IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 780 OF 2014

1. Shreekant Yallappa Doifode
2. Pravin Yallappa Doifode
3. Shankar Akaram Doifode ..Appellants

Versus

The State of Maharashtra ..Respondent

WITH
INTERIM APPLICATION NO. 4354 OF 2023
WITH
INTERIM APPLICATION NO. 4359 OF 2023
IN
CRIMINAL APPEAL NO. 780 OF 2014
.....

WITH
CRIMINAL APPEAL NO. 132 OF 2015

The State of Maharashtra ..Appellant

Versus

1. Jayashree Shrikant Doifode
2. Varsha Pravin Doifode
3. Madhuri Akaram Doifode ..Respondents

Dr. Yug Mohit Chaudhary a/w. Anush Shetty for the Appellants in Appeal/780/2014.
Mr. Himanshu J. Patil i/b. Alisha Mohite for the informant in Appeal/780/2014.
Mr. Vinit A. Kulkarni, APP for the State/Respondent in Appeal/780/2014 and for the Appellant/State in Appeal/132/2015.

CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.

DATE : 10 JUNE 2025

JUDGMENT: (Per Sarang V. Kotwal, J.)

1. Both these Appeals are decided by this common Judgment because they arise out of the same Judgment and order dated 26.08.2014 passed by the learned Sessions Judge, Kolhapur, in Sessions Case No.124 of 2011. By the impugned Judgment and order, the Appellants in Criminal Appeal No.780 of 2014 were convicted and the Respondent Nos.1 to 3 in Criminal Appeal No.132 of 2015 were acquitted. The convicted accused have preferred Criminal Appeal No.780 of 2014 against the Judgment and order of conviction and sentence and the State of Maharashtra has preferred Criminal Appeal No.132 of 2015 against the acquittal of the Respondent Nos.1 to 3. For the sake of convenience, the Appellants in Criminal Appeal No.780 of 2014 and the Respondents in Criminal Appeal No.132 of 2015 are referred to either by their names or by their status as particular accused in the said sessions case. The original accused were as follows:-

i) Accused No.1 Shreekant Yallappa Doifode

ii) Accused No.2 Pravin Yallappa Doifode

iii) Accused No. 3 Shankar Akaram Doifode

iv) Accused No.4 Jayashree Shrikant Doifode

v) Accused No.5 Varsha Pravin Doifode

vi) Accused No.6 Madhuri Akaram Doifode

There was one more accused who was a child in conflict with law. She was separately tried under the provisions of the Juvenile Justice Act 2000 and she was acquitted under that procedure.

2. By the impugned judgment and order, the accused Nos.1 to 6 were acquitted from the charges of commission of offences punishable under sections 143, 144, 147, 148, 302 r/w. 149 of the I.P.C. The Accused Nos.4 to 6 were acquitted from the charges of commission of the offence punishable U/s.302 r/w. 34 of the I.P.C.

3. The Accused Nos.1 to 3 were convicted for the offence punishable U/s.302 r/w. 34 of the I.P.C. and each one of them was sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/- and in default to suffer further S.I. for one month. The

convicted accused were given set off for the period they had spent in custody as under-trial prisoners.

4. Heard Dr. Yug Mohit Chaudhary, learned counsel for the Applicants in Criminal Appeal No.780 of 2014, Mr. Himanshu Patil, learned counsel for the Informant in Criminal Appeal No.780 of 2014, Mr. Vinit Kulkarni, learned APP for the State/Respondent in Criminal Appeal No.780 of 2014 and for the Appellant/State in Criminal Appeal No.132 of 2015. Dr. Yug Mohit Chaudhary also represented the Respondent Nos.1, 2 and 3 (the original accused Nos.4, 5 and 6) in Criminal Appeal No.132 of 2015.

5. The prosecution case is that, one Sandip Doifode had an agricultural land near village Ghunki, Taluka Hatkanangale, District Kolhapur. For a few years, his land was given for cultivation to the accused who were his relatives. After a few years, he came back to his village and started cultivating his own land. Therefore, the accused and their families were holding a grudge against Sandip. There was one more incident after the local election, wherein, there was some quarrel between Sandip on one

hand and the accused on the other. The incident in the present case took place on 05.07.2011 at around 6:30p.m. It is alleged that the accused Nos.4, 5 and 6 along with the child in conflict with law threw chilly powder in Sandip's eyes. The Accused Nos.1 to 3 assaulted him with weapons like sickle and choppers. There were two blows on his head and one on his chest. Sandip's friend took him to the hospital but he was declared dead. Accordingly, the F.I.R. was lodged at Vadgaon police station vide the C.R.No.79 of 2011 under sections 302, 143, 147, 148 and 149 of the I.P.C. at 9:20p.m. on 05.07.2011 by one Anil Doifode. There was a cross complaint lodged by the accused' group against Sandip's group vide C.R.No.80 of 2011 at the same police station; mainly under section 307 of the I.P.C. for causing grievous injuries to accused No.2 Pravin. The investigation was conducted separately in both these registered offences. Two separate trials were conducted before the same court. The cross case lodged by the accused' group resulted in acquittal.

6. As far as the present case is concerned, the charge-sheet was filed against all the accused and the case was committed to

the Court of Session at Kolhapur. During trial, the prosecution examined 24 witnesses; out of which three were the eye witnesses, the other witnesses were panchas for recovery of weapons, seizure of clothes, carrier of the articles to the F.S.L., and the medical officers conducting postmortem examination and collecting accused' blood. The prosecution concluded the evidence by examining the investigating officers. The C.A. reports were produced on record.

7. In the examination U/s.313 of the Cr.p.c. the accused took the defence that the complainant party had barged into their house and had assaulted them. The complainant had good relations with the police, therefore, the police had shown a wrong scene of the incident. The police did not record the accused' version correctly and a false case was lodged against the accused at the instance of the first informant and his friends. In the cross-examination of the eye witnesses, the defence was taken on similar lines and it was also the case of the accused that, they were assaulted by the informant's group and had suffered grievous injuries. Thus, by implication, the accused had taken a plea of

exercising right of private defence through the cross-examination of the eye witnesses.

8. The learned Trial Judge observed that, there was no trace of chilly powder near the eyes or on the other body parts of the deceased, and the prosecution case about the throwing of chilly powder by the accused Nos.4 to 6 was not supported by the medical evidence. The evidence of the eye witnesses, as far as, the accused Nos.4 to 6 are concerned, was held to be not trustworthy and, therefore, the accused Nos.4 to 6 were acquitted. As far as the convicted accused are concerned, the learned Trial Judge observed that the defence taken by the accused was not a probable defence. The defence had not proved the case of attack on the person or on the property of the accused. Though the explanation offered by the prosecution witnesses was not entirely satisfactory; but their version could not be said to be totally improbable. Having observed thus, the learned trial Judge concluded that, failure of the prosecution to account for the injuries of the accused, did not militate against the credibility of the witnesses, on the core of the occurrence. On this basis the conclusion of the guilt of the accused

Nos.1 to 3 was recorded. It is significant that the investigating officer himself had produced the injury certificates of the accused. The accused No.2 Pravin and the child in conflict with law in particular had suffered grievous injuries. The Accused No.2 had suffered a temporal bone and ribs fracture and the child in conflict with law had lost tip of one finger. Those grievous injuries were not explained by any of the eye witnesses. However, as mentioned earlier, the learned Trial Judge made his observations and reached to the conclusion of guilt of the accused Nos.1 to 3.

9. As can be seen from this backdrop, the evidence of the eye witnesses is the most crucial evidence in this case and the conviction can be sustained only if their evidence inspires confidence.

10. PW-1 Anil Doifode was the first informant. He has deposed that the deceased was his cousin. He was about 25 years of age. Even the accused were the relatives of PW-1. They were all cousins. They were agriculturists. The deceased Sandip's parents had passed away eight to ten years prior to the incident. After the

death of his parents, Sandip was residing with his sister at Mouje Shirti, Taluka Walava, District Sangli. Sandip's parents had an agricultural land at village Ghunki. After Sandip had started residing with his sister, the accused were cultivating that particular land. Four years prior to the incident, Sandip returned to the village Ghunki and started cultivating his own land. Since he took back his land, the accused were not happy and were holding a grudge against him. Their relations had become strained. On 28.03.2011 there was a by-election of Zilla Parishad at Ghunki. There was victory procession for the elected candidate. At that time, there was some quarrel between Sandip on one hand and the accused Nos.1 to 3 on the other. The matter was reported to the police. PW-1 has further deposed that, on 05.07.2011, in the evening, he had received a phone call from Sandip expressing his apprehension that the accused Nos.1 and 2 were likely to cause harm to him. PW-1 returned to Ghunki. He reached there at around 6:15p.m. He saw Sandip outside PW-1's house. Sandip told PW-1 that the accused Nos.1 and 2 would commit his murder. PW-2 Avinash Harale came there. PW-3 Santosh Harale had also

reached at the same spot on motorcycle. He was accompanied by one Ajay Shinde. PW-1's brother also came towards them. All of them advised Sandip that they could hold a meeting with the Sarpanch and then settle the matter. Sandip started walking towards his house. At that time, all the accused came running towards him. They came through a passage of their house towards that particular lane. The Accused No.2 Pravin was holding a sickle, the Accused No.1 Shreekant and the Accused No.3 Shankar were having *koyta* in their hands. The Accused Nos.4 Jayshree and Accused No.5 Varsha sprinkled chilly powder on Sandip's face. Sandip started cleaning his eyes. At that time, the accused No.2 Pravin caught and pulled him. He gave a blow of sickle on his chest. Sandip pushed the accused No.2 Pravin, who fell down on a heap of stones. The Accused No.6 Madhuri and the child in conflict with law held Sandip from either side and they were giving kick blows. At that time, the Accused No.1 Shreekant and the Accused No.3 Shankar gave blows of *Koyta* on Sandip's head. Those blows were given on both the sides of Sandip's head. He fell down by the side of a gutter in front of the house of one Dhondiram. PW-1 and

others immediately rushed towards Sandip. The accused came towards PW-1 and others by raising their weapons. PW-1's group then pelted stones towards the accused. The other persons from the locality gathered there and they also started pelting stones towards the accused. The accused started running towards their house. While running, they fell in a lane. In the meantime, PW-1 Anil and others took Sandip to the hospital in a car. He was taken to C.P.R. Hospital at Kolhapur, but he was declared dead. PW-1 and others went to Vadgaon police station at around 9:15p.m. and lodged his report. The F.I.R. is produced on record at Exhibit-79. Raju and Avinash had accompanied PW-1. The police recorded their statements, as well. PW-1 identified the weapons produced in the Court.

In the cross-examination of this witness, the defence counsel brought material omissions on record from this witness's police statement. PW-1 admitted that those material facts were not stated by him to the police when his statement was recorded by the police. He admitted that, he had not told the police that he had returned to Ghunki at about 6:15p.m. He had not told the police

that, Sandip and Raju had come to him and that Sandip had told him that Shreekant and Pravin would not spare him. He had not referred to the plan to have a meeting with the Sarpanch. He had not told the police that the accused Pravin had given a blow with full force over the left ribs of Sandip. He had not told the police that the accused No.2 Pravin had fallen on a heap of stones or that there was a wall of stones. He had not told the police that the accused Madhuri and the child in conflict with law had assaulted the deceased and had kicked him. He had not told the police that the accused obstructed them and had threatened them when PW-1 and others tried to come near Sandip after the assault. He had not told the police that they had pelted stones to save themselves and that others had also pelted stones towards the accused. He admitted that the accused had registered their own C.R.No.80 of 2011 under section 307 of the I.P.C. which had resulted in Sessions Case No.141 of 2012 in the same Court.

11. The defence put certain suggestions to make out a case of right of private defence available to the accused. PW-1 denied those suggestions. He denied that the deceased Sandip, Raju

Shinde and Ajay Shinde were having swords in their hands and Avinash, Santosh and Sunil were having sticks in their hands and that they went towards the house of the accused with weapons. He further denied that, they entered the house of the accused and attacked them. He also denied that the Accused No.2 Pravin suffered fracture and injuries on his person and that the accused Jayashree and the child in conflict with law had also suffered injuries.

12. PW-2 Avinash Harale was another eye witness. He had described the incident exactly in the same manner as was described by PW-1. He was also shown as an accused in the counter case filed by the accused. He admitted that when his statement was recorded by the J.M.F.C. Vadgaon on 01.08.2011, he might have not mentioned the name of the Accused No.3 Shankar in that particular statement. He explained that he had not told the police that Sandip had pushed the Accused No.2 Pravin forcefully and that Pravin had fallen down on the stones. He also accepted that he had not told the police or the J.M.F.C. that they had pelted stones towards the accused. He denied the defence's suggestion

that he and the others had attacked the accused in the house of the accused No.2 Pravin.

13. PW-3 Santosh Harale was the third eye witness examined by the prosecution. His examination in chief and cross-examination were exactly on the similar lines as the depositions of PW-1 and PW-2. He also denied the suggestion that he and the others had caused injuries to the accused by entering their house.

14. PW-4 Avinash Jadhav was a spot pancha. He proved the spot panchanama on record at Exhibit-92/C. He admitted that, the presence of heap of stones near Dhondiram's house was not mentioned in the panchanama. The police had seized the blood stained earth, simple earth and chilly powder from the spot of incident.

15. PW-5 Sunil Patil was a pancha in whose presence the blood stained chopper was recovered at the instance of the accused No.1 Shreekant, on 08.07.2011. The chopper was recovered from a shrub near a service road adjoining to Pune Bengaluru highway.

16. PW-6 Praveen Desai was a pancha in whose presence the sickle was recovered at the instance of the Accused No.2 Pravin, on 27.07.2011 from a spot near a service road adjoining to Pune Bengaluru highway. It was taken out from a heap of sugarcane crop.

In his cross-examination, he stated that he had not seen any injuries on the accused No.2. This is significant because the record shows that the Accused No.2 had suffered serious injuries and his hand was in plaster.

17. PW-7 Mahadeo Hucchhe was a pancha in whose presence the blood stained chopper was recovered at the instance of the Accused No.3 Shankar on 11.07.2011. It was also recovered from a shrub near a service road adjoining to Pune Bengaluru highway.

18. PW-8 Prakash Koli was a pancha in whose presence the clothes of the deceased, the accused No.1 Shreekant and the accused No.3 Shankar were seized by the police.

19. PW-9 Babaso Sidh was another pancha who was a

witness to the seizure of clothes of the accused No.2, on 25.07.2011. Those clothes were produced by the police as they were brought from the hospital. They were kept on a table and then they were seized.

20. PW-10 Bharat Shirke was a pancha for the inquest panchanama. PW-12 Santosh Mane was police naik who had seized the clothes of the deceased. PW-13 ASI Maruti Patil had conducted the initial investigation by conducting the inquest panchamama and had issued letter for postmortem examination.

21. PW-11 Dr. Nilesh Shirgaonkar had conducted the postmortem examination on 05.07.2011 between 10:50p.m. to 11:50p.m. He had seen the following injuries:

i) Bite marks on right cheek below ear.
ii) Incised wound over occipital bone on right side about 13cm. in length.
iii) Incised wound over occipital bone below the injury No.2 on the left side, about 12cm in length.
iv) Incised deep wound over left lateral side of chest, admeasuring 14cm x 5cm x 4cm. Muscles and ribs were exposed.
v) Abrasion over right dorsum of hand.

On the internal examination, it was found that there was skull fracture of the occipital bone and the brain was congested. There was fracture of 5th, 6th and 7th ribs exposing the left lung and pleura. According to him, the cause of death was head injury and injuries to vital organs.

22. PW-16 Dr. Preeti Bhosekar had first examined the deceased at about 8:00p.m. But by that time Sandip had already died. She had described the similar injuries.

23. PW-14 PSI Balasaheb Ambi and PW-15 PHC Raghunath Yadav had carried the muddemal articles to F.S.L.

24. PW-17 Dr. Nootan Pore and PW-18 Dr. Rangrao Patil had collected the blood samples of the accused.

25. PW-19 Anjum Shaikh and PW-20 Satish More were the photographers who had taken the photographs of the dead body and the spot respectively.

26. PW-21 Police Naik Salim Shaikh had conducted some part of the investigation. He had conducted inquest panchanama

and had seized the clothes of the deceased.

27. PW-22 Shankarrao Patil was the Circle Officer. He had prepared the map of the spot.

28. PW-24 ASI Sanju Patil had recorded the statements of some of the witnesses.

29. PW-23 API Anil Vibhute was the main investigating officer. He has stated that he had recorded the statements of Avinash Harale and Raju Shinde. He admitted that chilly powder was seen at different parts in the lane. He arrested the accused No.1 Shreekant on 06.07.2011 and two more accused were arrested on 07.07.2011. He deposed about the recovery of weapons. He arrested the Accused No.2 Pravin on 25.07.2011 after he was discharged from the hospital of Dr. Joshi. On 30.07.2011 he caused the statement of witness Avinash Harale to be recorded by the J.M.F.C. Vadgaon. He had sent the articles for the chemical analysis. He filed the charge-sheet on 29.09.2011. He produced the C.A. reports on record at Exhibits 137 to 141/C. He had sent the accused to Vadgaon Primary Health Center because there was

no primary health center at village Ghunki.

In the cross-examination, he admitted that the police record shows that PW-1 Anil, PW-2 Avinash and PW-3 Santosh Harale were arrested on 06.07.2011. That was in connection with the cross complaint lodged by the accused in this case. Till this cross-examination was conducted by the defence counsel, this witness had remained silent about the injuries suffered by the Accused. But, during the cross-examination he admitted that, he was knowing that the accused had also received injuries and that they were admitted in C.P.R. Hospital. However, he gave an explanation that the said case was investigated by another police officer. He admitted that, he knew that the house of the accused were near the spot of incident, but he did not go to their house. He also admitted that the Accused No.2 Pravin had plaster on his right hand at the time of his arrest on 25.07.2011. This is significant because the pancha for recovery at the instance of the Accused No.2 had stated that he had not seen any injury on the accused No.2. He admitted that, he was in-charge of the police station, but he had not enquired about the injuries suffered by the accused. He

admitted that, he had not produced the injury certificates of the accused. But on specific cross-examination, he produced those certificates before the Court. The learned Trial Judge took those injury certificates on record and marked them as Exhibits-154 to 160. These injury certificates are very important in the context of this case. Those injury certificates were duly proved through the evidence of the I.O. himself. We will make a reference to those certificates a little later.

30. Apart from this oral evidence, the prosecution has produced the C.A. reports on record at Exhibits-137 to 141 which show that the blood group on the clothes of the deceased was mentioned as inconclusive. The blood found on the weapons was of human origin but the blood group was inconclusive. There was blood on the clothes of the accused, but even their blood group was inconclusive.

31. The injury certificates of the accused, as mentioned earlier, are the most crucial piece of evidence in this case. The Accused No.1 Shreekant had local swelling of the size 2cm x 2cm

on the occipital region. It was a simple injury. The injury certificate of the child in conflict with law showed that she had suffered CLW on tip of left thumb. There was loss of finger and it was described as a grievous injury caused by a sharp weapon. There was swelling on the right finger and abrasion on the head. The Accused Jayashree had suffered C.L.W. of the size 7 x 2 x 0.2cm on the right parietal bone. It was described as simple injury. The Accused No.2 Pravin had suffered grievous injuries. His medical certificate is produced on record at Exhibit 154. He had suffered fracture over temporal region and C.T. scan of brain showed *subgaleal hematoma*. The injury was described as a grievous injury. There was abrasion on the left elbow joint and there was fracture of the right hand elbow. It was also a grievous injury. He had suffered fracture of right temporal bone as was mentioned in Exhibit-156. Thus, he had suffered grievous injuries.

This, in short, was the evidence led by the prosecution.

32. Dr. Yug Mohit Chaudhary, learned counsel for the Appellants made the following submissions:

The prosecution case depends on the evidence of the eye witnesses PW-1 Anil, PW-2 Avinash and PW-3 Santosh. Their evidence is not trustworthy at all. The record itself shows that they have suppressed the material facts. The serious injuries suffered by the accused are neither explained nor even referred to by these witnesses. The learned Trial Judge has given benefit of doubt to the accused Nos.4, 5 and 6, based on the same evidence of PW-1, PW-2 and PW-3. That means, those three eye witnesses were disbelieved by the learned Trial Judge so far as the role attributed to the Accused Nos.4 to 6 are concerned. Therefore, their evidence against the Accused Nos.1 to 3 is also not reliable.

The seizure of blood stained clothes of the accused itself is disbelieved by the learned Trial Judge in paragraph-87 of the Judgment. The reasoning is proper and, therefore, this is not an incriminating piece of circumstance. The recovery of weapons from the Accused Nos.1 to 3 is doubtful. The choppers were recovered at the instance of the Accused Nos.1 and 3 from the bushes near a service road which was accessible to all. There was no element of concealment of these weapons, so that, no one could

have seen those weapons till they were recovered on 08.07.2011 and 11.07.2011 respectively. The recovery at the instance of the Accused No.2 on 27.07.2011 is not reliable considering the gap between the date of the incident and the date of recovery. Blood stains on these weapons do not conclusively show that the blood was of the deceased's blood group. There was no connection between the blood group of the deceased and the blood found on those weapons.

33. The investigation was unfair and malafide. It proceeded only in one direction to somehow implicate the accused falsely. The I.O. had admitted that he did not even enter the house of the accused for investigation when it was the specific case of the accused that the complainant's group was the aggressor and that they had entered the house of the accused and had caused attack on the accused. The investigating agency and the prosecution did not care to produce the injury certificates of the accused before the Court. It was only during the cross-examination that the I.O. was left with no option but to produce those injury certificates. This shows that there was an attempt to deliberately suppress the

material facts.

34. The absence of chilly powder in the eyes or near the eyes or on any part of the body of the deceased shows that the prosecution case to that extent is definitely false. He submitted that, the approach of the learned Trial Judge was erroneous because even after considering the fact that the prosecution witness had suppressed the injuries suffered by the accused, the learned Trial Judge has not given benefit of doubt to the accused. From the evidence led by the above witnesses, it was quite clear that they had suppressed the true occurrence and had projected the incident only from one angle to implicate the accused falsely. Learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of ***Lakshmi Singh and others etc. V. State of Bihar***[1]***.***

35. Dr. Chaudhary further submitted that, from the record itself the defence has sufficiently brought on record the defence version which is probabilized by the evidence led by the prosecution itself. He submitted that, specific defence can be

1 AIR 1976 SUPREME COURT 2263

gathered from the evidence led by the prosecution itself. A plea of self defence can be taken by introducing such plea in the cross-examination of the prosecution witness or in the statement of the accused recorded U/s.313 of the Cr.p.c. In support of this contention, Dr. Chaudhary relied on the Judgment of the Hon'ble Supreme Court in the case of ***Kashi Ram and others V. State of M.P.***[2].

36. Learned APP, as well as, Mr. Himanshu Patil, the learned counsel for the first informant opposed these submissions. They submitted that the facts of this case which support the prosecution are brought on record by the defence through cross-examination itself. The incident was described by the prosecution witnesses in the examination in chief. The description was further elaborated by these witnesses during cross-examination. There is no reason to disbelieve the version of the prosecution witnesses. There is no dispute about the fact that the deceased had suffered two blows on his head and one blow on the chest which has resulted in his death. The accused has not explained as to how those injuries

2 AIR 2001 SUPREME COURT 2902

were caused to him. Apart from the direct evidence of the eye witnesses, there are corroborative pieces of evidence in the nature of recovery of weapons at the instance of the accused, as well as, the recovery of blood stained clothes from the person of the accused. There was a motive for the accused to commit murder of the deceased. The cross case lodged by the accused has resulted in acquittal. The very fact that the chilly powder was found at the spot shows that there was preparation on the part of the accused to commit murderous assault on the deceased; which is supported by finding of the chilly powder at the spot. Therefore, it could not be even suggested that the accused had acted in self defence while causing fatal injuries to the deceased Sandip. The postmortem reports show that the deceased had suffered *homicidal death*. No one else was responsible but the accused for this offence. The injuries to the accused, in fact, suggests that the accused were present at the spot when the incident had occurred. The prosecution case, therefore, cannot be disregarded in totality. They submitted that the State has challenged the acquittal of the accused Nos.4 to 6 and, therefore, the conclusion of their

innocence reached by the learned Trial Judge is under consideration before this Court. Hence, it cannot be said that, since the Accused Nos.4 to 6 are acquitted, the benefit could also be extended to the Accused Nos.1 to 3.

37. We have considered these submissions. With the assistance of the learned counsel, we have perused the entire record and the impugned Judgment. As far as the accused Nos.4 to 6 are concerned, they are acquitted by the learned Trial Judge mainly because the prosecution evidence through the eye witnesses is not supported by the medical evidence. It is the specific case of the prosecution that the Accused Nos.4 to 6, as well as, the child in conflict with law had thrown chilly powder on the face of the deceased Sandip. He tried to clean his eyes. During that time, the accused Nos.1 to 3 inflicted fatal blows on him. However, the postmortem notes and the evidence of PW-11 Dr. Nilesh who had conducted the postmortem examination show that, there were no trace of chilly powder either in the eyes, near the eyes or on any body part of the deceased. The learned Trial Judge has, therefore, rightly disbelieved the prosecution version, as far as, the

roles attributed to the accused Nos.4 to 6 are concerned. Therefore, we have no reason to interfere with that finding. It is a possible view. Hence, we uphold the acquittal of the Accused Nos.4 to 6.

38. Having observed thus, regarding the nature of evidence against the Accused Nos.4 to 6, resulting in their acquittal, the prosecution evidence against the other accused will have to be considered very carefully as they have clearly implicated at least three accused i.e. the Accused Nos.4, 5 and 6 falsely. Apart from this, the main consideration which weighed with us is about the non explanation of grievous injuries caused, in particular, to the accused No.2 and the child in conflict with law. The female minor accused who was also supposed to have taken part in the incident had lost the tip of one finger. This injury could have been caused only by a sharp weapon. The accused No.2 had suffered fracture to the temporal bone and fracture of right hand. Thus, these three grievous injuries i.e. two suffered by the Accused No.2 Pravin and one suffered by the child in conflict with law have remained totally unexplained by the prosecution witnesses. Significantly, the

prosecution witnesses Nos.1 to 3 claimed to have seen the incident right from the beginning till the deceased Sandip was taken to the hospital. At no point, these witnesses have described any part of the incident which could have led to causing these grievous injuries to the Accused No.2 and to the child in conflict with law. This is a very serious lacuna in the case of the prosecution. In this context, Dr. Chaudhary has rightly relied on the Judgment of the Hon'ble Supreme Court in the case of ***Lakshmi Singh.*** The relevant portion from this judgment is reflected in paragraphs-2 and 11. It was observed that, in that case, the accused Dasrath Singh had suffered three injuries, out of which, two were serious injuries which were inflicted by a sharp cutting weapon. There was fracture of right forearm and puncture wound on the left thigh. The Hon'ble Supreme Court observed that, in those circumstances, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. The witness had deliberately suppressed the injuries on the person of the accused which was the most important circumstance to discredit the entire prosecution

case. It was further observed that, non explanation of such injuries by the prosecution was a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which led to the irresistible conclusion that the prosecution had not come out with a true version of the occurrence. It was observed that, though, it was an unfortunate case in which two persons had lost their lives, since the prosecution had not come out with the true version, the result was that the murderer of the two persons had to go unpunished. But if the prosecution did not choose to put forward the true version, it is to be itself squarely blamed for the failure of the case.

Paragraph-2 of the case of ***Lakshmi Singh*** reads thus:

> "2. This is an unfortunate case in which two persons appear to have lost their lives over a very petty and trivial dispute. On a perusal of the evidence and the circumstances of the case, we feel that the prosecution has not come out with the true version and the result is that the murder of the two persons has to go unpunished, and this is yet another misfortune of the case, but if the prosecution does not choose to put forward the true version it is to be itself squarely blamed for the failure of the case."

39. In paragraph-11, the Hon'ble Supreme Court went on to

make important observations, as follows:

> "……. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:
>
> (1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:
>
> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
>
> (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.
>
> The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. ……."

These observations of the Hon'ble Supreme Court in the case of ***Lakshmi Singh*** are squarely applicable to the present case.

40. The prosecution witnesses made a feeble attempt to get over this lacuna of non explanation of injuries to the accused by

introducing a theory of fall of the accused on a heap of stones. It is significant to note that the spot panchanama does not show presence of any heap of stones at all. In any case, it is most unlikely that the injuries suffered by the two persons from the accused' group could have been caused due to the fall on a heap of stone. Importantly, the child in conflict with law had lost tip of her finger through a sharp weapon; that has nothing to do with the fall on a heap of stones. Another aspect of the matter is that the theory of fall of the accused on the stones is introduced by the prosecution witnesses for the first time during their deposition before the Court. They had not mentioned so in their police statements. This fact was admitted by them when those omissions were specifically put to those witnesses by the learned counsel for the defence during the cross-examination. All these factors lead to an inescapable conclusion that the prosecution witnesses and, in particular, the eye witnesses have deliberately suppressed the genesis of the incident. A true occurrence of the incident is not brought before the Court. Therefore, we do not find it safe to rely on the evidence of these eye witnesses to reach a conclusion of

guilt, as far as, even the Accused Nos.1 to 3 are concerned.

41. Another aspect of this case is about the probable defence of the accused that they could have acted in exercise of their right of private defence. As mentioned earlier, in this context, the suggestions were given to the prosecution witnesses, and, the accused had answered specifically in that behalf in response to the questions put by the learned Trial Judge during their examination u/s.313 of the Cr.P.C. In this context, Dr. Chaudhary relied on the Judgment of three Judges Bench of the Hon'ble Supreme Court in the case of ***Kashi Ram***. The relevant portion is in paragraph-24 of the said Judgment; which reads thus:

> "24. The High Court was also not right in criticising and discarding availability of plea of self defence to the accused persons on the ground that the plea was not specifically taken by the accused in their statements under Section 313 Cr. P.C. and because the accused Prabha did not enter in the witness box. Though Section 105 of the Evidence Act enacts a rule regarding burden of proof but it does not follow therefrom that the plea of private defence should be specifically taken and if not taken shall not be available to be considered though made out from the evidence available in the case. A plea of self defence can be taken by introducing such plea in the cross-examination of prosecution witnesses or in the statement of the accused persons recorded under Section 313 Cr. P.C. or by adducing defence evidence. And, even if the plea is not

> introduced in any one of these three modes still it can be raised during the course of submissions by relying on the probabilities and circumstances obtaining in the case as held by this Court in Vijayee Singh Vs. State of U.P. : AIR 1990 SC 1459. It is basic criminal jurisprudence that an accused cannot be compelled to be examined as a witness and no adverse inference can be drawn against the defence merely because an accused person has chosen to abstain from the witness box."

Based on these observations, we have seriously considered the defence taken by the accused.

42. Section 100 of the I.P.C. reads thus:

> **"100. When the right of private defence of the body extends to causing death.** - The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-
>
> First.- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;
>
> Secondly. - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;
>
> Thirdly. - An assault with the intention of committing rape;
>
> Fourthly. - An assault with the intention of gratifying unnatural lust;
>
> Fifthly. - An assault with the intention of kidnapping or abducting;

> Sixthly. - An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.
>
> Seventhly. - An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act."

This provision mentions that a person can exercise his right of private defence even to the extent of causing death if there is even an apprehension as mentioned in that section. In the present case, the facts indicated that it was not a mere case of apprehension, but in fact, grievous injuries in the nature of skull fracture, fracture to the hand and severing of the tip of a finger was actually a result of the incident. Therefore, there is sufficient force in the submission of Dr. Chaudhary that the defence taken by the accused was a probable defence which ought not to have been brushed aside by the learned Trial Judge.

43. As a result of this discussion, it is quite clear that the evidence of the eye witnesses is doubtful and the prosecution has not crossed the threshold of reasonable doubt to enable the court

to reach a conclusion of guilt of the accused.

44. Even other corroborating circumstances did not favour the prosecution. The learned Trial Judge himself has discredited the evidence of seizure of clothes of the accused Nos.1 and 3. He had rightly observed that, it was highly improbable that the accused would roam around wearing the same clothes for a few days till they were arrested. The clothes of the Accused No.2 were actually seized on 27.07.2011 after his discharge from the hospital. Those clothes were produced by a police officer and they were not produced in front of the pancha in presence of the accused No.2 from his person. The clothes of other two accused, as mentioned earlier, were seized belatedly. In any case, the C.A. report does not show that the blood found on those clothes was that of the deceased.

45. The next circumstance which is brought on record by the prosecution is the recovery of weapon. A chopper was recovered at the instance of the Accused No.2 on 27.07.2011 which was after more than 21 days of the occurrence. It was allegedly recovered after the accused No.2 was discharged from the hospital. The

pancha for this recovery i.e. PW-6 Praveen Desai had stated that he did not see any injuries on the person of the Accused No.2 at that time; which is contrary to the evidence of the I.O. because, at that time, the right hand of the accused No.2 was in plaster.

46. The recovery of weapon at the instance of the Accused Nos.1 and 3 was from a place which was accessible to all. The weapons were just thrown in the shrub near a service road adjoining to Pune Bengaluru highway. As mentioned earlier, the C.A. report did not conclusively show that the blood found on the weapon was that of the deceased. Thus, these are the weak pieces of evidence on which it is unsafe to rely to reach the satisfaction that the accused had committed this offence.

47. Dr. Chaudhary had rightly criticized the investigation carried out by the I.O. PW-23 Anil Vibhute admitted that he was in-charge of the said police station which had investigated both these offences. But very conveniently, PW-23 has shown ignorance about the investigation carried out in the cross case. He had not even bothered to enter the house of the accused, though, it was the specific case of the accused right from the time of lodging their

F.I.R. that the informant's group had entered their house and had committed attack on the accused. The I.O. had not bothered to produce the injury certificates of the accused till he was compelled to do so during his cross-examination. All this shows that the investigation was not fair. The record shows that PW-1 was taken before the J.M.F.C., Vadgaon, but he had refused to give his statement U/s.164 of the Cr.P.C. The photographs of the spot shows that chilly powder was spread on quite some length of the road which is quite contrary to the prosecution case that it was thrown on the face of the deceased at the spot of the incident. All these circumstances taken separately or even together raise serious doubt about the prosecution case and, therefore, we do not think it safe to convict the accused on the basis of this doubtful evidence. As a result, the Criminal Appeal No.780 of 2014 succeeds and the Criminal Appeal No.132 of 2015 fails. We are informed that the original Accused No.1 Shreekant Doifode has passed away.

48. Hence, the following order:

O R D E R

i) The Criminal Appeal No.780 of 2014 is allowed.

ii) The Judgment and Order dated 26.08.2014 passed by the Sessions Judge, Kolhapur, in Sessions Case No.124 of 2011, convicting the Accused No.1. Shreekant Yallappa Doifode, Accused No.2 Pravin Yallappa Doifode and the Accused No.3 Shankar Akaram Doifode, and sentencing them, is set aside.

iii) The Appellant No.2 Pravin Yallappa Doifode and the Appellant No.3 Shankar Akaram Doifode in Criminal Appeal No.780 of 2014 are in jail, they shall be released forthwith if not required in any other case.

iv) The Appellant No.2 Pravin Yallappa Doifode and the Appellant No.3 Shankar Akaram Doifode in Criminal Appeal No.780 of 2014 shall execute P. R. Bonds in the sum of Rs.25000/- each, U/s.481 of Bhartiya Nagrik Suraksha Sanhita, 2023 (correspondingly U/s.437A of the Cr.P.C.) for their appearance, in case an Appeal is preferred.

v) The Criminal Appeal No.132 of 2015 is dismissed.

vi) The part of the Judgment and Order dated 26.08.2014 passed by the Sessions Judge,

Kolhapur, in Sessions Case No.124 of 2011, acquitting the Accused No.4 Jayashree Shrikant Doifode, Accused No.5 Varsha Pravin Doifode and the Accused No.6 Madhuri Akaram Doifode i.e. the Respondent Nos.1 to 3 in Criminal Appeal No.132 of 2015, is upheld.

vii) Both the Appeals are disposed of.

viii) With disposal of Appeals, all the interim applications are also disposed of.

(SHYAM C. CHANDAK, J.) (SARANG V. KOTWAL, J.)