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IN THE COURT OF SESSIONS JUDGE, JALNA
(Presided over by : V. M. Mohite)

Sessions Case No. 235/2023

Exh. 112.

FORM NO.XXXII
Part 'A'
(Title Page of Judgment)
[Para 44 (I) of Chapter VI of Criminal Manual]

Date of Judgment:	25/03/2026
Sessions Case No.	235/2023
FIR/Crime No.	90/2023
Police Station	Jafrabad

Prosecution	State of Maharashtra Through Police Station Jafrabad, Taluka Jafrabad, District Jalna.
Represented by	Learned DGP Shri B.V.Ingale,
Accused	1. Shankar Sanjay Pawar, Age :- 23 years, 2. Swapnil Bhagwan Mule, Age :- 22 years, Both r/o.Kolegaon, Taluka Jafrabad, District Jalna

Represented by	Learned counsel Shri.M.B.Lingayat for the accused No.1 Learned counsel Shri.H.T.Kakade for the accused No.2.
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Part 'B'

Date of offence	27/04/2023
Date of FIR	28/04/2023
Date of Charge sheet	17/07/2023
Date of framing Charge	29/08/2023
Date of commencement of evidence	18/12/2023
Date of which judgment is reserved	16/03/2026
Date of the Judgment	25/03/2026
Date of the Sentencing order, if any	Nil

Accused Detail

Rank of the accused	Name of accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period detention undergone during Trial for purpose of Sec.428
1.	Shankar Sanjay Pawar	30.04.23	Under Trial Prisoner	Under Sections 302, 504,	Accused is acquitted	—	—

				r/w sec.34 of the Indian Penal Code			
2.	Swapnil Bhagwan Mule	28.04.23	27.03.23	Under Secti- ons 302, 504, r/w sec.34 of the Indian Penal Code	Accused is acquitted	---	---

Part 'C'

[Para 44 (iii) of Chapter VI of Criminal Manual]

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**A. PROSECUTION**

Rank	Name	Nature of Evidence (Eye Witnesses, Police Witness, Medical Witness, Panch Witness)
PW-1	Gajanan Bajirao Chavand, (Exh.35)	Panch witness,
PW-2	Suresh Ramrao Shelke, (Exh.46)	Informant,
PW-3	Sandip Trimbak Shelke, (Exh.55)	Witness,
PW-4	Santosh Gulabrao Kardel, (Exh.57)	Panch witness,
PW-5	Laxman Ramesh Kale, (Exh.63)	Panch witness,
PW-6	Vinod Sahebrao Dukare, (Exh.71)	Panch witness,

PW-7	'Mu'. daughter of deceased, (name withheld) (Exh.87)	Witness,
PW-8	Dr.Amol Pratap Rajput, (Exh.93)	Medical Officer,
PW-9	Rajaram Kashiram Tadavi, (Exh.101)	Investigating Officer.

B. DEFENCE WITNESS, IF ANY

Rank	Name	Nature of Evidence (Eye witnesses, Police witness, Medical witness, Panch witness)
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C. COURT WITNESSES, IF ANY

Rank	Name	Nature of Evidence (Eye witnesses, Police witness, Medical witness, Panch witness)
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. PROSECUTION

Sr.No.	Exhibit	Description
1.	PW-1, Exh.36 Exh.37	Letter dated 28.04.2023, Inquest panchnama
2.	PW-2, Exh.47 Exh.48 Exh.49 Exh.50 Exh.51 Exh.52 Exh.53	Complaint, Printed F.I.R. Statement recorded u/sec.164 of Cr.P.C. Six photographs, Photo Photo Signature on stamp paper

	Exh.54	Contents of stamp paper
3.	PW-3, Exh.56	Statement recorded u/sec.164 of Cr.P.C.
4.	PW-4, Exh.58 Exh.59 Exh.60	Seizure panchnama, Signature and label on Article MO-4 Signature and label on Article MO-5
5.	PW-5 Exh.64 Exh.64-A Exh.65 Exh.66 Exh.67	Spot cum seizure panchnama Contents of column No.10 in seizure panchnama Signature and label on Article MO-1 Signature and label on Article MO-2 Signature and label on Article MO-6
6.	PW-6 Exh.72	Seizure panchnama
7.	PW-8 Exh.P-1/PW-8 Exh.P-2/PW-8	Post Mortem Report Letter dated 28.04.2023
8.	PW-9 Exh.P-1/PW-9 Exh.P-2/PW-9 Exh.102 Exh.103	Letter dated 05.06.2023 Letter dated 01.05.2023 Station Diary Entry Station Diary Entry

B. DEFENCE

Sr.No.	Exhibit	Description
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C. Court Exhibits:

Sr.No.	Exhibit	Description
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D. Material Objects:

Sr.No.	Material Object Number	Description
1.	Article MO-1	Knife
2.	Article MO-2	Wooden stick
3.	Article MO-3	Shirt
4.	Article MO-4	Pair of sandal
5.	Article MO-5	Baniyan
6.	Article MO-6	Handkerchief
7.	Article MO-7	Broken piece of knife

JUDGMENT

(Delivered on this 25th day of March 2026)

1. Accused have faced this trial for the offences punishable under Sections 302 and 504, read with Section 34 of the Indian Penal Code on a charge-sheet filed against them by the Jafrabad Police Station.

The prosecution's case in brief is as under:-

2. The informant Suresh Ramrao Shelke (PW-2) is a resident of village Kolegaon, Taluka Jafrabad, District Jalna and would do agriculture as an occupation. His elder brother Narayan Ramrao Shelke (the deceased) would also stay jointly alongwith him. On 27.04.2023 a 'Harinam Saptah' was organised in the village and arrangement of dinner was also made. Dnyaneshwar alias Shrawan, the son of deceased and 'Ga' alias 'Mu.' (name withheld) (PW-7) the

daughter of deceased had also attended the said function and had taken the dinner. At about 7.15 p.m. they were returning home on their motorcycle. Shankar Sanjay Pawar (accused No.1) who was their neighbour had followed them on his motorcycle. The informant had questioned the accused No.1 as to why he was following the children and harassing them. Accused No.1 started abusing the informant. The informant had tried to convince accused No.1 to not abuse but he continued to abuse loudly. He had then threatened the informant of dire consequences and started running. He had stopped at a distance and phoned somebody. As soon as he had disconnected the phone, his friend Swapnil Bhagwan Mule (accused No.2) came near him. Both accused started abusing the informant. The deceased had gone towards the accused to convince them that they should not abuse and accused No.1 had removed a knife from his pant pocket and started assaulting the deceased with the knife. Accused No.2 had also assaulted the deceased by means of a stick on his head from behind, as a result of which deceased had collapsed. Seeing his brother being assaulted, the informant had gone towards him. Accused had fled. The deceased was bleeding heavily due to the injuries caused to him. The informant had carried the deceased to the Janjal Hospital, with the

help of Ganesh Shelke, Gajanan Shelke and Sandip Shelke (PW-3). The Doctors had examined him and declared him dead. The informant had lodged the report (Exh.47) regarding the incident.

3. On the report (Exh.47) lodged by the informant, offence was registered at C.R.No.90/2023 of the offences punishable under Sections 302 and 504 read with Section 34 of Indian Penal Code. It was investigated by A.P.I. Tadavi (PW-9) who was then attached to Jafrabad police station.

4. Before the report (Exh.47) was lodged, the police had received the information about the deceased to be murdered. The station diary entry No.21/2023 was taken and P.S.I. Madan had proceeded to the spot and he had prepared the spot panchnama (Exh.64). A knife was seized from the spot.

5. After the matter was marked to A.P.I. Tadavi for investigation, he had collected the inquest panchnama, spot panchnama and the First Information Report and the photographs. He had recorded statements of witnesses. He had obtained 7x12 extract of the spot of incident. He had arrested accused No.2 on 28.04.2023 and the accused No.1 on 30.04.2023. He had seized the clothes of accused No.1 vide panchnama (Exh.58). He had obtained the blood samples of accused.

He had forwarded muddemal for chemical analysis. He had obtained postmortem notes. He had enquired with the Doctor as to whether injuries can be caused to the deceased by the knife and the Doctor had replied in the affirmative. He had got recorded the statements of witnesses under Section 164 of the Code of Criminal Procedure. After completing the investigation, he has filed the charge sheet against accused in the Court of Judicial Magistrate First Class, Jafrabad who had in turn committed the case to this court, the offence being exclusively triable by the Court of Session.

6. Charge (Exh.09) of the offences punishable under Section 302, and 504, read with Section 34 of the Indian Penal Code, was framed and read over and explained to accused in vernacular by my learned predecessor. Accused pleaded not guilty (Exh.10 and Exh.11) and claimed to be tried. What can be discerned from the tenor of the cross-examination on behalf of accused and the answers given by the accused No.1 in his statement u/sec.313 of the Code of Criminal Procedure is that it is the defence of accused No.1 that he was having a love affair with PW-7, the daughter of deceased. Deceased had not approved of their affair and would object to PW-7 meeting him. On the day of the incident, deceased and others had found him alone at

home and therefore had gone to his house and abused him. He was scared and therefore he started running and deceased, his brother and his son had followed him. They had caught him and started beating him. The injuries were thereby caused to him. Though he was injured, he was defending himself and there was a scuffle. Deceased had removed a knife and apprehending that he might kill him with the knife, accused No.1 had snatched the knife from the hands of the deceased and had assaulted the deceased. The deceased had succumbed to the injuries caused to him. Accused No.1 has not examined any witnesses in support of said defence. As far as accused No.2 is concerned, his defence is of total denial and false implication due to previous enmity.

7. I have heard learned DGP Shri.B.V. Ingale for the prosecution. He has stated to me in brief the prosecution story. According to him, on the day of incident, when the children of the deceased i.e. PW-7 and her brother Shrawan were returning home from the 'Saptah' accused No.1 had followed them. PW-7 had complained to her paternal uncle i.e. PW-2. PW-2 had therefore questioned accused No.1 and accused No.1 started abusing him. Accused No.1 had then phoned accused No.2 and he also came to the spot. Both accused

started abusing. Deceased had gone near the accused to convince them to not abuse when accused No.1 had removed a knife and stabbed the deceased with the knife. Accused No.2 had assaulted the deceased by means of a stick on his head. Accused had then fled. The learned DGP submits that deceased was carried by the informant and others to the hospital at Chikhali. Deceased was declared dead. The informant had then gone to the police station and he had reported the incident on the same night in the early hours at 2.49 hours. The learned DGP submits that in the meantime, police has received the information about the incident and police had proceeded to the spot and prepared the spot panchnama between 00.10 hours to 1.50 hours. The broken knife and a stick was found at the spot and seized by the police. The inquest panchnama was prepared and the body was sent for postmortem. The postmortem was conducted and the cause of death of the deceased was opined as “Hemorrhagic shock due to stab injury to chest and abdomen”.

8. The learned DGP has taken me through the oral evidence on record and submits that accused does not dispute his presence at the spot of incidence at the time of incidence. He submits that accused has come with a defence of private defence. The learned DGP submits

that the prosecution witnesses have stated that it is the accused who has stabbed the deceased by means of a knife. Both PW-2 Suresh Shelke and PW-3 Sandip Shelke have witnessed the incident. They have deposed about the manner in which accused had assaulted the deceased. He submits that the Court will have to see as to who was the aggressor. The prosecution has proved that it was the accused No.1 who, had removed a knife and assaulted the deceased. Accused No.2 was also present at the spot and he has assaulted with the stick. The learned DGP therefore submits that the prosecution has sufficiently established the fact that it is the accused Nos.1 and 2 who were aggressors and they in furtherance of their common intention, assaulted the deceased and committed his murder.

9. Advocate Shri.Lingayat the learned advocate for the accused No.1 on the other hand submits that admittedly on the day of the incident, there was a 'Harinam Saptah' arranged in the village and majority of the villagers had attended the same. Undisputedly the accused, the informant and deceased are neighbours, their houses being adjoining each other. The distance between the place where 'Harinam Saptah' was organised and the houses of accused and the informant are situated at a distance of one kilometre. Accused was

admittedly alone at home and his parents had also gone for the 'Harinam Saptah'. The learned advocate submits that while stating about the motive for the accused to commit the offence, it is the prosecution's case that accused had followed the children of the deceased on the motorcycle. It is therefore that the informant and the deceased had gone to the house of accused to convince them. The learned advocate submits that admittedly accused had started running and the informant, deceased and the son of deceased had chased him. The learned advocate submits that it is difficult to believe that the informant and others had chased the accused for such a minor incident. The learned advocate submits that the prosecution witnesses Nos.2, 3 and 7 can be said to be the material witnesses. They are not stating the entire facts before the Court. He submits that it is the defence of accused that PW-7 the daughter of deceased was having an affair with accused No.1. Both families had learnt about their affair. The meetings were held to convince accused No.1 and PW-7 to sever their relations. However, PW-7 had also not discontinued her relations with accused No.1. It is therefore that the informant and deceased were carrying grudge against the accused No.1. Undisputedly informant, deceased and the son of deceased had followed the accused

when he was running. The learned advocate submits that the informant and the deceased who had gone to the house of accused and when accused started running away, they had chased him. It is they who were the aggressors. They had gone to the house of accused with the sole intention of assault him and had followed him with the same intention. Accused No.1 was a young boy aged 23 years. He was alone at home. It was night time. The informant and deceased and others had assaulted him and injuries were thereby caused to him. It is therefore that accused No.1 had acted in self defence and when deceased had removed a knife he had snatched the knife and stabbed the deceased. The learned advocate therefore submits that accused No.1 had acted in self defence. In support of his said submission, the learned advocate has relied upon the certain decisions, which I shall be discussing at a later stage.

10. Based on the foregoing the following points arise for my determination. My findings thereon for the reasons to follow are as under.

POINTS

FINDINGS

- | | |
|--|---------------------|
| 1. Whether prosecution proves that the... death of deceased Narayan Ramrao Shelke is homicidal ? | In the affirmative. |
| 2. Whether the prosecution proves that ... | In the negative |

on 27.04.2023 at about 19:15 hours, near Limbaji Dagadu Shelke Farm, Warud to Kolegaon Road, Kolegaon, Taluka Jafrabad, District Jalna, both accused in furtherance of their common intention, did commit murder of deceased, by intentionally or knowingly caused death and thereby committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code ?

3. Whether the prosecution proves that ... In the negative
 on aforesaid date, time and place, in furtherance of their common intention, both accused intentionally insulted and thereby gave provocation to deceased, intending or knowing it to be likely that such provocation would cause him to break the public peace and thereby committed an offence punishable under Section 504 read with Section 34 of the Indian Penal Code ?
4. What order ? ... As per final order

REASONS

AS TO POINT NOS.1 TO 4 :-

11. As all these points require a discussion of same set of facts, they are taken-up for discussion together to avoid any repetition of facts.

12. The prosecution in support of its case has examined in all nine witnesses. PW-2 Suresh Shelke, PW-3 Sandip Shelke and PW-7 'Mu alias Ga' (name withheld) are examined by the prosecution as

witnesses to the incident. PW-1 Gajanan Chavhan is examined as a panch to inquest panchanama Exh.37. PW-4 Santosh Kardel is examined by the prosecution as a panch to the seizure panchanama of the Chappal and the Baniyan of the accused. PW-5 Laxman Kale is examined as a panch to the spot panchanama Exh.64. PW-6 Vinod Dukare is examined by the prosecution as a panch to the seizure panchanama of the shirt of the deceased Exh.72. PW-8 Amol Rajput is the Medical officer who has conducted the post mortem examination and has issued the post mortem report Exh.P-1/PW-8. PW-9 A.P.I. Tadavi is the Investigating Officer.

13. It may be stated here at the outset that the fact that deceased has died due to the assault by accused by means of a knife is not disputed. Therefore it is not disputed that the death of the deceased is homicidal. In addition we have the Inquest panchanama Exh 37 and the evidence of PW-8 Dr. Amol Pratap Rajput who has conducted post mortem examination on the dead body of the deceased on 28/04/2023. PW-8 has stated that he had noticed the following external injuries.

- (i) Incised stab wound penetrative in nature in between entry 4 and 5 intercostal space which were penetrating in heart. Its width was 3 to 4 cm and 6-8 cm in depth.

- (ii) Incised stab wound penetrative in nature in between 5 cm and 6 cm intercostal space on left hypochondrial region. 3-4 cm in width and 6-7 cm in depth.
- (iii) Stab injury in left lateral region of flank. 4 x 4 cm in width and 6-7 cm in depth with remaining part of knife in situ penetrating the spleen.

14. He has stated that the above injuries are ante mortem. He had noticed the following internal injuries.

Thorax region-

- (i) Left lung – Incised wound 4.5 cm in depth and 2-3 cm in width.
- (ii) Heart with weight- Incised wound 4.5 cm in depth 3-4 cm in width, pale.

15. According to him, the cause of death was “hemorrhagic shock due to stab injury to the chest and abdomen”. Accordingly, he has proved the post mortem report Exh.P-1/PW-8.

16. In the cross-examination on behalf of accused no.1 he has denied that no knife was found in the body of the deceased. Accused no.2 has declined to cross-examine the medical officer.

17. In view of the evidence of PW-8, the nature of injuries found on

the person of deceased and the remaining part of knife found in the body of deceased coupled with the fact that deceased has died a homicidal death is not disputed, I proceed to answer the point no.1 in the affirmative.

18. In order to prove that accused has committed the murder of deceased the prosecution has mainly relied upon the oral testimony of the witnesses PW-2 Suresh Shelke, PW-3 Sandip Shelke and PW-7 'Mu.'. I shall therefore proceed to discuss the oral evidence on record.

19. The sum and substance of the oral evidence of PW-2 Suresh Ramrao Shelke, the informant is that the incident had occurred on 27/04/2023 on a Thursday. A 'Harinam Saptah' was organized in the village and on 27/04/2023 meals were arranged for all. The children of deceased namely 'Ga.' @ 'Mu.' and Dnyaneshwar @ Shrawan had also taken the meals and they were returning home on a motorcycle. Accused no.1 had followed them on a motorcycle. The children had phoned deceased and told him about it. After they reached home they had told the informant about it. The informant had therefore gone to question the accused no.1 as to why he was troubling the children. Accused no.1 had started abusing the informant. Accused no.1 had then phoned somebody and threatened the informant. Accused no.2

came to the spot. Both accused started abusing the informant. The elder brother of the informant i.e. the deceased also came to the spot. He had tried to give an understanding to the accused but they continued to abuse. Accused no.1 had then removed the knife from his pants pocket and gave three blows of knife on the deceased. Accused no.2 had assaulted the deceased by means of a stick on his neck. Deceased fell down and accused fled away. PW-3, Gajanan Shelke and Ganesh Shelke came for help. Deceased was bleeding. Informant had kept the deceased in the pick up vehicle van and took him to Janjal Hospital at Chikhali. Deceased was declared brought dead. He was shifted to the Government Hospital at Chikhali. The informant had gone to the police station and lodged a report about the incident Exh.47.

20. The informant has identified the knife Article MO-1 before the Court to be the same Knife used by accused no.1 and the wooden stick Article MO-2 to be used by accused no.2. He has identified the clothes of the deceased.

21. The informant has further stated that from the Government Hospital he had gone home and had shown the spot of incident to the

police and the police to have accordingly prepared the spot panchanama Exh.64.

22. In the cross-examination he has admitted that he, his two brothers and their family reside jointly. He admits that the 'Haripath' starts at about 04:30 p.m. and it lasted for about one and half hour. Thereafter people take dinner. The people from the village and outside the village attend the 'Haripath' and take dinner. Normally, the people from the village take dinner in the last serving. The children of deceased had taken meals in the first serving. According to him, deceased had reached home when the children were complaining about the accused to the informant.

23. He states that his house is situated on the Kolewadi road. There is difference between Kolewadi and Kolegaon. There are two roads to his house from the village, one is Kaccha road having pits and the other road is tar road. The children were coming from the Kaccha road. It takes 15 to 20 minutes to reach the place of dinner walking. He spoke to the children for about 5 to 10 minutes after they reached home. His house and house of accused are in the same lane and at a distance of 60 feet from the road. There is an open space from the road till their houses. Both houses face in the same direction. There

are trees in front of his house. He was shown the photograph Exh.52 and he has identified his house and house of accused in the said photograph. According to him, he had gone in front of the house of accused to give an understanding to the accused. He had gone in the courtyard of the house of the accused. From that spot, the house of accused is situated at a distance of 30 feet. He had gone alone and had convinced the accused for about five to ten minutes. According to him, after giving an understanding to the accused, he had not returned home. Accused was walking towards the village Warud and he had followed him and stopped him.

24. It was suggested to him that accused no.1 was running and he had followed the accused no.1 and he has denied it. His attention was drawn to his report and he has stated that he has mentioned in the report that accused no.1 started running on the road. It was suggested to him that he had started beating accused and therefore accused started running and he has denied it. He has denied the suggestion that he was having a stick with him. According to him, deceased has reached the spot after 10 to 15 minutes.

25. He has stated that his house is at a distance of 150 feet from where he had stopped and deceased had reached there. He has

admitted that the children Shrawan and 'Ga.' had also reached the spot. He has admitted that the spot of incident is situated at about 150 feet from that spot. He has stated that as soon as deceased started giving an understanding to accused, accused had assaulted him and deceased fell down. There was a single blow with the stick. Deceased fell down at a distance of about 5 feet from the road. He states that deceased was first taken on a motorcycle and then in a big vehicle. He was asked whether accused had sustained any injury and how he had sustained the injury and he has replied that he cannot tell. He was asked whether he, the police and panchas have inspected the entire spot of incident and he has stated that he had personally not inspected.

26. It was suggested to him that there was a love affair between 'Ga.' and accused no.1 and they were meeting and chatting and he has denied it. He has denied that in meeting between mother of accused and his family members and it was decided that the family members shall keep a watch on their children. It was suggested to him that he and deceased had threatened accused that if he was again seen along with 'Ga.' he will have to face consequences and he has denied it.

27. He has admitted that the parents of accused were not at home when he had gone to the house of accused. All villagers from the

village had gone for the 'Saptah'. He has denied the suggestion that 'Ga.' was not listening to them and had continued to meet accused no.1 and therefore they had grudge against the accused no.1 He has denied the suggestion that accused no.1 was alone and he, the deceased and his nephew Dnyaneshwar had followed him caught him and there was a scuffle between accused and deceased and they all had started beating accused no.1 and that accused no.1 had thereby sustained injuries to his head, ear and legs.

28. It was suggested to him that the Stick Article MO-2 was in his hands and he has denied it. He has denied the suggestion that in the quarrel deceased had removed the knife to kill accused no.1 and accused no.1 thought that now he shall not survive and had therefore snatched the knife from the hands of deceased. He has denied the suggestion that had accused no.1 not snatched knife he would have himself died. He has denied the suggestion that as accused no.1 and 'Ga.' were not listening, he had followed accused no.1 in order to kill him and started beating him. Deceased was asking accused no.1 why he was not listening to them and he has denied it. He has denied the suggestion that he has lodged this false complaint.

29. He has admitted that there are criminal cases pending against

him and the deceased of the offences punishable u/s. 325, 324 and 323. He has denied that an offence u/s. 307 of the Indian Penal Code is also pending against deceased. He has denied the suggestion that deceased was addicted to liquor and he could not tell whether on the day of incident, deceased was under influence of liquor. It was suggested to him that to bring an end love affair between the accused no.1 and 'Ga.', the parents of accused no.1 had fixed his marriage. It was suggested to him that accused no.1 is only the son of his parents and he has admitted it. He has feigned ignorance about accused taking education at the time of incident. He has denied the suggestion that a false complaint is lodged by concealing the real facts.

30. In the cross-examination on behalf of accused no.2 it was suggested to him that the land of his father in Gat no. 305 was sold to one Dnyandev Mule and he has denied it. He has admitted that a bond was written in favour of the father of accused regarding a land ad-measuring 1 Guntha. He has admitted that two years prior to the incident the father of accused no.1 had filed a complaint against him regarding the said land and therefore the relations between his father and the father of accused no.2 are strained. He admits that on the day of incident he had met one Ajay Shelke and accused no.2 on the

motorcycle. He has denied the suggestion that when the quarrel was going on between him and accused no.1, Ajay was present.

31. The omission that accused no.2 had assaulted deceased on his neck was brought to his notice and he has replied that he had stated to the police but police had not recorded the word 'neck'. He has denied the suggestion that accused no.2 was not present when the quarrel between deceased and accused no.1 took place. He has denied the suggestion that he has falsely implicated accused no.2.

32. As far as PW-3 Sandip Trimbak Shelke is concerned, according to the prosecution he is an eye witness to the incident. This witness is also a resident of village Kolegaon i.e. the village where the informant and the accused reside. In his evidence this witness has stated that he owns a hotel named 'Sainiwant' on the Warud to Chikhali road near village Kolegaon. On 27/04/2023 at about 07:00 to 07:15 p.m. he was in his hotel. He had heard some screams and he had gone in that direction. He states that accused no.1 was assaulting deceased by means of a knife. Accused no.2 came to the spot. One Gajanan Shelke, Ganesh Shelke and PW-2 were present at the spot. Accused fled. A knife was in the stomach of deceased. Deceased was bleeding. Deceased was taken to the house of the informant on a motorcycle. He

was then taken to the private hospital at Chikhali in a four wheeler. He had also gone to Chikhali on a motorcycle. Deceased was declared dead. He states that his statement was recorded by the police and by the Court.

33. In the cross-examination on behalf of accused no.1 he has stated that his hotel is in existence since two and half years prior to the incident. There is one servant in the hotel. At the time of incident there were customers on two to three tables and they were four to five customers. He had reached the spot and the customers had also followed him. He has denied the suggestion that he also sells liquor. He admitted that there is an open space of 90 to 100 feet between his hotel and the road.

34. He admits that the spot panchanama was prepared on the day of the incident itself. He could not state whether on the date of incident it was cloudy and therefore police had to arrange for light and tarpaulin.

35. He has denied the suggestion that he had heard the sound from a long distance. His attention was drawn to his statement recorded by the Court and he has denied to have stated the words “from a long distance”. He states that he had seen accused no.1 on the spot. The spot is situated on the Warud to Chikhali road. He was asked whether

a scuffle was going on between accused no.1 and deceased when he reached the spot and he has replied that when he had gone to the spot, the scuffle was going on and accused no.1 had left the spot. When they had gone to the spot, the scuffle had lasted for two to three seconds.

36. According to him, he had narrated the incident to the police after the incident. He has admitted that police were frequently visiting the spot of incident and the house of deceased after the incident. He cannot state whether a police constable was deputed at the spot of incident. He has denied the suggestion that he had not witnessed any incident and that he was not present at the spot of incident and that he is deposing falsely due to his good relations with informant and deceased.

37. In the cross-examination on behalf of the accused no.2 he has denied the suggestion that he has not witnessed the incident of assault on deceased. He states that he had reached the spot after accused no.1 left the spot. He had not met Ajay Shelke on the day of incident. He had not seen accused no.2 assaulting. He has denied the suggestion that he has named accused no.2 on the say of the informant. He has stated that accused no.2 had reached the spot after the incident.

38. PW-7 'Mu.' @ 'Ga.' is the daughter of deceased. While stating about the incident she states that it had occurred on 27/04/2013. She and her brother had taken food in the 'Harinam Saptah' and they were returning home. Accused no.1 had followed them on his motorcycle. After they reached home her brother had complained about the accused to the informant. They all were standing in front of their house when accused no.1 came in front of their house. Informant had asked accused why he was harassing the children. Accused no.1 started abusing the informant. He then made a phone call and accused no.2 came to the spot. Both accused started abusing the informant. Her father (deceased) also reached the spot. She states that she had gone inside the house to switch off the gas and when she had returned, the informant and one Gajanan Shelke had dropped deceased home on motorcycle and deceased was bleeding heavily. She had asked her brother and her brother had told her that accused no.1 had assaulted the deceased. He had also told her that accused no.2 had assaulted deceased by means of stick. She states that deceased was taken to the hospital at Chikhali. In the morning she had learnt that deceased has expired.

39. In the cross-examination she has admitted that there's is a joint

family consisting of her grand parents, parents, paternal uncle and aunt and six brothers and sisters. Accused no.1 is her neighbour and their houses are adjoining the Chikhali-Jafrabad Highway road. The distance between the Highway road and their houses is 50 to 60 feet. The distance between the her house and house of accused no.1 is also 50 to 60 feet. She states that her school is at Warud. She admits that there is a hotel on the road to the school and same is situated on the same side of the road on which her house is situated. She admits that there is an open space between the house and the hotel and the owner of the hotel is Sandip Shelke (PW-3). She admits that it takes approximately five minutes to go walking to the hotel from her house.

40. She admits that after she and her brother returned home they had talked to the informant. She admits that accused no.1 had gone to his house. She admits that informant had said that he shall talk to accused no.1 and saying so he had gone to the house of accused no.1. She admits that accused no.1 was standing on the Oata of his house and the informant had gone towards him. The informant was standing in the courtyard of the house of accused no.1. Deceased came after 15 to 20 minutes. Accused no.1 was running and deceased had followed him. Informant had followed the deceased. Her brother had also

followed informant. It was suggested that her father had caught hold of accused no.1 and she has denied it.

41. She states that she was standing on the 'Oata' of her house when informant was in the courtyard of the accused no.1. Deceased had not gone to the courtyard of accused no.1. She admits that accused no.1 had started running when the informant was still in the courtyard of his house. Accused had started running on the road. She admits that at the time of incident the parents of accused no.1 were not at home and they had gone for the 'Saptah'. It was suggested to her that accused no.1 was running because he was scared that the deceased and informant and her brother shall beat him and she has stated that she cannot state about it.

42. She has denied the suggestion that she was on visiting terms to the house of accused no.1 and that she had a love affair with accused no.1. She was asked whether she shall identify her photographs and she has denied it. She has denied the suggestion that she would go to the house of accused no.1 and talk with him for hours together. She has denied the suggestion that the mother of accused no.1 had learnt about their affair and she had therefore called her grand-parents and told them to give an understanding to her to severe the relations and

she has denied it. She has denied the suggestion that she had told her grand-parents that there were indecent photographs of she and accused no.1 in the cell phone of accused no.1.

43. According to her, she was in her house on the night of the incident. She has stated her ignorance as to whether police had come to their house in the night. According to her, informant had not come home that night. She had not contacted the informant on phone that night.

44. She has denied the suggestion that the incident was an outcome of her affair with accused no.1. She has denied the suggestion that accused came from a comparatively poor family and therefore her family members did not approve of their affair.

45. In the cross-examination on behalf of Accused No 2, she admits that accused no.1 had phoned when he was having an exchange of words with the informant in front of his house. She admits that the abuses took place for two to three minutes and thereafter accused no.1 and her paternal uncle ran away. She admits that thereafter she went inside her house. She admits that accused no.2 was not along with accused no.1 and when accused no.1 had followed her and her brother. She states that accused no.2 had come 10 to 15

minutes after accused no.1 had phoned. She states that accused no.2 was standing in front of his house only. She states that he had then gone inside his house and came out after two to three minutes. She admits that she and her brother had not gone anywhere after they returned home. She has denied the suggestion that accused no.1 had not phoned accused no.2. She has denied the suggestion that her brother had not told her about the incident and that they had falsely implicated accused no.2.

46. This is in all the oral evidence as far as the incident is concerned. As already stated above the other evidence consists PW-1 who is the panch to the inquest panchanama. I have already referred it. There is also a panchanama about the seizure of the clothes of the deceased and PW-6 has proved it. In my opinion, this panchanama does not require any further discussion in view of the defence of the accused.

47. PW-5 is the panch to the spot panchanama and according to this witness police had called him to the spot on 28/04/2023. The spot was situated on the Chikhali to Jafrabad road, near village Kolegaon near 'Sainiwant Dhaba'. The spot was shown by informant. A stick of two to two and half feet length, a broken knife having blood stains and a

white colour handkerchief were seized from the spot and the panchanama Exh.64 was prepared. He was shown the articles and he has identified them.

48. In the cross-examination he states that the panchanama was prepared at about 12:00 to 12:15 a.m. The spot is situated at a distance of 2.5 to 3 kilometers from Warud. It was prepared in the night. It was suggested to him that informant is related to him and he has denied it. He however admits that he is acquainted to the informant. According to him, the population of Warud is approximately 5000 to 6000. His house is situated in the village and not on the Chikhali-Jafrabad road. He states that he had received a phone call of Madan Sir to attend the panchanama at 12:00 hours. According to him, Madan Sir had asked whether he knew the spot of incident and he had replied in the affirmative. He admits that it was a cloudy day and there was a possibility of rain or hailstones.

49. He has stated that the distance between the house of informant and the spot of incident is 250 to 300 feet. The distance between the spot of incident and the hotel is approximately 60 to 70 feet. Police had measured the distance between spot of incident and the hotel. There were some bushes near the house of informant. Some bushes

were cut down. At some places, the land was digged. The spot of incident was near the tar road. There was one electric pole near the spot of incident. He has identified the stick Article MO-2 to be the same stick. He admits that generally farmers keep such sticks at home.

50. He states that he knows the accused persons because they are frequent visitors. The house of accused no.1 is situated on Chikhali-Jafrabad road. The house of accused no.1 and informant are on the same road and the distance between their houses is approximately 70 to 80 feet.

51. He states that a generator was brought on the spot and the spot panchanama was prepared in the light. He was present at the spot of incident until 01:30 to 02:00 a.m. He had then gone. According to him, there was no drainage line near the spot. His attention was then drawn to the sketch and he has admitted that there is mention of a drainage line.

52. He states that the knife was lying at a distance of 60 to 70 feet away from Sainiwant Hotel. According to him, the owner of the hotel was not present at the time of the spot panchanama. He has denied the suggestion that he is deposing falsely as he is related to the informant.

53. Thus, what can be gathered from the tenor of the oral evidence

on behalf of the prosecution is that on the day of incident accused no.1 had followed the daughter and the son of the deceased. The children had therefore complained to the informant and the informant had gone to the house of accused no.1 to give him an understanding that he should not henceforth trouble the children. Deceased had also gone to the house of accused no.1 to convince him that he should not trouble the children. Accused no.1 had abused them. He had then phoned and called accused no.2 and accused no.2 came to the spot with the stick. Accused no.1 had removed the knife and stabbed the deceased and accused no.2 had assaulted the deceased by means of a stick on his neck. Injuries were thereby caused to the deceased and deceased had succumbed to those injuries.

54. On the contrary, it is the defence of the accused no.1 that he was having a love affair with PW-7. Their parents had not approved of the relations between him and PW-7. Their parents had tried to convince him and PW-7 to sever their relations but PW-7 continued to talk to him. PW-2, deceased and the other family members had therefore carried a grudge against him. On the day of incident when he was alone at home the informant and deceased had gone to his house. They were armed with weapons. He was scared and therefore he started

running and the informant, deceased and the son of deceased had followed him. Deceased had scuffled with him and had then removed a knife. He had snatched the knife and stabbed the deceased.

55. Thus, accused comes up with a defence of he having exercised the right of private defence.

56. It would be appropriate to briefly discuss here the principle of right of private defence which is crystallised by the judgments of the Hon'ble High Court and Hon'ble Apex Court.

57. Relevant provisions dealing with a right of private defence are sections 96 and 97 of the Indian Penal Code.

“Section 96 - Things done in private defence. - Nothing is an offence which is done in the exercise of the right of private defence.

Section 97- Right of private defence of the body and of property.--
Every person has a right, subject to the restrictions contained in section 99, to defend-

First.--His own body, and the body of any against any offence affecting the human body; other person,

Secondly.--The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or

which is an attempt to commit theft, robbery, mischief or criminal trespass.

58. Section 100 of the Indian Penal Code reads as under.

“Section 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.”

59. Adv.Shri.M.B.Lingayat, the learned Advocate for accused relies upon the decision in Darshan Singh Vs. State of Punjab & Another 2010(1) Crimes 78 (Supreme Court). The Hon'ble Apex Court has discussed the principle of right of private defence and how the Court has crystallized this principle in some important judgments. It has discussed various decisions and in paragraph No.39, observed as under:-

“39. The law clearly spells out that right of private defence is available only when there is reasonable apprehension of receiving the injury. The law makes it clear that it is necessary that the extent of right of private defence is that the force used must bear a reasonable proportion of the injury to be averted, that is the injury inflicted on the assailant must not be greater than is necessary for the protection of the person assaulted. A person in fear of his life is not expected to modulate his defence step by step, but at the same time it should not be totally disproportionate.”

60. I would like to refer here the decision of the Hon'ble Apex Court in Laxmisingh Vs. State of Bihar, AIR 1976 SC 2263. The Apex Court held that in murder case in case of non-explanation of injuries sustained by the accused at the time of occurrence or in the course of

altercation the Court can draw the following inferences.

- (i) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.
- (ii) That the witnesses who have denied the presence of injuries on person of the accused are lying on a most material point and therefore their evidence is unreliable.
- (iii) 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.

61. The Apex Court further held that omission on the part of the prosecution to explain 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. However, there may be cases where the non explanation of injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or whether the evidence was so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy that it far out ways the effect of the omission on the part

of the prosecution to explain injuries. The Apex Court further held that the truth and falsehood were so inextricably mixed together that itself difficult to separate them and 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.

62. Coming to the present case before us accused was admittedly having injuries on his person when he was arrested and medically examined on 30/04/2023. The injuries on the person of the accused are not explained by the prosecution witnesses. On the contrary, PW-2 has stated that he cannot tell whether accused had sustained any injury and how he had sustained the injury. The Investigating officer (PW-9) has admitted that there were injuries on the person of the accused No 1 when he had arrested him and medically examined him. He seems to have not investigated how the injuries were caused to the accused. The learned Advocate for accused has drawn my attention to the arrest memo of the accused wherein it is mentioned that accused had contusion injuries on his head, right ear and chest.

63. As already stated above it is the defence of the accused that when the informant had gone to his house he had started running. The informant, the deceased and Shrawan and 'Ga.' had followed him

Deceased had caught him at the spot of incident and there was a scuffle between them. Deceased and others had assaulted him on his head, ears and his leg and injuries were thereby caused to him. Deceased had then removed a knife. He himself was armless. He had thought that he shall not be able to save himself and he had snatched the knife from the hands of the deceased to save himself. Had he not snatched the knife he would have died.

64. Though the prosecution witnesses have denied the entire defence put up by the accused No 1, in view of the fact that certain injuries were caused to the accused No 1 in the incident and they have not been explained by the prosecution the defence taken by the accused seems to be probable. It is difficult to rely upon the evidence of PW-2, PW-3 and PW-7 in view of the fact that PW-2 has lied by stating that he had not seen any injuries on the person of accused No.1. No doubt as observed by the Hon'ble Apex Court in the judgment of Lakshmi Singh (supra) this principle would not apply in certain cases but then the evidence of the prosecution should be so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. I may

proceed to discuss the evidence on record to determine whether the case before us is one of such.

65. Admittedly, the house of the informant and the house of the accused are situated nearby each other. PW-7 has stated that distance between their house and the house of the accused no.1 is 50 to 60 feet. PW-2 has stated in the cross-examination that he had gone to the house of accused No 1 and was standing in the courtyard of the house. Admittedly, the parents of accused No 1 were not at home and he was alone. He has further stated that accused had proceeded towards village Warud and he had followed accused no.1. In the complaint Exh.47 the informant has stated that accused had started running away and he had followed accused No 1. PW-2 has further stated that the spot of incident was 150 feet from his house. In other words accused no.1 had ran for a distance of more than 200 feet and as per the version of PW-2, he, PW-7, the deceased and the son of deceased had followed accused No.1. In other words accused no.1 was trying to run away from PW-2, deceased and his son and it was they who were chasing him. Thus, it is the PW-2 and others who seem to be aggressors at least at this stage.

66. PW-3, the eye witness to the incident has stated that there was a

scuffle between accused no.1 and the deceased. There were signs of scuffle taken place on the spot of incident i.e. the bushes were seem to be disturbed.

67. Thus, what can be discerned from the entire circumstances stated above is that when PW-2 had gone to the house of accused No 1, accused No 1 had started running away from him. I find substance in the defence that accused No 1 was running to save himself. PW-2 and his brother and his nephew had followed him for a distance of at least 200 feet or more. There was admittedly then a scuffle between the deceased and accused and certain injuries were thereby caused to the accused. None of the prosecution witnesses have stated about this scuffle. Thus they are trying to hide material facts from the Court. In these circumstances, the probabilities cannot be denied that deceased had removed a knife to assault the accused no.1 and accused no.1 had snatched the knife from the deceased and stabbed him with the same knife.

68. It is the defence of accused no.1 that the prosecution witnesses had taken disadvantage of the fact that he was alone at home and the other villagers had also gone to attend the 'Saptah' and had gone to his house. The fact that accused no.1 was alone at home is an admitted

fact. As already stated above accused no.1 started to run away is also proved. If at all the accused no.1 was having any knife with him and he had any intention to kill the deceased, there was no reason for the accused no.1 to run away from PW-2 and the other persons.

69. The very fact that it was the PW-2 who had intentionally gone to the house of accused No 1 and the fact that accused had tried to run away and the informant and others had followed him, probabalises the defence of the accused no.1 that it was the prosecution witnesses who were the aggressors. Accused no.1 has merely acted in self defence.

70. The story put forth by the prosecution also does not appear to be probable. According to the prosecution witnesses there was absolutely no enmity between them and the accused no.1 prior to the incident. They have denied the defence of the love affair between Accused No 1 and PW-7 and therefore any strained relations. According to the prosecution witnesses it was only on the day of incident that accused No 1 had followed Dnyaneshwar and PW-7 on his motorcycle. It is only because of this incident that the informant had gone to the house of accused no.1 and had given him an understanding. Deceased had also gone to the house of accused No 1. Accused No 1 had given them abuses and assaulted deceased with the

knife. It is difficult to believe that accused no.1 must have removed the knife and stabbed the deceased only because they were trying to give him an understanding.

71. It also requires to be noted here that the prosecution witnesses PW-1 and PW-7 are related to each other and to the deceased closely. According to PW-2, deceased, PW-7 and the son Dnyaneshwar were present at the spot of incident at the time of incident. The prosecution has not examined the son Dnyaneshwar @ Shrawan. There is no independent witness examined by the prosecution to support the assault except PW-3. PW-3 has stated that Gajanan Shelke, Ganesh Shelke were also present. They are not examined. As far as PW-1 and PW-7 are concerned, they can be termed as interested witnesses. No doubt their evidence is not necessarily unreliable. But a careful approach will have to be adopted while analysing their evidence. If their evidence is found reliable and trustworthy it can be relied upon. But their evidence will have to be scrutinized very minutely to eliminate any chances of falsity.

72. It can be stated at the outset that the evidence of PW-2 and PW-7 is not consistent with each other regarding several material aspect. In fact their evidence is not consistent at all. They have given

inconsistent versions about the incident in their deposition itself. The evidence is inconsistent regarding the spot of incidence also. According to PW-2 he had gone to the house of accused no.1 to question him. He states that when he had questioned accused no.1, accused no.1 started abusing him. Accused no.1 had then phoned somebody and accused no.2 had come. Both accused then started abusing him. His brother i.e. the deceased came to the spot. Deceased tried to convince accused but both accused abused him. Accused no.1 had then removed a knife from his pocket and assaulted the deceased. Accused no.2 assaulted deceased by means of a stick on his neck. Deceased had thereby collapsed.

73. On the other hand, in the cross-examination PW-2 has stated that his house is at a distance of 150 feet from where he had stopped and his brother also come there. He then states that from there the spot of incident is situated at a distance of 150 feet. Thus, there seems to be inconsistency regarding the spot of incident.

74. PW-7 on the other hand states that after they had reached home they had told the informant that accused no.1 had followed them. They all were standing in front of the door of their house and accused no.1 had come in front of their house. PW-2 had asked accused no.1

why he was following and harassing her brother Dnyaneshwar @ Shrawan and accused no.1 had abused PW-2. Accused no.1 had then made a phone call and accused no.2 came to the spot. They all had abused her uncle. Deceased also came to the spot.

75. Thus, as per the evidence of PW-7 reproduced above, the spot of incident was in front of her house. But further in her cross-examination she has admitted that PW-2 had gone to the house of accused no.1. She has admitted that accused no.1 was standing on the 'Oata' of his house and PW-2 had gone towards him. PW-2 was standing in the courtyard of the house of accused no.1. She then states that after deceased came, accused no.1 started running and deceased had followed him. PW-2 had followed deceased. Her brother Dnyaneshwar @ Shrawan had also followed PW-2. In other words, the spot of incident was neither in front of her house nor in front of the house of accused.

76. PW-5 the panch to the spot panchanama on the other hand states that distance between the house of PW-2 and the spot of incident is approximately 250 to 300 feet.

77. Thus, what can be said of the deposition of the prosecution witnesses is that it is inconsistent as far as the spot of incident is

concerned. This inconsistency is because the prosecution witnesses wanted to conceal the fact that accused no.1 had attempted to run away and they had followed accused no.1. The truth however prevailed and the prosecution witnesses have admitted in the cross-examination that accused no.2 had ran and he was followed by PW-1 and his other family members including the deceased.

78. It is also pertinent to note here that PW-3 is examined by the prosecution as a witness to the incident. This witness admittedly owns the hotel 'Sainiwant' which is situated on the Warud-Chikhali road. According to him at about 07:30 p.m. he had heard somebody scream and therefore he had gone to the spot. He says that accused no.1 had assaulted the deceased by means of a knife. Thereafter, accused no.2 came to the spot. Gajanan Shelke, Ganesh Shelke and PW-2 were present on the spot. Accused had then fled.

79. In the cross-examination this witness has stated that when he reached the spot accused no.1 was leaving. He then states that accused no.1 was on the spot. He has admitted that when he had gone to the spot a scuffle was going on between accused no.1 and deceased and it had lasted for two to three seconds.

80. Thus, the evidence of this witness is inconsistent regarding the

time when he reached the spot. He has stated different things at different places. According to this witness accused no.2 had reached the spot after he has reached the spot. There were other witnesses present at the spot before he reached the spot. There was a scuffle between accused no.1 and the deceased before he reached the spot. At one place he has stated that he had reached the spot when accused no.1 was leaving whereas at other place he has stated that he had seen the scuffle between accused no.1 and the deceased and accused no.1 assault the deceased by means of knife. This witness does not say accused no.2 to have made any assault to the deceased by means of stick. Thus, the evidence of this witness is totally inconsistent with the evidence of the other prosecution witnesses. A doubt arises about his presence at the spot at the time of assault.

81. It is argued by the learned D.G.P. that he is an independent witness and there is no reason for him to falsely depose against the accused and to disbelieve him. However, the inconsistent facts stated by this witness itself creates a doubt about he to have witnessed the incident personally. If this witness is to be believed one Gajanan Shelke, Ganesh Shelke and PW-2 were present on the spot of incident before he reached the spot. The prosecution has not examined Gajanan

Shelke or Ganesh Shelke. There is no explanation why they are not examined.

82. It should also be noted here that as far as PW-7 is concerned, she has made an attempt to conceal the material facts. Though according to PW-2, PW-7 had also followed them and reached the spot of incident, PW-2 claims that she had stopped outside her house. She has tried to pose that the entire incident has taken place in front of her house and when the actual incident of stabbing had taken place she had gone inside the house to switch off the gas stove. She then wants us to believe that as soon as she switched off the gas, she came outside to find that Gajanan Shelke had brought deceased on a motorcycle and deceased was bleeding heavily. Though according to her she had gone inside and returned back within two minutes, she wants us to believe that the entire incident had taken place and deceased was required to be brought injured on a motorcycle and it was her brother Dynaneshwar @ Shrawan who had told her that accused no.1 had assaulted deceased by means of a knife.

83. Learned D.G.P. Shri. Ingale submits that assuming that accused has acted in self defence, the facts and circumstances reveal that accused has exceeded the said right. He submits that if the injuries

found on the person of the accused are considered they are minor injuries. On the contrary, there are three stab wounds found on the person of deceased. The learned D.G.P. submits that there was no need for the accused to stab the deceased with the knife thrice. He has stabbed the deceased only with the intention and knowledge of killing the deceased. In support of his submission the learned D.G.P. has relied upon the decision in Manik s/o. Hanmant Mote and others Vs. State of Maharashtra. He draws my attention to observations made in paragraph nos.17 and 18. They are reproduced as under.

“17. Another aspect i.e. also required to be considered is that at one place the accused persons are taking the defence of total denial and at another breath they want to take the defence of right of private defence. No doubt, right of private defence extends to right of protecting the property, but when such defence is taken, the presence of the accused is required to be presumed. The accused are coming with a case that accused No.1 (now deceased) lodged First Information Report against the deceased persons as well as PW 9 and PW 10, wherein he contended that he was assaulted. The learned trial Judge has rightly said that the evidence in the cross case cannot be readily read in an another cross case. There are methods and

procedure laid down under the law as to how and in which circumstances evidence in the cross case can be read in the another cross case. That procedure has not been adopted. Mere filing of the copy of the evidence of the Doctor in another case to bring it on record that accused No.1 (now deceased) had sustained injury on the same day, it is not sufficient to hold that the said injury was in respect of the same incident or arising out of the same incident. No efforts were taken by accused No.1 (now deceased) to enter into the witness box nor accused Nos.2 and/or 3 led the evidence. As the plea of right of private defence has been raised, in this connection, we would like to consider the legal position on this point. In *Raj Singh vs. State of Haryana and others*, [(2015) 6 SCC 268], the Hon'ble Apex Court, in paragraph No.16, has held as under -

“16. The right of private defence is codified in Sections 96 to 106 IPC. Sections 96 declares that “nothing is an offence which is done in exercise of the right of the private defence”. Section 97 states that every person has right of defence of person as well as of property. Section 100 describes the situations in which the right of private defence of body extends to the extent of voluntarily causing of death. To claim right of private defence extending to voluntary causing of

death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The law of private defence does not require that the person assaulted or facing apprehension of an assault must run away for safety. It entitles him to defend himself and law gives him right of private defence. There is no right of private defence where there is no apprehension of danger. Necessity of averting and impending danger must be present, real or apparent.

18. The right of private defence should always be proportionate. If the other person is armed, then so much of the assault will be permitted which will disarm him. Here, it has not been cogently brought on record by the accused that the informant's side was armed. Even if for the sake of argument it is accepted that there was one axe with them, which farmer may usually carry, still all the four persons i.e. one deceased, informant (now deceased), PW 9 and PW 10 were assaulted with axe or deadly weapon.”

84. Per contra, learned Advocate Shri.Lingayat relies upon the decision in the Darshan Singh Vs. State of Punjab & Another, 2010(1) Crimes 78 (Supreme Court). He draws my attention to para nos.39 and 58 of the judgment. It reads as under.

“39. The law clearly spells out that right of private defence is available only when there is reasonable apprehension of receiving the injury. The law makes it clear that it is necessary that the extent of right of private defence is that the force used must bear a reasonable proportion of the injury to be averted, that is the injury inflicted on the assailant must not be greater than is necessary for the protection of the person assaulted. A person in fear of his life is not expected to modulate his defence step by step, but at the same time it should not be totally disproportionate.”

“58. The following principles emerge on scrutiny of the following judgments:

- (i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.
- (ii) 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.
- (iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that

there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing

his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”

85. He then relies upon the decision in Sheshreddy s/o. Gopireddi Changati Vs. State of Maharashtra, 2013 (2) Mh.L.J. (Cri.) 332. He draws my attention to para no. 19 and 20 of the judgment. They read as under.

“19. P.W.2 has stated that the appellant had stated before him that the deceased had visited hut of the appellant armed with iron pipe and had attempted to assault the appellant. This statement of the appellant has been taken into consideration by me as part of same transaction in which the appellant had admitted to have assaulted the deceased. The deceased was in drunken condition. In the circumstances, there was a reasonable cause for the appellant to apprehend that grievous hurt would be the consequence of assault on the part of the deceased if the appellant did not exercise right of private defence.

20. Therefore, in my view, the appellant was entitled to exercise his right of private defence to the extent of causing death of the deceased. Section 96 of the Indian Penal Code states that nothing is an offence which is done in the exercise of the right of private defence. Since the

appellant has assaulted the deceased in exercise of the right of private defence, he had committed no offence. The learned trial Court has erred in holding that the right of private defence was excessively exercised by the appellant. In my considered view, there was no excess on the part of the appellant and he was within his right to cause death of the deceased. He had, therefore, committed no offence. He is entitled to be acquitted.”

86. He then relies upon the decision in *Nabia Bai Vs. State of Madhya Pradesh*, 1992 Criminal Law Journal 526. In this case also accused had managed to get hold of the knife hold by deceased and inflicted injuries on the deceased in order to save herself from armed intruder. It was held that accused must be considered to have acted in the exercise of her right of self defence.

87. He relies upon the decision in *Partap Vs. The State of Uttar Pradesh*, AIR 1976 Supreme Court 966 wherein it is held that the burden on accused to establish a plea of self defence is on the basis of the principles of preponderance of probability.

88. He then relies upon the decision in *Vilas Mahadu Chavhan and others Vs. State of Maharashtra*, 2007(1) Mh.L.J. (Cri.) 1176. He draws my attention to para no.20 of the judgment. It reads as under.

“20. Learned advocate Mr.Deshpande, appearing for the accused, on the other hand relied upon the judgment of the Supreme Court in the case of Deo Narain v/s. The State of U.P. reported in (1973) 1 SCC 347. In para 5 the Supreme Court observed thus:-

"In our opinion, the High Court does seem to have erred in law in convicting the appellant on the ground that he had exceeded the right of private defence. What the High Court really seems to have missed is the provision of law embodied in section 102, Indian Penal Code. According to that section the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to the present and imminent, and not remote or distant danger. This right rests on the general principle that where a crime is endeavoured to be committed by force, it is lawful to repel that force in self-defence. To say that the appellant could only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law embodied in the above section. The right

of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him. It is a preventive and not punitive right. The right to punish for the commission of offences vests in the State (which has a duty to maintain law and order) and not in private individuals. If after sustaining a serious injury there is no apprehension of further danger to the body then obviously the right of private defence would not be available. In our view, therefore, as soon as the appellant reasonably apprehended danger to his body even from a real threat on the part of the party of the complainant to assault him for the purpose of forcibly taking possession of the plots in dispute or of obstructing their cultivation, he got the right of private defence and to use adequate force against the wrongful aggressor in exercise of that right. There can be little doubt that on the conclusions of the two Courts below that the party of the complainant had deliberately come to forcibly prevent or obstruct the possession of the accused persons and that this forcible obstruction and prevention was unlawful, the appellant could reasonably apprehend imminent and present danger to his body and to his companions. The complainants were clearly determined to use maximum force to achieve their end. He was thus

fully justified in using force to defend himself and if necessary also his companions against the apprehended danger which was manifestly imminent. Again the approach of the High Court that merely because the complainant's party had used lathis, the appellant was not justified in using his spear is no less misconceived and insupportable. During the course of a marpeet, like the present, the use of a lathi on the head may very well give rise to a reasonable apprehension that death or grievous hurt would result from an injury caused thereby. It cannot be laid down as a general rule that the use of a lathi as distinguished from the use of a spear must always be held to result only in milder injury. Much depends on the nature of the lathi, the part of the body aimed at and the force used in giving the blow. Indeed even a spear is capable of being so used as to cause a very minor injury. The High Court seems in this connection to have overlooked the provision contained in section 100, Indian Penal Code. We do not have any evidence about the size or the nature of the lathi. The blow, it is known, was aimed at a vulnerable part like the head. A blow by a lathi on the head may prove instantaneously fatal and cases are not unknown in which such a blow by a lathi has actually proved instantaneously fatal. If, therefore, a blow with a lathi is aimed at a vulnerable part like the

head we do not think it can be laid down as a sound proposition of law that in such cases the victim is not justified in using his spear in defending himself.”

89. The learned Advocate also draws my attention to the observations made in para no.17 of the judgment in Manik Hanmant Mote (cited supra). The Hon’ble High Court has referred to the decision of Dharam Vs. State of Haryana (2007) 15 Supreme Court Cases 241 to para no.18 and 19 and they are reproduced her.

“18. The right of private defence should always be proportionate. If the other person is armed, then so much of the assault will be permitted which will disarm him. Here, it has not been cogently brought on record by the accused that the informant’s side was armed. Even if for the sake of argument it is accepted that there was one axe with them, which farmer may usually carry, still all the four persons i.e. one deceased, informant (now deceased), PW 9 and PW 10 were assaulted with axe or deadly weapon.

19. Objection has been raised as regards the fact that the First Information Report is not proved. No doubt, when the evidence began Vyankatrao was no more, but the prosecution has not come with a case that he died due to the injuries sustained by him on 08.09.2017.

Prosecution has examined PW 19 Dr. Aditya Deshpande, who had given endorsement regarding the mental status of Vyankatrao, however, the said First Information Report cannot be considered under Section 32(1) of the Indian Evidence Act. Even if the First Information Report is not duly proved in this case; yet, it has no fatal effect on the prosecution story. The story has been proved through the other witnesses.”

90. Coming back to the present case before us what can be discerned is that accused was all alone and he was chased by three persons. There was also injuries caused to the accused. In my opinion, the very fact that accused no.1 was running and the three persons were following him is sufficient to create an apprehension in the mind of the accused no.1 that there was a danger to his body. The very fact that injuries were found on the person of the accused no.1 and they being not explained by the prosecution, it can be safely inferred that accused no.1 was assaulted by persons who were chasing him. The very fact accused no.1 was armless and that deceased had removed a knife was sufficient enough for the accused no.1 to apprehend that there was a danger to his life. A scuffle has taken place between the accused no.1 and the deceased. In the entire circumstances, it can be

said that accused could reasonably apprehend imminent and present danger to his body. The deceased and the other persons along with him were clearly determined to use force to achieve their end and therefore accused no.1 was fully justified in using force to defend himself. It may also be noted here that admittedly wooden stick is recovered in this offence. According to the prosecution accused no.2 was armed with the said stick, but if one goes through the evidence of PW-3 and PW-7 a doubt arises about accused no.2 to be involved in the incident and he to be armed with the wooden stick. In such circumstances, the possibility cannot be denied that it was the prosecution witnesses who were armed with the stick. In my opinion, the apprehension of the accused that had he not snatched the knife from the deceased and stabbed the deceased, it would be he who would be killed, appears to be probable.

91. As far as the submissions that accused has given three stab wounds and it was not required is concerned, I would disagree with the same. The Hon'ble lordship in the decision of Manik Mote and others Vs. State of Maharashtra has observed that the means and force a threatened persons adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in

golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon a host of factors like the prevailing circumstances at the spot, his feelings at the relevant time, the confusion and the excitement depending on the nature of assault on him, etc. Nonetheless, the exercise of right of private defence can never be vindictive or malicious. It would be repugnant to the very consent of private defence.

92. In the present case before us the accused no.1 was unexpectedly confronted by the prosecution witnesses. When he realised that he was alone and had a threat of injury or life the first thing he did is he attempted to run away. Only when the deceased had removed a knife and he thought that there is a imminent danger to his life that he has snatched the knife from the deceased and has given him the blows causing him the fatal injuries. Therefore, in my opinion, in the facts of the case it may be reasonably concluded that accused no.1 had assaulted the deceased in exercise of the right of self defence. Accused no.1 has not exceeded the right of private defence. He has acted within the limits prescribed by law to launch an attack to save his own

life. I am therefore of the opinion that accused no.1 cannot be held guilty of the offence with which he is charged. I therefore answer points in the negative.

93. As far as accused no.2 is concerned I have already observed that the evidence of the prosecution witnesses is inconsistent regarding the role of accused no.2 in the offence. The medical evidence on record also does not support the contention of PW-2 that accused no.2 had given a blow of stick on the neck of the deceased. No corresponding injury is found. The evidence of prosecution witnesses PW-2, PW-3 and PW-7 is inconsistent and creates a doubt about the presence and participation of accused no.2 in the offence. Hence, I answer the points in the negative as far as accused no.2 is concerned.

94. In view of the entire discussion and the answers to the above points accordingly I proceed to pass the following order.

ORDER

1. Accused No.1) Shankar Sanjay Pawar and no.2) Swapnil Bhagwan Mule are hereby acquitted under Section 235(1) of the Code of Criminal Procedure of the offences punishable under Sections 302, 504 r.w. 34 of the Indian Penal Code.
2. The bail bonds of the accused stand cancelled.

3. Accused no.1 be released forthwith, if not required in any other crime.
4. The muddemal property Knife (Article MO-1), Wooden stick (Article MO-2), Shirt (Article MO-3), Pair of sandal (Article MO-4), Baniyan (Article MO-5), Handkerchief (Article MO-6), Broken piece of knife (Article MO-7), being worthless be destroyed after expiry of appeal period.
5. The accused to furnish PB and SB of Rs.15,000/- each and surety of like amount under Section 437-A of the Code of Criminal Procedure.

Date : 25.03.2026

(V.M. Mohite)
Sessions Judge,
Jalna.

C E R T I F I C A T E

I affirm that the contents of this PDF file are word to word as per original judgment.

Name of Steno - A.P.Deshmukh

Name of the Court - Principal District & Sessions Judge, Jalna.

Date :- 02/04/2026

Sd/-

Stenographer Grade-1