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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.224 OF 2008.**

- | | | |
|--|---|----------------------|
| 1. Sandip Hari Karande |] | |
| age: 21 yrs, Occn. business, |] | |
| residing at Pandharpur, Tal.Pandharpur |] | |
| District: Pandharpur |] | |
| | | |
| 2. Kapil Hari Karande, |] | |
| age: 19 years, occn. business |] | ... <u>Appellant</u> |
| r/o Behind old Karad Naka |] | Orig. accused |
| Pandharpur, Tal. Pandharpur |] | Nos 2,3 and 4 |
| District: Pandharpur |] | |
| | | |
| 3. Nagarbai Hari Karande, |] | |
| age: 42 years, occn. Nil, |] | |
| r/o Behind old Karad Naka |] | |
| Pandharpur, Tal. Pandharpur |] | |
| District: Pandharpur |] | |
| | | |
| V/s. | | |
| | | |
| The State of Maharashtra | |]... Respondent |

CRIMINAL APPEAL NO.242 OF 2008.

- | | | |
|------------------------------|---|----------------------|
| Hari Laxman Karande |] | |
| age: 48 years, Occn. Service |] | ... <u>Appellant</u> |
| r/o Behind Old Karad Naka |] | Orig. accused |
| Pandharpur, tal. Pandharpur |] | No.1. |
| District: Solapur |] | |

V/s.

The State of Maharashtra

]... Respondent

CRIMINAL APPEAL NO.859 OF 2008

The State of Maharashtra

] Appellant

-vs-

1. Hari Laxman Karande
age: 45 yrs.Occn. Service

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2. Sandip Hari Karande
age : 19 yrs. Occn. Business

]]

3. Kapil Hari Karande,
age: 17 years, Occn. Business

] Respondents.
] Ori. accused
Nos 1 to 4

4. Sou. Nagarbai Hari Karande
age: 34 yrs, Occn.household work

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All are residing at Old Karad Naka
Chandrakant Dhotre Wada
Pandharpur, District: Solapur

]]]

Mrs. P. U. Badadare, for appellants in Appeal No.224 of 2008 and for respondent Nos 2 to 4 in Appeal No.859 of 2008

Mr. P. R. Arjunwadkar, for Appellant in Appeal No.242 of 2008 and for respondent No.1 in Appeal No.859 of 2008

Dr. F. R. Shaikh A.P.P., for the Respondent-State in appeal Nos 224 of 2008 and 242 of 2008 and for appellant State in Appeal No.859 of 2008.

**CORAM : SMT. V. K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

CLOSED FOR ORDER ON : 16th JUNE, 2015.

JUDGMENT PRONOUNCED ON : 26th JUNE, 2015

JUDGMENT : [Per: Dr. Shalini Phansalkar-Joshi, J.]

1. All these three appeals are arising out of one and the same judgment and order dated 14.2.2008 of learned Sessions Judge, Pandharpur, in Sessions Case No.68 of 2006, hence they are being decided by this common judgment. For the sake of convenience, therefore, the parties are referred to by their original nomenclature.

2. By the impugned judgment, accused No.1 Hari is convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months. He is also convicted for the offence punishable under Section 324 and 506 (II) of the IPC and is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/-, in default to undergo rigorous

imprisonment for three months on each count. Accused Nos 2 to 4 are convicted for offence punishable under Section 323 r/w Section 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.1,000/- in default to suffer rigorous imprisonment for 45 days. Hence, being aggrieved by the same, Criminal Appeal Nos 224 of 2008 and 242 of 2008 are preferred by the accused Nos. 1 and 2 to 4, respectively.

3. Whereas Criminal Appeal No.859 of 2008 is preferred by the State against acquittal of accused No.1 for the offence punishable under Section 307 of IPC and also against acquittal of accused Nos 2 to 4 under Section 302, 307, 504 and 506 of IPC.

4. Facts, as are necessary, for deciding these appeals may be stated thus :-

P.W.8 Sangita is the wife of deceased Chandrakant and mother of P.W.7 injured Sagar. Her elder daughter Sarita is married and younger daughter Snehal is taking education.

Accused Nos 2 and 3 are the sons and accused No.4 is the wife of accused No.1. Accused were running a sugar-cane juice shop in front of the house of P.W.8 Sangita. Just four months prior to the incident, accused Nos 1 to 3 had abused and assaulted P.W.7 Sagar and complaint thereof was lodged at Pandharpur Police Station. Police had taken action against accused on that count. Being annoyed due to said complaint, accused persons, as per prosecution case, used to harass P.W.8 Sangita and her family members. There used to be frequent quarrels and exchange of hot words between the two families.

5. On the date of incident i.e. 28.3.2006 at about 12.30 in the noon, when P.W.8 Sangita was standing in front of her house on the road, accused No.1 Hari and his son accused No.2 Sandip gave her abuses and threatening. Thereafter at about 2.00 p.m. when P.W.7 Sagar was returning home for lunch, accused No.1 Hari and accused No.2 Sandip threatened him also with sattur and also assaulted him by fist-blows and kicks. Witnesses by name Rajesh Chavan and Saudagar intervened and separated P.W.7 Sagar. P.W.8 Sangita, her husband deceased

Chandrakant and P.W.7 Sagar, therefore, went to the police station and lodged complaint about the same to the police.

6. While they were returning from police station, at about 2.45 to 3.00 p.m. accused Nos 1 to 4, who were standing in front of their sugar-cane juice shop, again started abusing P.W.8 Sangita and her family members. Accused No.1 started assaulting deceased Chandrakant with sattur in his hand. P.W.7 Sagar intervened and hence sustained blow of sattur on his left hand. P.W.8 Sangita pulled her son P.W.7 Sagar aside. However, at that time accused No.1 Hari gave another blow of sattur which fell on the neck of deceased Chandrakant. Due to it he sustained injury and fell down in the pool of blood. Accused No.2 fell down P.W.7 Sagar and accused No.1 assaulted P.W.7 Sagar also with sattur on his right leg whereas the other co-accused assaulted P.W.7 Sagar and P.W.8 Sangita with fist blows and sticks.

7. The persons residing nearby, namely, P.W.7 Anil Babar, Mahesh, and Nitin Bajarangi tried to intervene in the incident, but they were not successful. After assault, accused

fled from the spot. Deceased Chandrakant and P.W.7 injured Sagar were taken to the Municipal Hospital at Pandharpur where P.W.3 Dr. Sudhir Deshpande examined P.W.7 Sagar and found one incised wound on his right leg and left palm with abrasion on his right shoulder. Chandrakant was declared to be dead on admission. On conduct of autopsy on the dead body of Chandrakant, P.W.3 Dr. Deshpande, found one chop wound on neck which according to him has resulted into the cause of his death.

8. By that time, police were also informed of the said incident by P.W.8 Sangita and her complaint came to be recorded by police vide Exh.16. On her complaint C.R.No.50 of 2006 was registered for various offences punishable under Sections 302, 307, 323, 324, 506 read with Section 34 of the Indian Penal Code at about 16.30 hrs. The investigation of the said crime was taken over by P.W.11 Senior Police Inspector Vidhate. He went to the spot of incident alongwith P.W.10 API Harun Shaikh and made spot panchanama Exh.35. From the spot, he collected blood stained mud, simple mud and some sticks under the

panchanama. Then he recorded statement of P.W.7 Sagar and five other witnesses. On the same day accused Nos 2 to 4 were arrested and clothes on their person were seized under panchanama Exh.37. They were sent for medical examination to Municipal Hospital on that day itself, where P.W.3 Dr. Deshpande examined them and found no fresh injuries on their person.

9. On 29.3.2006, P.W.11 Senior Police Inspector Vidhate seized blood stained clothes of P.W.7 injured Sagar under panchanama Exh.33 and the clothes of deceased under panchanama Exh.32. Search of accused No.1 Hari was taken and he came to be arrested on 22.4.2006. During police custody on 25.4.2006, accused No.1 Hari expressed his willingness to show the place where weapon of assault sattur was concealed. The memorandum Panchanama thereof was made at Exh.45 in presence of P.W.4 panch Somnath More. Thereafter accused No.1 Hari guided police and panchas to the handcart of pineapple juice, run by his son, accused No.2 Sandip, at Bhadule Chowk and there he produced the sattur kept on the top of the hand cart. It came to be seized under panchnama Exh.46. On

8.5.2006, P.W.11 Senior Police Inspector Vidhate sent the seized articles to Chemical Analyzer vide requisition Exh.73. The Chemical Analyzer's reports are produced at Exh.74 to 79. Further to completion of investigation, chargesheet came to be filed in the J.M.F.C. Court at Pandharpur.

10. In due course the case came to be committed to the trial Court. The trial Court framed charge against accused vide Exh.2. Accused pleaded not guilty and claimed trial. They raised a specific plea of right to private defence and to prove this plea, they examined in all six witnesses; whereas the prosecution examined 11 witnesses to prove its case.

11. On appreciation of the evidence led by the prosecution and defence, the trial Court held guilt of the accused No.1 alone to be proved for the offence punishable under Section 302 of IPC in respect of committing murder of deceased Chandrakant and convicted and sentenced him as above. As regards charge under Section 307 of IPC for attempting to commit murder of P.W.7 Sagar, the trial Court acquitted him for

the said charge, but convicted him for the offence punishable under Section 324 of IPC. In respect of remaining accused Nos 2 to 4, the trial Court acquitted them of all the offences except for the offence under Section 323 of the IPC, of voluntarily causing hurt to P.W.7 Sagar and P. W. 8 Sangita with stick and fist-blows and sentenced them as aforesaid.

12. This judgment of the trial Court is challenged by accused No.1 by filing Criminal Appeal No.242 of 2008 and by accused Nos 2 to 4 by filing Criminal Appeal No.224 of 2008. This judgment is challenged by the State also against acquittal of the accused No.1 for offence punishable under Section 307 r/w 34 and acquittal of accused Nos 2 to 4 for the offence punishable under Section 302, 307, 504, 506 r/w 34 of IPC.

13. In these appeals, we have heard Mr. P.R. Arjunwadkar learned counsel for the accused No.1 and Mrs. P.U. Badadare, for accused Nos 2 to 4 who have strenuously urged before us that the trial Court has committed an error in ignoring and not properly appreciating the plea of right to private defence raised

and proved by accused through evidence of witnesses. It is submitted by them that evidence on record in this case categorically goes to prove that it was P. W.7 Sagar and P.W.8 Sangita who were the aggressors. They had come in front of sugar-cane juice shop of accused No.1 and raised quarrel. There was background of previous enmity and disputes between parties, in view of love affair between Sarita, the elder daughter of P.W.8 Sangita, and accused No.2 Sandip, which was opposed by family members of P.W.8 Sangita. Sarita was married off to some another person and that was real cause of disputes between the parties. Moreover, both parties are belonging to different political factions. There is only interested evidence of P.W.7 Sagar and P.W.8 Sangita on record as the trial Court has disbelieved the evidence of P.W.6 Anil, the only independent eye witness in the case. As against it, accused No.2 Sandip has examined himself and brought on record true picture of the incident. His evidence, supported with the evidence of defence witness Dr. Narote, goes to prove that in the same incident, accused No.2 Sandip has also sustained injuries. Prosecution has, however, not made any attempt to explain those injuries. The

suppression of injuries suffered by accused No.2 in the same incident, by the prosecution probabilises the plea of right to private defence raised by the accused and hence according to learned counsel for the appellants, the benefit of doubt has to be extended to the accused, as the case against them does not fall fully and completely within the four corners of the law.

14. Learned counsel for accused No.1 Hari, has also advanced an alternate submission that it is a case of single blow injury, without having any intention on the part of accused No.1 to cause death of deceased or to cause such bodily injuries as is likely to result into death and, therefore, at the most the case against accused No.1 Hari falls under Section 304 Part (I) or Part (II) of IPC. The conviction of accused No.1 for offence punishable under Section 302 IPC according to learned counsel for accused No.1 is, therefore, liable to be quashed and set aside. He has further submitted that as the accused No.1 has already undergone imprisonment of more than nine years, in his opinion, accused No.1 also deserves to be released on the punishment already undergone in jail.

15. Per contra, learned APP Dr. F.R. Shaikh has supported the judgment of trial Court to the extent of conviction of accused No.1 under Section 302 and refuted the plea of defence counsel that his case is falling under Section 304 part (I) or (II) of IPC. He has submitted that it is not a case of one single blow, as evidence on record proves that three blows of sattur were hurled by accused No.1, out of which one was obstructed by P.W.7 Sagar and hence he sustained injury on his left hand. Moreover, the fatal blow was also of such a serious and grievous nature that it has resulted into instant death of the deceased. Hence according to him, the case against accused No.1 squarely falls under Section 302 of IPC. It is further submitted by learned APP Shri. Shaikh that even as regards injury caused to P.W.7 Sagar, the very fact that injury was caused by sharp edged weapon like sattur and that too on the part of body like right leg makes out a case for the offence punishable under Section 307 of the IPC. Hence to that extent, according to him, the judgment and order of the trial Court is required to be modified as the trial Court brought down the case against accused No.1 in respect of injury

to P.W.7 Sagar, for the offence punishable under Section 324 of the IPC only.

16. In the backdrop of above submissions, it can be clearly inferred that the occurrence of the incident is not in dispute. Involvement of the prosecution witnesses and the accused herein is also not in dispute. The very plea of right to private defence raised by the accused makes it abundantly clear that the only issue arising for consideration is about the manner in which the incident has occurred; whether the accused were aggressors or whether it was the prosecution witnesses.

17. The main plank of prosecution case in this respect is on the evidence of P.W.7 injured Sagar, P.W.8 his mother Sangita and P.W.6 Anil. P.W.8 Sangita has deposed about the incident which has occurred on that day at about 12.30 to 1.00 p.m. According to her, when she was standing outside the house, accused Nos 1 and 2 started abusing her and even gave her threats with knife. When her son P.W.7 Sagar came for lunch, accused Nos. 1 and 2 threatened him also with the said knife.

It is deposed by P.W.8 Sangita and also by P.W.7 Sagar that due to this incident of abusing and threatening, P.W.8 Sangita alongwith her husband deceased Chandrakant and son went to the police station to lodge complaint. Their evidence stands supported with the complaint lodged by P.W.8 Sangita about this incident which is produced on record at Exh.59.

18. The second incident, which gave rise to this case, took place while P.W.8 Sangita, her husband deceased Chandrakant and son, were returning from the police station to their house. They saw that accused Nos 1 to 4 were present in their sugar-cane juice shop and they confronted P.W.8 Sangita and her husband as to why they have lodged complaint against them. On that score, accused picked up quarrel. In the said quarrel, accused No.1 Hari initially assaulted P.W.7 Sagar by fist-blows and sattur. To rescue P.W.7 Sagar, deceased Chandrakant intervened. Accused No.1 gave sattur blow to Chandrakant. P.W.7 Sagar obstructed said blow by means of hands, hence he sustained injury on his left hand. Accused No.1 then gave second blow of sattur to Chandrakant, which fell on his neck. Due to said

blow Chandrakant fell down in a pool of blood. By that time accused No.1 gave third blow of sattur to P.W.7 Sagar on his leg. Meanwhile accused Nos 2 to 4 continued assault on P.W.8 Sangita with stick, fist-blows and kicks. After the assault accused fled from the spot.

19. Deceased Chandrakant was then taken to the hospital in auto rickshaw by P.W.7 Sagar and his brother Sawan. There Chandrakant was declared to be dead. P.W.7 Sagar, who was also injured in the incident, was treated in the said hospital. Meanwhile police came to the spot and recorded complaint of P.W.8 Sangita vide Exh.16.

20. Except for some minor discrepancies or inconsistencies, which are bound to occur in the evidence of any truthful witness, nothing worthwhile is elicited in the cross-examination of these two witnesses to disbelieve them in any way. As a matter of fact in the cross-examination of P.W.8 Sangita, it is brought on record that in all three blows of sattur were inflicted by accused No.1, first blow was given to

Chandrakant which P. W. 7 Sagar obstructed and hence received injury on his hand, the second blow was received on the leg of P. W. 7 Sagar and third blow fell on the neck of Chandrakant. It is also brought on record that P.W.7 Sagar has also received stick blows on his leg and back, at the hands of accused No.2 Sandip.

21. In the cross-examination of P.W.8 Sangita, it is also brought on record that police carried out panchanama of scene of offence in between 5.00 to 6.00 p.m. She had shown them the spot of incident, at that time stick was lying there which police seized under panchanama at Exh.35. It is further brought on record that her saree and blouse were stained with blood and police seized them under panchanama.

22. In the cross-examination of P.W.7 Sagar, it is brought on record that police had seized his blood stained clothes also. He has received 5 to 6 stick blows on his leg and in back in the said incident. The entire incident lasted for about 5 to 6 minutes. Some persons had gathered there after the incident was over. In his cross- examination, it is further brought on record that

accused No.1 Hari brought sattur from his sugar-cane juice shop when the incident started. The suggestions are put up to him that deceased Chandrakant caught hold of accused No.2 Sandip and was assaulting him with stick and that accused No.2 Sandip was shouting and calling his father for help to save him. Both these suggestions are denied by P.W.7 Sagar.

23. The suggestions which P.W.7 Sagar has accepted are that during initial part of incident, accused No.1 Hari was in the shop and the incident has taken place in front of the shop of accused No.1. On the basis of this evidence, attempt is made by defence to show that it was the prosecution witnesses and the deceased, who had come to the juice shop of accused No.1 and they were, therefore, the aggressors.

24. However, in our considered opinion, the evidence on record clearly goes to prove that way to the house of P.W.8 Sangita was passing from the sugar-cane juice shop of accused No.1 and the incident has taken place when P.W. 8 Sangita, Chandrakant and P.W. 7 Sagar were returning from police station

to their house. Hence from the mere fact that the incident has taken place in front of shop of accused No.1 it cannot be inferred that the prosecution witnesses were the aggressors. As a matter of fact, the evidence on record proves that it was the accused No.1 and other accused persons, who confronted P.W.8 Sangita and deceased Chandrakant as to why they lodged complaint and picked up quarrel on that count. Thus, the incident was initiated by the accused persons and not by the prosecution witnesses, though it has occurred in front of sugar-cane juice shop of accused No.1.

25. There is also independent evidence of P.W. 6 Anil, who is having his own shop near the spot of incident. He is knowing deceased, prosecution witnesses and the accused. He has deposed about the incident that at about 2.30 p.m. after hearing shouts of P. W. 8 Sangita, he came out of his shop and found that accused No.1 Hari was armed with sattur and he was assaulting P.W.7 Sagar. When deceased Chandrakant intervened, accused No.1 Hari gave a blow with sickle which P.W.7 Sagar obstructed with his left hand, but subsequent thereto, second blow fell on

the neck of the deceased. As per his evidence, he tried to intervene, but as the sattur was wielded in air by accused No.1 Hari, he could not go to the rescue of injured. Instead thereof he ran towards Choupala Chowk and telephoned police from the coin box.

26. The only ground on which trial Court has not accepted his evidence, is that he had come to the spot after hearing shouts and at that time he saw that there were injuries on the person of P.W.7 Sagar and he had fallen down. Similarly, deceased Chandrakant was lying on the ground in a pool of blood. In our opinion, even if this witness has not seen actual assault, the fact remains that he is an eye witness to the incident and his evidence supports the evidence of P.W.7 Sagar and P.W.8 Sangita.

27. There is also corroborating medical evidence on record. P.W.3 Dr. Deshpande, who was on duty at Pandharpur Municipal Hospital, has examined P.W.7 Sagar at 4.30 p.m. on that day, and found following injuries on his person :-

- 1) Incised wound 4 x 2 cm on right leg, right lateral side 8 cm upper from right ankle joint.
- 2) Incised wound 4 x 0.1 cm on left palm at base of the thumb.
- 3) Abrasion reddish muscle deep 1 x 1 cm on right shoulder.

According to him, all these injuries were caused by hard and sharp weapon and possible by means of instrument like sattur. He has issued injury certificate Exh.39 accordingly. Thus, injury of incised wound on right leg of P.W. 7 Sagar proves assault by sattur whereas incised wound on left palm at base of the thumb, proves that the said injury was caused with sharp weapon like sattur when he was obstructing the sattur blow hurled at his father by accused No.1 Hari.

28. P.W.3 Dr. Deshpande has also conducted postmortem on the dead body of Chandrakant and on external examination he has noticed the following injury:-

“Chop wound 12 cm in length 5 m in width and 6 cm in depth on neck from survival to anterior side of neck at level of 5th survival vertebra”.

On internal examination, he found that survival spine Nos. 5, 6 and 7 were dislocated. In his opinion, though it was single injury, as it was chop wound over the neck, it was sufficient in the ordinary course of nature to cause death and the cause of death was this chop wound. The postmortem report to that effect is produced on record at Exh.40. Thus, the medical evidence in the case goes hand in hand with ocular evidence to prove the occurrence of the incident, as deposed by the prosecution witnesses.

29. At this stage coming to the defence taken by accused. Accused No.2 Sandip has examined himself, raising a specific plea that he was having love affair with Sarita, the elder daughter of deceased Chandrakant and P.W.8 Sangita. He has produced on record several letters exchanged between him and Sarita at Exh.119. According to him, as the said love affair was

opposed by P.W.7 Sagar and deceased Chandrakant, there were disputes between the two families. Their relations had become strained. Sarita was married discreetly. About 7 to 8 days prior to this incident, she had come to the house of her parents. Her father Chandrakant had seen her meeting accused No.2 Sandip, and therefore, they were having grudge against accused No.2 and it was the cause for this incident.

30. It is further deposed by accused No.2 Sandip that on the date of incident at about 10.30 to 10.45 a.m., P.W.7 Sagar and his father were abusing him. At around 12 to 12.30 noon, they threatened him of lodging complaint against them. Then he saw P.W.8 Sangita going to police station to lodge complaint. It is his further evidence that at about 2.00 to 2.30 p.m. when he was standing outside his sugar-cane juice shop, P.W.7 Sagar and his father Chandrakant came to beat him on account of his love affair with Sarita. At that time P.W.7 Sagar was having stick in his hand, Chandrakant caught hold of him from behind and P.W.7 Sagar started assaulting him with stick. Due to it he sustained injuries and fell down. He thought that he would be killed and so

he said to his father as to whether he would come to save him after his death. Hence, his father came there. P.W.7 Sagar, and deceased Chandrakant started assaulting his father. As he himself was frightened, he ran away.

31. So far as this evidence of accused No.2 Sandip is concerned, in the first place, it does not explain the manner in which P.W.7 Sagar and his father Chandrakant received the sattur blows. His evidence is, however, certain to the effect that sattur was in the hands of his father. Accused No.1 Hari, who has brought it from his sugar-cane juice shop. His evidence is also clear to the effect that P.W.7 Sagar, at the most, was having only stick. The attempt of defence appears to show that in order to save accused No.2 Sandip, his father has used sattur and in exercise of that right to private defence, injuries were caused to P.W.7 and Chandrakant.

32. To substantiate that accused No.2 has also sustained injuries in the same incident, Dr. Prakash Narote is examined as defence witness, who has testified that on 31.3.2006 accused

No.2 Sandip was brought to the Hospital by police and on his examination, he found following injuries:-

- 1) Contusion 1 cm x 1 cm on left lateral aspect of the hand
- 2) Contusion 4 cm x 1 cm on upper arm left.
- 3) Abrasion $\frac{1}{2}$ cm x $\frac{1}{2}$ cm on left elbow.
- 4) Contusion 1 cm x 1 cm left leg posterior aspect.
- 5) Contusion 4 cm x 2 cm. right shin.

According to him, all these injuries are possible by hard and blunt object like stick. The age of injuries was more than 24 hours which may extend upto 72 hours i.e. three days maximum. He has issued injury certificate Exh.106 accordingly. However, in his cross-examination, he has admitted that he did not make any enquiry with accused No.2 about the history of injury and accused No.2 also did not inform him as to how injuries were caused.

33. In the backdrop of this evidence, the evidence of P.W.3 Dr. Deshpande is required to be referred again, because the evidence of P.W.3 Dr. Deshpande goes to show that on the day of incident itself i.e. on 28.3.2006 accused No.2 Sandip, accused No.3 Kapil and accused No.4 Nagarbai were produced before him by police for their medical examination. He medically examined them and did not find evidence of any fresh injuries on the body of any of the accused. He has produced on record requisition of the police Exh.43 which was sent by police to him for medical examination of these three accused and on the said requisition itself he has made endorsement that no fresh injury was found on the body of any of the accused. P. W. 10 API Shaikh has also deposed about sending accused Nos 2 to 4 to P.W.3 Dr. Deshpande, on the same day for their medical examination and no fresh injuries being found on their persons.

34. In such situation, the evidence of defence witness Dr. Narote that there were five contusions found on the body of accused No.2 on 31.3.2006 i.e. 3 days after the incident becomes difficult to be relied upon to hold that all these injuries

were sustained in the same incident, especially in the light of the fact that no history was given to Dr. Narote and as admitted by Dr. Narote himself, that these injuries are possible by self infliction.

35. Though learned counsel for the appellants has relied on the **State of Rajasthan -vs- Madho and anr** reported in **1991 Supp (2) SCC 396**, to advance submission that as prosecution witness has not explained the injuries on the accused person, implicit reliance cannot be placed on such witness, the essential requirement to accept this legal proposition is that injuries must have been caused to the accused in the same incident. In the instant case, the defence has failed to prove that the injuries found on the person of accused No.2 were caused in the same incident, as there were no fresh injuries after the incident when accused No.2 was examined by P.W.3 Dr. Deshpande.

36. As to the plea of right to private defence, learned counsel for appellants has relied on **Mohan Singh -vs- State**

of Punjab reported in **(1975) 4 SCC 254**, to advance well settled legal proposition that the accused can discharge the burden to prove the right to private defence by establishing preponderance of probabilities. He has also relied upon **Abdul Kadir and others -vs- State of Assam** reported in **1985 (Supp) Supreme Court Cases 603**. However, this authority cannot be made applicable to the facts of the present case because in that case, right to private defence was held proved, as evidence on record established the existence of grievous injuries inflicted by deceased party on the vital part of body of accused. In the instant case the alleged injuries found, that too 3 days after the incident on the person of accused No.2, are neither on vital part of body nor they are grievous in nature. They are simpliciter contusions. Therefore, even if it is accepted that these injuries are sustained in the incident, the plea of right to private defence cannot be accepted.

37. Moreover, in the present case, the evidence on record does not show that any danger to life of accused No.2 Sandip was apprehended for accused No.1 to rush to the spot with sharp

edged weapon like sattur and to make indiscriminate assault on P.W.7 Sagar and his father deceased Chandrakant. There is also no evidence proving that any of the prosecution witnesses or the deceased were armed with the sharp edged weapons like sattur or knife or there was any apprehension of danger to the life of accused No.2 Sandip. This is a clear case where accused No.1 has patently and apparently made an indiscriminate assault. Hence the plea of right to private defence cannot be accepted.

38. The last and alternate submission advanced by learned counsel for appellant is that, as it is case of single blow injury, the case of accused No.1 will fall under Section 304 Part (I) or (II) of IPC. However, in our opinion, this plea also cannot be accepted as there is no uniform or general law as such that whenever there is a single injury, the case will unerringly fall under Section 304 part (I) or (II) and will not fall under Section 302 of IPC. As held by the Apex Court in **Thangaiya -vs- State of Tamil Nadu** reported in **2005 Cri. L. J. 684**. Section 300 is not ruled out only because of a single blow injury causing death. The nature of the weapon used, its size, place of assault, facts

leading to assault, part of the body which is injured by the assault, are the factors among others are required to be considered in each case as each case depends on its own facts and circumstances.

39. In the present case, the weapon used is a sharp edged weapon like sattur, assault made is on the vital part of body like neck. It was also not a case of a assault by single blow, but in all three blows were inflicted by accused No.1. One fell on the right leg of P.W.7 Sagar, the other blow which was intended towards deceased Chandrakant was obstructed by P.W.7 Sagar and hence he sustained injury on his left hand. The third blow given by accused No.1, proved to be fatal as it was given on the vital part of body like neck. Therefore this is not a case where a single blow is given, but it is case where three successive blows were inflicted out of which one was proved to be fatal, as the other two could be averted. In such situation, the case squarely falls under Section 302 of the IPC and no benefit of any of the *Exception* carved out under Section 300 of IPC can be extended to the accused.

40. The plea raised by learned counsel for appellant that out of political rivalry or earlier strained relations, accused are falsely implicated in the case, also cannot be accepted in the present case because of concrete and positive evidence of eye witnesses which is supported and corroborated by the prompt F.I.R. and medical evidence. The conviction of the accused No.1, therefore, for the offence under Section 302 of IPC is, therefore, to be upheld.

41. As regards the appeal filed by the State challenging acquittal of accused Nos. 2 to 4 for offence under Section 307 read with 34 of the IPC, in respect of injuries caused to P.W.7 Sagar, in our considered opinion, having regard to the nature of injuries sustained by P. W. 7 Sagar, the view taken by the trial Court of convicting accused No.1 alone, as he alone wielded the weapon, for the offence under Section 324 of IPC being the probable view, we do not intend to interfere in the said finding of the trial Court.

42. So far as the appeal filed by accused Nos 2 to 4 for their conviction under Section 323 read with section 34 of the IPC is concerned, the evidence on record is more than sufficient to prove their involvement and the part played by them in giving fist blows and kicks and assaulting with sticks to P.W.7 Sagar and P.W.8 Sangita. Therefore, their conviction under Section 323 read with section 34 of IPC is fully justified and established by the evidence on record and is maintained. However, we find some substance in the submission as regards sentence imposed on them. The trial Court sentenced them to suffer rigorous imprisonment for one year and to pay fine of Rs.1,000/- each in default rigorous imprisonment for 45 days. It is submitted that accused Nos 2 and 3 had already undergone imprisonment for about 8 months; whereas accused No.4 being a woman has undergone imprisonment for 24 days only. In our considered opinion, therefore, we alter the punishment of rigorous imprisonment of one year imposed on them to that of the punishment which they have already undergone. Therefore, accused Nos 2 to 4 now need not to undergo their remaining part of sentence. To that extent their appeal deserves to be allowed.

43. Consequently, Criminal Appeal No.224 of 2008 is partly allowed. The conviction of accused Nos. 2 to 4 for the offence under Section 323 read with section 34 of IPC is maintained, however, the sentence of rigorous imprisonment for one year as imposed upon them is altered to that of the period which they have already undergone.

44. Criminal Appeal No. 242 of 2008 preferred by accused No.1 Hari and Criminal Appeal No.859 of 2008 preferred by the State, are dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K.TAHILRAMANI, J.]