R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 29th DAY OF AUGUST, 2019

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL APPEAL NO.770 OF 2013

BETWEEN:

STATE OF KARNATAKA
BY THE POLICE SUB INSPECTOR
MOODABIDRI,
DAKSHINA KANNADA DISTRICT
MANGALURU. ... APPELLANT

(BY SRI. I.S. PRAMOD CHANDRA, STATE PUBLIC PROSECUTOR-2)

AND:

1. MR. VISHWANATHA DEVADIGA
SON OF BABU DEVADIGA
AGED ABOUT 26 YEARS
RESIDING AT KEMPLAJE PAPER MILL
HOSABETTU-574 227.

2. MRS. BHAVANI DEVADIGA
AGED 34 YEARS
WIFE OF GOPAL DEVADIGA
RESIDING AT 5 CENTS MANE

KEMPLAJE PAPER MILL
HOSABETTU VILLAGE
MANGALURU TALUK-574 227.

... RESPONDENTS

(BY SRI. P.P. HEGDE, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTIONS 378(1) AND (3) OF THE CRIMINAL PROCEDURE CODE PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 14.02.2013 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAKSHINA KANNADA, MANGALURU IN CRIMINAL APPEAL NO.45/2006 – ACQUITTING THE RESPONDENTS/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 326, 324 READ WITH SECTION 34 OF INDIAN PENAL CODE AND TO CONFIRM THE ORDER DATED 20.01.2006 PASSED BY THE CIVIL JUDGE (JUNIOR DIVISION) AND JUDICIAL MAGISTRATE FIRST CLASS, MOODBIDRI IN C.C.NO.27/2004.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.07.2019 COMING ON THIS DAY, H.P. SANDESH J., PRONOUNCED THE FOLLOWING:-

**JUDGMENT**

This appeal is filed challenging the judgment of acquittal passed in Criminal Appeal No.45/2006 dated 14.02.2013 on the file of II Additional District and Sessions Judge, Dakshina Kannada, Mangalore and prayed to confirm the judgment dated 20.01.2006 passed by the Civil Judge (Jr. Dn.) and JMFC, Moodbidri in

C.C.No.27/2004 and pass such other order as the Hon'ble Court deems fit in the facts and circumstances of the case.

2. The brief facts of the case is that; on 17.02.1999 at about 3.00 p.m., the first informant Yashonanda Moolya has given the statement to Moodabidri Police that he is residing near Paper Miil Hosabettu Village along with his family, his brother Vishwanatha and his wife Harinakshi. On that day, the complainant had been to the house of his brother Vishwanataha i.e., accused No.1. In his house, his wife Harinakshi, his sister Bhavani i.e., accused No.2 and her daughter Yashoda were there. Accused No.1 was inside the room. There was altercation between the complainant and his sister Bhavani in the matter of partitioning the immovable property. In the meantime, accused No.1 came out of the house and caught hold of the complainant tightly. In the meantime, accused No.2 brought a sickle from inside and assaulted the complainant on his hands and legs and caused bleeding injuries. As a result, the complainant fell down. Accused No.2 came there and

again, assaulted him on all the parts of the body. He requested the police to take action against them.

3. Based on the information given to police, police have registered the case against both the accused for the offences punishable under Sections 324 and 326 read with 34 of Indian Penal Code. Police also conducted spot mahazar and drawn the spot sketch and also recorded the statement of witnesses. After collecting the documents and on completion of the investigation, the police have filed the charge sheet against accused persons for the above offences.

4. The accused did not plead guilty and hence, prosecution has examined witnesses as P.Ws.1 to 8 and got marked documents Exs.P.1 to 14 and so also M.Os.1 to 3. The accused persons were also subjected to 313 statement to put forth the incriminating material available against them. The accused persons have also examined one witness as D.W.1.

5. Accused No.1 in his statement under Section 313 of Cr.P.C., stated that P.W.2 along with P.W.3 came to his house and at that time, P.W.2 was armed with a sickle. P.W.2 demanded for partition of the property and threatened that he would chop off the limbs if partition was not effected. Thereafter, P.W.2 assaulted accused No.2 with the sickle. In the meantime, accused No.1 pushed the hands of P.W.2 and as a result, the sickle fell down. Accused No.2 picked up the said sickle. P.W.1 was attempting to assault accused No.2 and she was holding the sickle to protect herself. Hence, P.W.2 had sustained injuries. Accused No.2 has also given the same statement under Section 313 of Cr.P.C. Accused Nos.1 and 2 did not choose to enter into the witness box except examining D.W.1 i.e., daughter of accused No.2.

6. The Trial Court after hearing the arguments of both counsel, convicted the accused for the offences punishable under Sections 324 and 326 read with 34 of Indian Penal Code. The accused were sentenced to

undergo imprisonment for two years and to pay fine of Rs.1,000/- each. Being aggrieved by the judgment of conviction and sentence, the respondents herein filed appeal in Criminal Appeal No.45/2006 before the Court of II Additional District and Sessions Judge, Dakshina Kannada, Mangalore. The Appellate Court after considering the material on record, acquitted both the respondents herein.

7. Being aggrieved by the judgment of acquittal, the present appeal is filed by the State contending that the witnesses have specifically stated regarding the overt act committed by the accused persons and without believing the evidence of injured and Doctor's evidence, which is corroborated with the evidence of other witnesses, the learned II Additional District and Sessions Judge has committed an error in acquitting the respondents.

8. The learned II Additional District and Sessions Judge has failed to see the observations made by the Civil Judge and the fact that the Apex Court also held that the

evidence of an injured witness should ordinarily be ranked high and it is to be accepted despite minor discrepancies because an injured witness, who fortunately survived does not screen the real offender. It is well settled principle of law that evidence of an injured witness itself is sufficient to make out a case in favour of the prosecution. P.W.2 – Yashonanda Moolya has given statement that he was lying on the ground in the courtyard of the house of accused with bleeding injuries. P.W.2 had no time to think and to say a false and imaginary story to implicate the accused. The evidence of P.W.2 is in consonance and in conformity with the contents of Ex.P.3. There is no reason to disbelieve his testimony. The Appellate Court has not properly appreciated the evidence and erroneously, acquitted the respondents. Hence, the State prays this Court to set-aside the judgment of acquittal.

9. The learned State Public Prosecutor also would contend that there is no dispute with regard to the incident and the respondents have not disputed the incident. Their

plea was of private defence. When the respondents have taken the plea of private defence, the burden shifts on them to prove the circumstances that warrant exercise of private defence. The same has not been done. The learned State Public Prosecutor would submit that the factual aspects of the case clearly shows that there was no occasion to exercise private defence and in spite of the same being not proved, the Appellate Court has committed an error. The reasons assigned are not sustainable under law. The Trial Court has appreciated the evidence of injured witnesses and medical evidence and rightly convicted the accused by giving reasons for the said conclusion. The same has been reversed by the Appellate Court without assigning proper reasons. Hence, the judgment passed by the Appellate Court is liable to be set-aside and the order of conviction by the Trial Court is to be restored.

10. Per contra, the learned counsel appearing for respondent Nos.1 and 2, in his argument, vehemently

contended that the respondents have exercised private defence. The complainant came with a deadly weapon to the house of the respondents and started scolding them and demanded partition of the property. The complainant threatened the accused that he will chop off the limbs if partition was not effected. When the complainant assaulted accused No.2 with sickle, without any other alternative, accused No.1 had pushed the hands of the complainant. As a result, he has sustained the injuries and the same has been properly explained before the Appellate Court. The evidence of D.W.1 was brought to the notice of the Appellate Court and the Appellate Court in a right perspective has come to the conclusion that the judgment of conviction and sentence of trial Court is illegal, arbitrary and capricious and has passed a well reasoned order. Hence, there is no need to interfere with the findings of the Appellate Court and hence, prayed this Court to dismiss the appeal.

11. Having heard the arguments of Additional State Public Prosecutor and also learned counsel for respondents/accused, the points that would arise for our consideration are:

> *1. Whether the II Additional District and Sessions Judge has committed an error in acquitting the accused for the charges leveled against them and it requires interference by restoring the judgment of conviction and sentence as ordered by the trial Court?*
>
> *2. What order?*

12. Before adverting to the contentions of both counsel, this Court has to in a nutshell mention the case of the prosecution. The case of the prosecution is that on 17.02.1999 at about 3.00 p.m. in Hosabettu Village of Mangalore Taluk, in the courtyard of the house of accused No.1, when the complainant came there, accused No.1 caught hold of the complainant with his hands. Accused No.2 has assaulted the complainant with sickle and caused simple and grievous injuries to his hands and legs and also other parts of the body. Based on the complaint, the

police have registered the case against accused Nos.1 and 2 for the offences punishable under Sections 324 and 326 read with Section 34 of Indian Penal Code.

13. Having taken note of the case of the prosecution and defence of the accused, there is no dispute with regard to the occurrence of the incident. Accused Nos.1 and 2 have taken the plea of private defence during the course of trial. However, the prosecution evidence is that P.Ws.1 and 3 went to the spot on hearing the screaming sound i.e., wife of the complainant and brother-in-law of the complainant and they found that the accused persons had assaulted the complainant. The complainant has been examined as P.W.2 and he has stated that accused No.1 called him to his house and when he went there, accused Nos.1 and 2 assaulted with sickle. The prosecution also relied upon the evidence of P.W.4 who is running STD booth and he has stated that D.W.1 came and made phone call to the police and she told that the complainant was assaulting her mother. P.W.5 is the mahazar witness in

respect of seizure of sickle and also the seizure of trouser in terms of Exs.P.1 and 2. P.W.6 – Police Sub-Inspector took up further investigation of the case and conducted the spot mahazar in terms of Exs.P.1 and 2 i.e., seizure of sickle and trouser and apprehended the accused persons. He also recorded the statement of witnesses and collected the wound certificate and filed the charge sheet. P.W.7 is Head Constable, who received the telephone call from D.W.1, went to the spot and found the injured at the spot and secured the Ambulance and shifted the injured to First Aid Centre, Moodabidre. P.W.8 is the Doctor who conducted the medical examination on the injured and noticed seven injuries on the body of the victim.

14. Having considered the evidence and also the contentions of prosecution as well as the defence, we have already pointed out that there is no dispute with regard to occurrence of the incident. The dispute is only with regard to exercising the right of private defence. The defence of the accused is that there was a threat to their lives and

hence, exercised their right to private defence. In order to consider the grounds of appeal and also the contention of defence, before analyzing the evidence available on record, we would like to refer to Sections 96 to 102 of Indian Penal Code with regard to the private defence. Under what circumstances private defence can be exercised and the right of private defence comes to the aid of accused persons. Hence, Sections 96 to 102 of Indian Penal Code in respect of right of private defence are extracted as under:

> *"96. Things done in private defence.—*
>
> *Nothing is an offence which is done in the exercise of the right of private defence.*
>
> *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 other person, against any offence affecting the human body;*

*Secondly.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the defintion of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.*

*98. Right of private defence against the act of a person of unsound mind, etc.—*

*When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.*

*99. Acts against which there is no right of private defence.—*

*There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.*

*There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.*

*There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.*

*Extent to which the right may be exercised.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.*

*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.*

*101. When such right extends to causing any harm other than death.—*

*If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.*

*102. Commencement and continuance of the right of private defence of the body.—*

*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 it continues as long as such apprehension of danger to the body continues."*

15. On careful perusal of the provisions of Sections 96 to 102 of Indian Penal Code, with reference to the right of private defence available to the person, when there is a danger to the body and the property, the relevant proviso of Section 96 states that if anything is done in private defence, nothing is an offence which is done in exercise of right of private defence. Section 97 states that every person has a right, subject to the restrictions contained in

Section 99, to defend his own body and the body of any other person, against any offence affecting the human body. The second aspect is not necessary with regard to the properties is concerned. Section 99 states that no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law. Further, it would specify that there is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.

16. It is clear that the right of private defence in no case extends to inflicting of more harm than is necessary to inflict for the purpose of defence and there are restrictions to exercise the right of private defence. On reading of Section 100, it is clear that the right of private defence of the body extends, under the restrictions mentioned in the Section 99, 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. In total four instances are mentioned in Section 100 i.e., i) Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault; ii) Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault and 3rd to 7th instances does not require descriptions in respect of the facts and circumstances of the case.

17. The case on hand deals with causing of injury other than the death. On reading of Section 102, it is clear that 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 it continues as long as such apprehension of danger to the body continues.

18. We would like to refer the judgment of Apex Court in the case of *DARSHAN SINGH VS. STATE OF PUNJAB* reported in *(2010) 2 SCC 333*. In this Judgment, the Apex Court has culled out the principles on the plea of self-defence.

> *"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 coterminus 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 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."*

19. We would also like to refer the judgment of Apex Court in the case of *RIZAN AND ANOTHER VS. STATE OF CHHATTISGARH* reported in *(2003) 2 SUPREME COURT CASES 661*. The Apex Court in this judgment discussing the Sections 97, 99 and 100 regarding plea of right of private defence held that;

"the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by

> eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not required to call evidence: he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea."

20. Now, this Court has to analyze whether the material on record available before this Court comes within the purview of the principles laid down in the judgment

referred supra to exercise the right of private defence and no doubt, it need not be proved beyond reasonable doubt and there must be a preponderance of probabilities in favour of the accused to exercise the right of private defence. The burden of proof is on the accused, who sets up the plea of self-defence and it is not necessary to adduce evidence if the evidence of the prosecution itself is sufficient to prove the right of private defence. This Court has to analyze, whether such burden of proof has been discharged by the accused in order to invoke the right of private defence.

21. The Apex Court in the above judgment while referring to Sections 97 and 99 held that; Presumption regarding the exercise of right of private defence by accused – it cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence – The defence has to further

establish that the injuries so caused on the accused probabilises the version of the right of private defence – Number of injuries is not always a safe criterion for determining who the aggressor was.

22. The Apex Court in the above judgment while referring Section 102 held as hereunder:

> "Commencement and continuance of the right of private defence of the body – Held, the right commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, although the offence may not have been committed, but not until that there is that reasonable apprehension – The right lasts so long as the reasonable apprehension of the danger to the body continues.
>
> XXXXX 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 – Burden is on the accused to show that he had a right of private defence which extended to causing of death."

This Court also while analyzing the evidence has to keep in mind Sections 97 and 99 and also Sections 100 and 102 whether there was reasonable grounds for apprehending that either death or grievous hurt would be caused to them.

23. The number of injuries is not always a safe criterion. It cannot be stated as a universal rule that whenever the injuries are found on the body of the accused person, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilises the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the

accused are minor and superficial or where the evidence is so clear and cogent so independent and disinterested, so probable, consistent and credit-worthy, that if far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

24. Keeping in mind the aforesaid principles, this Court has to evaluate the evidence available on record. On perusal of the material, which has emerged in the evidence, it is not in dispute that the complainant went to the house of accused Nos.1 and 2 and the incident also took place in the courtyard of the house of accused Nos.1 and 2. It is the case of the prosecution that accused Nos.1 and 2 were already there in the house and the presence of D.W.1 is also not in dispute. It is the evidence of P.W.2 that accused No.1 was inside the house**.** The defence claims that accused No.1 was not in the house but, he came later. It is also in the evidence of the complainant that accused No.1 came and called to his house to talk with regard to giving of share. On perusal of the

prosecution evidence and also evidence of defence, there is no dispute with regard to the fact that there was a dispute among the parties in respect of giving of share to the complainant and also no dispute that they are the relatives.

25. The evidence of P.W.2 - Injured is that when he went inside the house, accused Nos.1 and 2 called him to the courtyard of the house of accused No.1. Accused No.1 held both his hands from backside and accused No.2 brought the sickle and assaulted on his hands and legs and he screamed at the spot and fell down. Even though the complainant fell down, accused No.2, again inflicted injuries with sickle. Both shirt and pant of the complainant were stained with blood. Having heard the screaming sound, his wife and brother-in-law i.e., P.Ws.1 and 3 came and on seeing the same at a distance, they ran away. Thereafter, police came to the spot and sent him to hospital in an ambulance. In the cross-examination, it is suggested that he caused threat to give share and the said

suggestion was denied. It is suggested that accused No.1 gave complaint to Moodabidare Police seeking protection when the complainant caused the threat and the said suggestion was denied. It is suggested that he was having ill-will against accused Nos.1 and 2 in connection with the share in the property and the same has been denied. It is suggested that when he went to the house of accused, he went along with one Jaya and the same was denied. However, he admits that when he went to the house of accused No.1, accused No.2 told that he is not having any right in the property. It is suggested that while going to the house of accused No1, he went with sickle and the same was denied. It is further suggested that when he went to the house of accused No.1, he was not in the house and only female members were there in the house and the same has been denied. It is suggested that while quarrelling with accused No.2, he put his hands on the neck and caused threat and the same is also denied. It is further suggested that when he went to assault accused No.2, in order to protect the body, accused No.2

obstructed him. At that time, accused No.1 came to the house and the same was denied. It is further suggested that in spite of accused No.1 arriving to the house, he continued to assault accused No.2 and pulled her, and the same is denied. By that time, accused No.2 snatched the sickle which was in the hands of the complainant and assaulted him and Jaya who had accompanied him ran away from the place and all these suggestions have been denied.

26. Having taken note of the evidence available on record particularly in the evidence of P.W.2, nothing is elicited that there was an apprehension of taking the life of accused Nos.1 and 2. It is suggested that in spite of accused No.1 arriving to the house, the complainant has broken the bangles of accused No.2 and pulled her. It is not the defence that complainant made an attempt to take away the life of either accused No.1 or accused No.2 using the alleged sickle which was in his hand. Nothing is suggested in the cross-examination of P.W.2 that he came

forward to inflict the injury with the sickle. It is also important to note that there is no material before the Court that P.W.2 came with sickle while coming to the house of accused Nos.1 and 2. None of the witnesses are also examined to the effect that P.W.2 went with sickle to the house of accused Nos.1 and 2.

27. P.W.2 has specifically stated that accused No.1 was inside the house. He came and held him tightly from the backside and accused No.2 inflicted injuries with a sickle. Though it was suggested that the sickle was snatched from the hands of P.W.2 and thereafter, injury was inflicted on him, the same has been categorically denied by him. It was also suggested in his cross-examination that one Jaya was along with him. He has not been examined as a witness nor cited as a witness. P.W.2 has denied the specific suggestion that the accused was not there in the house. It is further important to note that it was suggested that P.W.2 assaulted accused No.2 on her neck with hands and threatened her. It is not the defence

of the accused that P.W.2 tried to assault accused Nos.1 and 2 with a sickle. Hence, we do not find any reason to come to the conclusion that there was a reasonable apprehension that there was any danger to the life of accused Nos.1 and 2 to exercise the right of private defence.

28. The burden is on the accused to prove that circumstances warranted the right to exercise private defence. Hence, there was no need for them to enter into the witness box and explain the same. At the same time, the accused have to prove the fact that in the given circumstances, there was danger to their lives. Nothing is elicited in the cross-examination of P.W.2 to show that he tried to assault accused Nos.1 and 2 except eliciting that accused No.2 denied him share in the property. Further, no material is produced by the accused to show that P.W.2 went to their house along with one Jaya. None of the witnesses have spoken that P.W.2 went to the house of the accused along with the said Jaya. Nothing is elicited in the

evidence of the prosecution witnesses also to show that there was a reasonable apprehension that P.W.2 would have inflicted injury on the accused. It is also to be noted that there are no injuries on accused Nos.1 and 2 and only in the cross-examination of P.W.2, it was suggested to him that bangles of accused No.2 were broken and P.W.2 pushed accused No.2. Accused Nos.1 and 2 have not given any complaint to the Police about the alleged incident and they have not produced any material to show that they had taken any treatment in any hospital and that both of them were subjected to assault by P.W.2. No doubt, the evidence emerges that DW.1 went out of the house and telephoned the Police and though P.Ws.1 to 3 have denied the said fact, the evidence of Police witness examined before the Court shows that they came to know about the incident through P.W.1.

29. At this juncture, this Court would like to refer to the defence of DW.1. The evidence of DW.1 shows that on 17.02.1999 at about 2 to 3 p.m., when she was in the

house, the complainant – P.W.2 entered into their house and at that time, he was holding sickle in his hand. P.W.2 asked her mother to give a share in the property and he caused threat that he would kill accused No.2 if the said share was not given to him. DW.1 has stated that at that time, she was afraid. When her mother refused to give any share in the property to the complainant, he tried to inflict injury on her with a sickle. Her mother held the hands of P.W.2 and both of them fell down and her mother instructed her (DW.1) to go and inform the Police. She left the house and went to the STD booth near her house and informed the Police about the incident over phone. When she came back, she found that both her mother and P.W.2 were struggling/rolling on the floor. After some time, accused No.1 came to the spot and thereafter, Police also came to the spot. On perusal of the evidence of DW.1, it is clear that she had not witnessed P.W.2 inflicting injury on her mother – accused No.2. She saw that both her mother and P.W.2 were on the floor. She ran from the house to inform the Police and she did not witness the

incident. Hence, the evidence of DW.1 is not helpful to the accused persons to substantiate that there was an apprehension of danger to the life of accused Nos.1 and 2. It is further important to note that DW.1 has stated that if her mother did not hold the hands of P.W.2, he would have killed her mother, but she admits that P.W.2 had sustained injury in the fight between her mother and P.W.2. She has further stated that when her mother held the hands of P.W.2, sickle slipped from his hand and same had fallen on the ground. When her mother tried to lift the sickle from the ground, P.W.2 assauited her mother and her mother in spite of resistance, picked up the sickle from the ground and when P.W.2 tried to assault her mother, in order to ward off the assault, she put across the sickle, as a result of which, P.W.2 has sustained the injuries. In the cross-examination of DW.1, it is elicited that accused No.1 was not in the house when the Police came to her house. She has admitted that P.W.2 did not assault accused No.1, but she claims he assaulted only her mother – accused No.2. She has further admitted that P.W.2 assaulted her mother

on her neck with his hands. Further, she admits that when P.W.2 assaulted her mother, none tried to rescue her.

30. It is clear from the evidence of DW.1 that P.W.2 did not assault accused No.1 and that when P.W.2 was assaulting her mother – accused No.2, none tried to rescue her. According to her, P.W.2 assaulted her mother with his hands. We have already held that none of the witnesses has spoken about the incident and also no suggestion was made in the evidence of P.W.2 that he tried to inflict injuries to P.W.2 with a sickle. When such being the circumstances, it is clear that there was no reasonable apprehension of danger to the life of either accused No.1 or accused No.2. The evidence of DW.1 also does not come to the aid of accused Nos.1 and 2. We have already pointed out that there was no need for the accused persons to enter into the witness box if there was some material before the Court that there was apprehension of danger to the life of accused Nos.1 and 2. Nothing is elicited in the evidence of prosecution witnesses to come

to the conclusion that there was danger to the life of accused Nos.1 and 2 in order to exercise the private defence.

31. Apart from that, on perusal of the evidence of the prosecution witnesses and also the evidence of DW.1, we have already pointed out that DW.1 has deposed that P.W.2 tried to assault her mother with sickle and her mother held his hands and the sickle fell down on the ground and her mother lifted the same and in order to ward off the assault of P.W.2, her mother put across the sickle and as a result, he sustained the injuries.

32. Keeping in view this evidence, this Court has to appreciate the wound certificate, which is marked as Ex.P5. Perusal of the wound certificate discloses that P.W.2 had sustained six injuries and apart from that there was fracture of right forearm i.e., right ulna; fracture of right leg i.e., right tibia and fibula lower 1/3$^{rd}$; commuted fracture of left Tibia lower 1/3$^{rd}$. The injuries include incised wound measuring 10 cm x 2 cm exposing ulna;

incised wound measuring 3 cm x 1 cm over medial aspect of left upper forearm skin deep; incised wound measuring 3 cm x 1 cm over the lateral aspect of right thigh; incised wound measuring 5 cm x 2 cm over the right leg lower 1/3rd with bone exposed; three incised wounds each measuring 3 cm x 2 cm over the lower 1/3rd of left leg, middle 1/3rd and upper 1/3rd with bone exposed. It is stated in Ex.P5 that injury Nos.1, 4, 5 and 6 are grievous in nature. P.W.8 – Doctor has reiterated in his evidence with regard to the nature of the injuries as mentioned in the wound certificate – Ex.P5.

33. In the cross-examination of P.W.8, nothing is elicited except with regard to injury No.6 that the same could be caused when a person fell on the hard surface. It is not the case of the accused persons that P.W.2 has sustained the injuries, which are mentioned in Ex.P5, when he fell down on the hard surface. The nature of injuries are incised wounds and bone deep. If there were one or two injuries that too simple in nature, then there would

have been force in the contention of the accused persons, but in the case on hand, injuries were inflicted in the aggravated circumstances and nothing is suggested in the evidence of DW.1 and also in the evidence of the prosecution witnesses that P.W.2 tried to assault accused No.2 with sickle except the interested say of DW.1, who was not at the spot. It is clear from the evidence of DW.1 that when both P.W.2 and her mother fell down on the ground, she ran from the house and she did not witness the incident. She has clearly stated that when she came back, she found P.W.2 was lying on the ground, which is nothing but an improvement in her evidence.

34. Having considered the evidence of P.W.2 and also the evidence of Doctor – P.W.8 and considering the nature of the injuries sustained by P.W.2, as already pointed out by us, it is clear that there was no circumstance that warranted exercise of the right of the private defence since there was no injury inflicted to accused Nos.1 and 2. Also accused have not adduced any

evidence to show that P.W.2 tried to assault the accused with a sickle and that there was apprehension of danger to the life of accused Nos.1 and 2. Hence, we are of the opinion that the restrictions under Section 99 of the Indian Penal Code to exercise the right private defence have not been proved by the accused. In the absence of any material to show that there was a reasonable apprehension of danger to the lives of accused persons, mere taking the plea of private defence is not enough. The circumstances should disclose that there was a need to exercise the right of private defence and the same had to be proved by the accused when they had taken a specific defence with regard to private defence.

35. The trial Court while appreciating the evidence of the prosecution witnesses and also the evidence of DW.1 and keeping in view the principles laid down in the judgments cited therein has rightly come to the conclusion that the ingredients of Sections 97 and 99 of the Indian Penal Code, provides certain restrictions to exercise the

right of private defence. The Appellate Court has not re-appreciated the evidence in the proper perspective. There was no dispute with regard to the occurrence of the incident and the fact that P.W.2 sustained injury. The Appellate Court did not discuss the nature of the injuries sustained by P.W.2, which were mentioned in Ex.P5. The nature of injuries sustained by P.W.2 are grievous in nature. Perusal of the wound certificate – Ex.P5 discloses that the injuries are bone deep injuries. It was the defence of the accused that in order to ward off the assault of P.W.2 that too when he assaulted accused No.2 with hands, she put across the sickle and as a result injuries, were sustained by P.W.2. The very evidence cannot be accepted taking into account the nature of injuries and learned II Additional District and Sessions Judge while re-appreciating the evidence did not consider the medical evidence particularly, Ex.P5 – Wound Certificate and also the evidence of P.W.8 - Doctor.

36. P.W.8 has categorically stated in his evidence that injury No.6 could be caused if a person fell on the hard surface and not other injuries. The same has not been appreciated by the Appellate Court. It has failed to consider the evidence of P.W.2 and medical evidence on record and has erroneously acquitted the accused persons. No doubt, there is some discrepancy in the evidence of P.Ws.1 and 3 wherein they have stated that when they went to the house of accused No.1, they saw accused Nos.1 and 2 assaulting P.W.2 and they did not rescue P.W.2. No doubt there is discrepancy in the evidence of PWs.1 and 3, but that will not take away the entire case of the prosecution and except such minor discrepancies in the evidence of PWs.1 and 3, the evidence of P.W.2 and medical evidence on record substantiates the case of the prosecution. Hence, the very finding of the Appellate Court is not sustainable in acquitting the accused persons by coming to the conclusion that there was force in the contention of accused Nos.1 and 2 and that the situation warranted exercise of private defence. The Appellate

Court did not appreciate the ingredients of Sections 97 and 99 of the Indian Penal Code and other proviso of private defence and hence, committed an error in reversing the judgment of the trial Court. Hence, the judgment of the Appellate Court is required to be set aside and the judgment of the trial Court is required to be restored in respect of conviction.

37. The Trial Court while sentencing the accused has taken note of the injuries sustained by the injured and awarded sentence of imprisonment for a period of two years and imposed fine of Rs.1,000/-. Having taken note of the sentence, though sentence of two years is imposed, the trial Court failed to take note of the provisions of Sections 357 and 357A of Code of Criminal Procedure, which has five sub-Sections while awarding fine and compensation. Sub-section (1) of Section-357 of Cr.P.C enables the Court to impose fine and out of the fine so imposed, a portion of the same could be awarded as

compensation to be paid to the victim. Sub-section (3) of Section-357 of Cr.P.C reads thus:

> "(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced".

On a plain reading of the entire provisions of Section-357 of Cr.P.C., it is evident that the Court is empowered to award compensation only when the fine is imposed as sentence. The provisions of Section-357A of the Code of Criminal Procedure which has come into force with effect from 31.12.2009, by virtue of Act 5 of 2009 enables the Court to award compensation even where the cases end in acquittal or discharge. It is just and relevant to reproduce Section-357A which consists six sub-sections:

**"357A.Victim compensation scheme**-

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the Trial Court , at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation or where the cases end in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his

dependants may make an application to the state or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the state or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

38. We would also like to refer to the Notification of Karnataka State Government dated 22.02.2012 about victim compensation. In terms of amendment to Section

357-A of Code of Criminal Procedure, which mandates the State Government to prepare a scheme in co-ordination with the Central Government for providing funds for the purpose of compensation to the victims or his dependants who have suffered loss of injury as result of the crime and who required rehabilitation and the same Notification dated 22.02.2012 also has to be kept in mind while compensating the victim.

39. The Apex Court in the case of *ANKUSH SHIVAJI GAIKWAD –VS- STATE OF MAHARASTRA* reported in *(2013) 6 SCC 770* has reviewed the entire case law relating to the payment of compensation and relevant discussion is found atpage-785-791 and 797. In the said case, in paragraph-33, the Hon'ble Apex Court has observed as follows:

> "33. The long line of judicial pronouncements of this Court recognized in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or

compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid-1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the lawmakers and courts going back in a great measure to what was in ancient times common place. Harvard Law Review (1984) in an article on "Victim Restitution in Criminal Law Process: a Procedural Analysis" sums up the historical perspective of the concept of restitution in the following words:

"Far from being novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to be compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As the State gradually established a monopoly over the

> institution of punishment, and a division between civil and criminal law emerged, the victim's right to compensation was incorporated into civil law."

40. It is noticed by this Court that the trial Courts while sentencing, have not taken into account the gravity of the offences, nature of injuries sustained by the victim and the amount spent for treatment. The Courts have to take note of the said factors, while sentencing the accused and invariably the trial Courts are not properly applying their minds while sentencing the accused persons.

41. It has to be noted that the newly introduced provisions of Section-357A casts a responsibility on the State Governments to formulate schemes for compensating the victims of crime by the State Government, in coordination with the Central Government and hence, State Government issued the Notification dated 22.02.2012. Under the new Section 357A, the onus is put on the District Legal Services Authority or the State Legal

Services Authority to determine the quantum of compensation in each case.

42. The Apex Court in the case of SURESH VS. STATE OF HARYANA reported in (2015) 2 SUPREME COURT CASES 227 referring the earlier judgment of Ankush's case held that even interim compensation will have to be paid and rehabilitation of the victim will have to be made by the Government by providing adequacy of upper limit of compensation. Taking judicial note of the fact that 25 out of 29 States have notified victim compensation schemes, the award of compensation has not become a rule in terms of the provisions of Section 357A of Cr.PC., a direction is issued by the Apex Court to the effect that pending consideration of upward revision of compensation scales, the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State is higher, is to be adopted by all States and those States who have not formulated the scheme have been directed to formulate and notify their schemes within one month from the

receipt of a copy of the aforesaid order. It is further directed that the copy of the judgment be forwarded to National Judicial Academy to sensitize all the judicial officers in the Country relating to awarding of compensation under Sections 357 and 357A of Cr.P.C. The Apex Court in the said judgment has also held that it is the duty of the Court to ascertain financial need of victim arising out of the crime immediately and to direct grant of interim compensation, on its own motion, irrespective of application of victim. It is further held that the very object of Section 357-A Cr.P.C is to pay compensation to victims where compensation paid under Section 357 Cr.P.C is not adequate or where the case ended in acquittal or discharge and where the victim is required to be rehabilitated.

43. The primary object of the provisions of Section-357A of the Code of Criminal Procedure is to enable the Court to direct the State to pay the compensation to the victim where, the compensation awarded under Section-

357 Cr.PC. is inadequate irrespective of the fact that the case ended in acquittal or discharge and where the victim is required to be rehabilitated. The provisions of Section-357A have been incorporated into the Code of Criminal Procedure, on the recommendation of 154th report of the Law Commission submitted in the year 1996 by its Chairman K.Jayachandra Reddy. The Committee headed by Justice V.S.Malimath, to reform the Criminal Justice System, submitted report in the year 2003 making its recommendations to ensure Justice to the victims of crime.

44. The Apex Court in Suresh's case, while considering the scope and ambit of Section 357 discussed in detail and also considered the recommendation made by 154th report of the Law Commission and took note of the said recommendation while awarding compensation to the victim.

45. The Karnataka State Government while issuing notification dated 22.02.2012 appended to the schedule enhancing the compensation and the Apex Court in the

judgment referred supra in Suresh's Case held that there must be uniformity in the matter of fixing compensation in terms of the provisions of Section 357A of Cr.P.C., between States and there shall not be arbitrariness in awarding compensation and also issued directions to all the States to formulate the appropriate scheme, adopting the scheme notified by the State of Kerala, unless the scale awarded by any other State is higher and the State of Karnataka has already issued notification referred supra.

46. The Apex court in Ankush's case and Suresh's case made it clear that compensation has to be awarded irrespective of whether the case ended in acquittal or discharge. The obligation cast upon the criminal Courts under Section – 357 is a statutory obligation and its objects and meaning can be achieved only when the criminal Courts award requisite compensation as per the notification issued by the Government of Karnataka, Home Department (Crimes), without fail.

47. Having taken note of the recommendation of the 154th report of the Law Commission and also the principles laid down in the judgments referred supra, we are of the considered opinion that the trial Courts have to take note of the very object of Section 357, amended Section 357A of Cr.P.C and exercise the powers judiciously to award suitable compensation. It is also the considered opinion of this Court that all the Public Prosecutors who are representing the State, to appraise the Courts regarding the nature of the crime, gravity of the offence and make their endeavor to see that appropriate sentence has to be imposed on the accused. The Director of Prosecution and Government Litigation in Karnataka, Bengaluru is also directed to issue necessary circular imposing the obligation on the part of all the Public Prosecutors working in the State to make effective representation before the Courts to award suitable compensation not only in terms of Section 357 of Cr.P.C, but also in terms of Section 357-A of Cr.P.C.

48. It is also necessary to direct the Registrar General of this High Court to issue necessary circulars to the Judges who are working in the District Judiciary to implement the scheme of victim compensation, by keeping the very object of the statue and award appropriate compensation to the victim. It is observed by this Court that while sentencing the accused also, the accused oriented justice is noticed and the same is not in the letter and spirit of the wisdom of the legislature. The Courts should also make endeavour to provide victim oriented justice and the same can be done only if appropriate compensation is awarded to the victim. While imposing punishment, Courts should not only keep in view the rights of criminals, but also rights of victims and society at large as held in the judgment of Apex Court in the case of MUKESH VS. STATE FOR NCT OF DELHI REPORTED IN AIR 2017 SC 2161.

49. In this regard, this Court would like to give certain guidelines to the Courts below to exercise the

powers conferred upon the Courts under Sections 357 and 357-A of Cr.P.C. The Courts should also take note of the capacity of the accused to pay the compensation while awarding the victim compensation. Hence, the very scheme under Section 357-A of Cr.P.C also has to be kept in mind directing the Government to pay the compensation, wherever it is just and reasonable. The guidelines are formulated in the operative portion of the Judgment to comply both by the judicial officers and also public prosecutors for effective implementation of victim compensation.

50. In the present case on hand also, we have noticed that though the victim has suffered three fractures in the incident and subjected to three surgeries, only fine of Rs.1,000/- has been imposed by the trial Court and no compensation is awarded. The trial Court did not take note of the said fact into consideration while awarding sentence of imprisonment. The Court has failed to award any compensation in favour of the victim under Section 357 of

Cr.P.C. Having taken note of the incident, which had taken place in the year 1999, almost 20 years have elapsed and sentencing the accused for two years, appears to be on the higher side and the same can be compensated reducing the same to six months and also award the victim compensation to the victim. Hence, it is appropriate to reduce the sentence of imprisonment from two years to six months.

51. In view of the above discussion, we pass the following:

ORDER

I) The appeal filed by the State is allowed. The judgment dated 14.02.2013 passed by the Appellate Court in Crl.A.No.45 of 2006 is set aside.

II) The judgment of conviction dated 20.01.2006 passed by the trial Court in C.C.No.27/2004 is restored confirming the conviction.

III) The accused Nos. 1 and 2 are convicted for the offences punishable under section 326 of Indian Penal Code and modified the sentence to undergo simple imprisonment for a period of six months and directed to pay fine of Rs.50,000/- each which is payable to P.W.2. In default of payment fine, each of the accused to undergo further simple imprisonment of one year.

IV) The accused Nos.1 and 2 are convicted for the offence punishable under Section 324 of Indian Penal Code and sentenced to pay fine of Rs.5,000/- each which shall vest with the State. No sentence of imprisonment is imposed, if fine amount is paid.

V) Needless to State that if the accused persons were in custody during the period of trial, they are entitled for the benefit of set off under Section 428 of Cr.P.C.

Before parting with this case, we find it necessary to issue guidelines to the Judicial Officers and the Public Prosecutors to comply with Sections 357 and 357A of Cr.P.C by keeping in mind the object, intent and wisdom of legislature.

51. The trial Court Judges are directed to keep in mind the following guidelines while sentencing the accused persons:

i) While sentencing, the Courts are directed to consider the capability of the accused to pay the fine and if the accused is capable to pay the fine amount, order for appropriate fine and compensation.

ii) If the accused is not capable to pay the compensation, then direct or refer the matter to the District Legal Services Authority to pay the appropriate compensation with the corpus created by the State Government of Karnataka in terms of the Notification dated 22.02.2012.

iii) The trial Court Judges shall not only order for compensation but also make an interim order to rehabilitate the victims as held by the Apex Court in the cases of *ANKUSH and SURESH* (cited supra).

iv) The trial Court Judges shall also while awarding appropriate compensation and passing an order for interim rehabilitation, keep in mind the gravity of the offences, nature of injuries and the amount spent for treatment which should be just and reasonable and not exorbitant. In other words, the compensation should be proportionate to the gravity of the offence.

52. The Public Prosecutors are directed to keep in mind the following guidelines while assisting the Court to award sentence to the accused persons:

i) The Public Prosecutors shall request the respective Courts to impose the fine and compensation with the letter and spirit of Sections 357 and 357-A of Cr.P.C.

ii) The trial Courts have to determine whether the accused is capable to pay the fine

or the compensation amount, if not the same has to be referred to the District Legal Services Authority.

iii) The learned Public Prosecutors shall also make necessary application before the Court to make interim arrangements to rehabilitate the victim in order to fulfill the very object of Sections 357 and 357-A of Cr.P.C as held by the Apex Court in the cases of Ankush and Suresh (cited supra).

53. The Registrar General is directed to circulate this judgment to all the Judicial Officers of the State with a direction to comply with the object and intent of Sections 357 and 357-A of Cr.P.C and the Director of Prosecution to circulate the same to all the Prosecutors working in the State including the State Public Prosecutors.

Sd/-
JUDGE

Sd/-
JUDGE

sma/nbm