injured Ganpat, they rightly deposed that they have neither assaulted nor seen any injuries on the person of the accused Bhaurao and Homdeo. Under the situation it was not the responsibility of the prosecution to verify the defence of the accused. To say so that, there was no responsibility on the prosecution to verify the defence of the accused is to give a technical reply and to shirk the responsibility of fair investigation. The information disclosed by the accused Bhaurao and Homdeo was not at all complicated. They have specifically disclosed that there was an altercation which ensued in a scuffle, whereby; they sustained injuries and the defence being of private defence, it was incumbent on the Investigation Officer to investigate into the matter as disclosed by the accused. The disclosure of altercation, scuffle and assault, is writ large from the writing of the Investigating Officer i.e. requisitions Exh. 40 and Exh. 44 respect of the accused Bhaurao and Homdeo and in the result referring them to the Medical Officer, Primary Health Centre, Selu. The Investigating Officer admitted in his deposition in para 25 that;

"Bhaurao had injuries on his head and fore-head at the time of his arrest. His clothes were having stains of blood. Homdeo had also injuries. I do not remember whether his clothes were soiled with blood."

Non-action on the part of the Investigating Officer reflects upon the nature and manner of the investigation. No attempt at all is made to investigate though the injured accused positively said that they were assaulted by the complainant party. The genesis and the origin of the occurrence would have been known, if there would have been investigation regarding the injuries sustained by the accused. The Investigating Officer deliberately made no efforts to know the genesis and origin of the occurrence. The investigation is far from fair and honesty. The Investigating Officer has to work up a theory on the clues available but if he finds that there is material which shakes that theory, he must not be adamant to present a preconceived theory before the Court. The Investigating Officer must keep his mind open to collect and verify the facts in a straight forward manner. The manner of investigation in this case leaves much to be desired.

30. Giving conscious thought to the facts and circumstances, this Court takes a serious view of the superfluous and casual attitude to an assignment that demands professional skill of highest order of personnel"s charged with a duty of highest order in the success of Administration of Justice that would inspire confidence in the fairness, honesty and skillful discharge of mission of dispensation of justice strictly conforming to Rule of Law and Constitutional Mandate of evenhandedness towards justice.

In view of our discussion, we do not find any manifest illegality or perversity in the findings of the learned trial Court.

31. In the result, the instant appeal is dismissed. The findings of the learned trial Court are confirmed.

32. Appeal dismissed.