

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 220 OF 2021

Sameer s/o Chandbhai Pathan
Age 29 years, Occ. Labour,
R/o. Mendhvan, Tq. Sangamner
District Ahmednagar

...Appellant
(Ori. accused No.1)

versus

1. The State of Maharashtra
Through Police Inspector
Sangamner Taluka Police
Station, Tq. Sangamner
District Ahmednagar

2. Sopan Ramchandra Bade
Age 66 years, Occ. Agriculture
R/o. Mendhvan, Tq. Sangamner
District Ahmednagar

...Respondents

.....
Mr. K. N. Shermale, advocate for the appellant
Mr. S. J. Salgare, A.P.P. for respondent No.1 State
Mr. S. K. Shinde, advocate for respondent No.2

.....
**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

**Date of Reserving
the Judgment : 18.01.2022**

**Date of pronouncing
the Judgment : 16.02.2022**

JUDGMENT (PER V.K. JADHAV, J.) :-

1. This appeal is directed against the judgment and order of conviction dated 15.3.2021 passed by the Additional Sessions Judge, Sangamner in Sessions Case No. 37 of 2015.

2. Brief facts giving rise to the prosecution case are as follows:-

a) The informant Chandrakant Bade is residing with his wife i.e. accused No.3 Shubhangi and son Satyajeet in the house situated at village Mendhvan, Tq. Sangamner, District Ahmednagar. Deceased Somnath was real brother of the informant Chandrakant and son of P.W.11 Sopan Bade. At the relevant time, deceased Somnath and his father Sopan were residing in their farm house. As per the prosecution story, there was love affair between appellant-accused Sameer and accused No.3 Shubhangi. P.W. 1 Chandrakant had seen and heard accused No.3 Shubhangi while talking with appellant-accused Sameer on phone. Even P.W.1 Chandrakant had disclosed the said fact to the parents of appellant-accused Sameer and also warned co-accused No.3 Shubhangi for not making phone calls to appellant-accused Sameer. In spite of the same, appellant-accused Sameer and accused No.3 Shubhangi used to meet and make phone calls. Thus, four months prior to the incident, P.W.1 informant Chandrakant had lodged complaint Exh.33 to the police station and even the police had given warning to appellant-accused Sameer on that count. Since then the appellant-accused Sameer was also threatening P.W.1 informant Chandrakant that he will finish him.

b) The incident had taken place on 10.12.2014 at about 5.30 p.m.

when P.W.1 Chandrakant Bade was proceeding towards Rajwada for making payment to the labours. The appellant-accused Sameer was seen standing near Marathi school. On seeing P.W.1 informant Chandrakant, the appellant-accused Sameer started abusing him. P.W.1 informant Chandrakant was having cash amount with him at that time and therefore, he went to pay the money to the labours. However, while returning after making payment of money, the appellant-accused Sameer still was standing near the said Marathi school. P.W.1 informant Chandrakant had questioned appellant-accused Sameer as to whom he was abusing. The appellant-accused Sameer replied that he was abusing to him. Even the scuffle had taken place between them. P.W. 1 informant Chandrakant thereupon called his brother deceased Somnath by making mobile call. At about 6.30 p.m. deceased Somnath came near Marathi school. The appellant-accused Sameer alongwith his brother Akbar were standing near the hair cutting salon shop of P.W.8 Dattu Kadam. Deceased Somnath had thus questioned the appellant-accused Sameer as to why he was making calls to his sister-in-law i.e. accused No.3 and also abusing P.W.1 informant Chandrakant. Thereupon, the appellant-accused Sameer took a knife from his pocket and gave blows of knife on the chest and hands of deceased Somnath. Deceased Somnath was immediately taken to Tambe Hospital and thereafter shifted to Government Rural Hospital, Sangamner. However, he was declared dead on arrival.

c) On the basis of complaint Exh.34 lodged by P.W.1 Chandrakant, crime No. 156 of 2014 came to be registered for the offence punishable under Sections 302, 323, 504, 506 r.w. 34 of I.P.C. P.W.16 P.I. Sanjay Bhamare took over investigation of the crime. P.W.16 P.I. Sanjay Bhamare has visited the rural hospital, examined dead body and immediately thereafter went to the spot at about 10.30 p.m. The spot of incident was in front of one salon shop of villager P.W.8 Dattu Kadam. In front, inside and at the entrance of salon shop blood was lying. In front of salon shop one knife was also lying. On the next day morning at about 7.00 to 8.00 a.m. he drew inquest panchanama Exh.36 in presence of two panchas. In the morning at 9.00 a.m. he again went to the spot and in presence of panchas drew spot panchanama Exh.38. He has seized a knife and also collected sample of blood from the spot of incident. On 11.12.2014 at about 4.00 p.m. the father of deceased Somnath produced his clothes which were stained with blood. P.W.16 P.I. Sanjay Bhamare has seized the said clothes under seizure panchanama Exh.40. Article 8 and 9 before the court are the clothes of father of deceased Somnath. Further, at the time of post mortem, the clothes on the person of deceased Somnath were taken in the custody and the same were also seized under panchanama Exh.42. On 11.12.2014 at about 9.50 p.m. P.W.16 P.I. Bhamare has effected the arrest of appellant-accused Sameer and accused Akbar by drawing arrest panchanama Exh.50 and 84 respectively. Further, the clothes wore by the co-accused Akbar at the time of his arrest were

also seized under panchanama Exh.44. Articles 14 and 15 before the court were the same. He had recorded the statements of witnesses. On 15.12.2014 in presence of two panchas, the appellant-accused Sameer made statement that he will show the spot where he has concealed the clothes which he had wore at the time of incident. Accordingly, memorandum panchanama Exh.47 was drawn and at the instance of the appellant-accused Sameer, his clothes came to be sized as per recovery panchanama Exh.47. A T-shirt article 16 and a jeans pant article 17 before the court were the same. He has sent all seized articles to the Chemical Analyzer, Nashik. It was transpired during investigation that because of illicit relations between appellant-accused Sameer and co-accused Shubhangi the incident had taken place. Even the complaint was filed in that respect on earlier occasion. It also revealed during the investigation that co-accused Shubhangi has insisted the accused persons, including appellant-accused Sameer for commission of murder of deceased Somnath. On completion of investigation he has submitted charge sheet against the accused persons.

d) The learned Additional Sessions Judge, Sangamner had framed charge against the accused persons. All accused pleaded not guilty and claimed to be tried. The prosecution has examined in all 16 witnesses to substantiate the charges levelled against the accused persons. After completion of prosecution evidence, the statements of accused persons under Section 313 of Cr.P.C. came

to be recorded. As per the defence of appellant-accused Sameer, on the day of incident he was sitting in the salon shop. The deceased Somnath with an intention to assault appellant-accused Sameer came in the salon shop and assaulted appellant-accused Sameer with knife. In the said attack, the appellant-accused Sameer has sustained injuries on his stomach and on his hand. The other accused persons have denied their presence and participation in the alleged commission of crime.

e) The learned Additional Sessions Judge has convicted the appellant-accused for the offence punishable under Section 302 of I.P.C. and acquitted other accused persons for the charges levelled against them. The operative part of the conviction order dated 15.3.2021 in Sessions Case No. 37 of 2015 is reproduced herein below:-

“1. Accused No.1 Sameer Chandbhai Pathan, resident of Mendhvan, Tal. Sangamner, Dist. Ahmednagar, is hereby convicted for having committed an offence punishable under Section 302 of Indian Penal Code and acquitted from the offence punishable under Sections 323, 504, 506 read with Section 34 and Section 109 of I.P.C.

2. For the commission of an offence punishable under Section 302 of I.P.C. accused No.1 Sameer Chandbhai Pathan is sentenced to suffer rigorous imprisonment for

life and to pay fine of Rs.50,000/- (Rs. Fifty Thousand only), in default to suffer six months simple imprisonment.

3. Out of the realized fine amount, an amount of Rs.40,000/- be given to P.W.11 Sopan Ramchandra Bade, i.e. father of deceased Somnath, by way of compensation as per Section 357 of Cr.P.C.

4. Accused No.1 Sameer Chandbhai Pathan is continuously in the custody for the purpose of investigation, inquiry and trial from 11.12.2014 and in case the appropriate Government want to utilize its power under Section 433 of Cr.P.C. for remission or commutation of the sentence in that case accused No.1 Sameer is entitled for set off as per Section 428 of Cr.P.C.

5. Accused No.2 Akbar Chandbhai Pathan and accused No.3 Shubhangi Chandrakant Bade are hereby acquitted from the offence punishable under Sections 302, 323, 504, 506 read with Section 34 and Section 109 of I.P.C.

6. Bail bonds of accused No.2 Akbar Chandbhai Pathan and accused No.3 Shubhangi Chandrakant Bade stand cancelled. However, their bail bonds executed under Section 437-A of Cr.P.C. will remain in force.

7. Muddemal property i.e. knife, clothes, blood samples, blood stained sand, sand without blood etc. i.e. Articles 1 to 18 are worthless, be destroyed after the period mentioned in para 73(d) of Chapter VI of the

Criminal Manual, is over.

8. Copy of the judgment be given to accused No.1 Sameer Chandbhai Pathan free of cost and the concern clerk to take acknowledgment to that effect.”

3. Learned counsel for the appellant submits that the prosecution has examined P.W.1 informant Chandrakant Bade, P.W.11 Sopan Bade i.e. father of deceased Somnath and P.W.8 Dattu Kadam (owner of salon shop) as eye witnesses to the incident. P.W.1 Chandrakant and P.W.11 Sopan Bade are the highly interested witnesses. P.W.11 Sopan is not an eye witness to the incident. He has deposed in para 4 that when he reached at the door of salon shop he saw that accused Akbar running away and he was followed by appellant-accused Sameer. Learned counsel submits that both the witnesses have contradicted each other on material points. The evidence of P.W.1 Chandrakant suffers from material omission and contradictions. Evidence of P.W.1 Chandrakant and P.W.11 Sopan is not consistent, reliable and trustworthy.

4. Learned counsel for the appellant-accused submits that so far as P.W.8 eye witness Dattu Kadam is concerned, he has stated in his cross examination that P.W.1 informant Chandrakant and deceased Somnath came in front of his shop and started abusing the appellant-accused Sameer. The appellant-accused Sameer went out of his shop. P.W.1 Chandrakant and deceased Somnath started

beating to appellant-accused Sameer by fist and kick blows. The appellant-accused Sameer also gave blows to P.W.1 Chandrakant and deceased Somnath. P.W.8 has further admitted in para 12 of his cross examination that because of the beating the appellant-accused Sameer came inside the shop and fell down. The palm of the appellant-accused was stained with blood. In para 13 of his cross examination, P.W.8 Dattu Kadam has further deposed that the appellant-accused Sameer had picked up scissors from his shop and gave blow to deceased Somnath. He has also stated that scissors was stained with blood and hence the police seized it from his shop. Learned counsel submits that P.W.8 Dattu Kadam, who is independent witness has brought altogether new different story. The prosecution evidence is not reliable so far as the involvement of the appellant-accused in the alleged commission of crime. Learned counsel further submits that so far as the evidence about recovery at the instance of appellant-accused Sameer is concerned, the same is not reliable and trustworthy. Learned counsel submits that reports of the Forensic Laboratory Exh.100 to 102 only indicate that the blood group of blood stains on all these articles were of blood group "B". The blood group of appellant-accused Sameer and deceased Somnath was also "B". The appellant-accused Sameer had also sustained injuries. Learned counsel submits that the appellant is entitled for benefit of doubt.

5. Learned counsel for the appellant in the alternate submits that

as per the prosecution story itself, deceased himself had gone to the place of incident. As per the evidence of independent witness P.W.8 Dattu Kadam, the appellant-accused Sameer was not armed with any weapon and he has used the scissors of hair cutting salon to defend himself. The appellant-accused has acted in exercising his right of self defence. The appellant-accused Sameer has also sustained injuries on his person. Learned counsel submits that even if it is considered for the sake of discussion the appellant-accused Sameer has exceeded right of self defence by inflicting injuries on the person of deceased Somnath more than necessary, however, there was no intention on the part of the appellant-accused Sameer to commit murder. At the most, the appellant-accused Sameer can be convicted under Section 304 for culpable homicide and not murder.

Learned counsel for the appellant in order to substantiate his submissions, placed reliance on the following cases:-

- i) Kala Singh @ Gurnam Singh vs. State of Punjab, reported in (2021) 9 JT 330;
- ii) Bhagwan Swaroop vs. State of Madhya Pradesh, reported in (1992) AIR (SC) 675;
- iii) Shahajan Ali vs. State of Maharashtra, reported in 2017 (13) SCC 481

- iv) Govindan vs. State represented by the Deputy Superintendent of Police, (Criminal appeal No. 1665 of 2021 (SC).
- v) Smt. Sandhya Jadhav vs. State of Maharashtra, reported in 2006 (2) SCC 394.

6. Learned A.P.P. submits that there are three eye witnesses to the incident and the prosecution has proved beyond doubt the involvement of the appellant-accused in the commission of crime. Learned A.P.P. submits that evidence of P.W.1 informant Chandrakant, P.W.11 Sopan and P.W.8 Dattu Kadam are consistent on material points. P.W.8 Dattu though has given certain admission in his cross examination, however he has denied the suggestion given to him by the defence. Learned A.P.P. submits that denial of the suggestion given by the defence itself indicates that P.W.8 Dattu has given those admissions in the utter confused state of mind. Learned A.P.P. submits that the said scissors was not seized during the course of investigation and only a knife having blood stains came to be seized from the spot of incident. P.W.8 Dattu had also accepted that the appellant-accused Sameer had given blow of knife on the person of deceased Somnath. Learned A.P.P. submits that except P.W.8 Dattu Kadam, no other eye witness has deposed about scissors allegedly used in the commission of crime. Learned A.P.P. submits that the evidence of eye witness is fully corroborated by recovery of blood stained clothes of appellant-accused Sameer and

the C.A. report. Learned Judge of the trial court has thus rightly convicted the appellant-accused for having committed the offence punishable under Section 302 of I.P.C. There is no substance in the appeal and the appeal is thus liable to be dismissed.

7. Learned A.P.P. submits that in the event if the alternate arguments of the appellant is accepted, then the appellant is liable to be convicted under Section 304 Part-I and not under Section 304 Part-II of I.P.C. There was clear cut intention to commit murder. The appellant-accused Sameer was armed with dangerous weapon.

Learned A.P.P. for the respondent-State in order to substantiate his submissions, placed reliance on the judgment of Supreme Court in the case of Shyamal Ghosh vs. State of West Bengal reported in 2012 (7) SCC 646.

8. We have perused the material exhibits tendered by the prosecution, the evidence of the prosecution witnesses; the statement of the appellant-accused recorded under Section 313 of the Cr.P.C. and the impugned judgment.

9. So far as the homicidal death is concerned, the same is not seriously disputed by the defence in this case. The prosecution has examined P.W.15 Dr. Bhaskar Bhavar who has conducted the post mortem examination on the dead body of deceased Somnath. On

external examination, P.W.15 Dr. Bhavar has noted following injuries:-

- (i) Penetrating stab injury noted on left side of chest, just lateral and below the nipple of size 3 cm X 2 cm organ deep.
- (ii) Stab injury on left lower chest laterally of size 3 cm X 2 cm organ deep.
- (iii) Penetrating stab injury over left lateral aspect of lumbar region of abdomen of size 3 cm X 2 cm.
- (iv) Two CLWs noted over left forearm on medial and lateral aspects of size 2 cm X 1 cm X 1 cm and 1 cm X 1 cm X 1/2 cm.
- (v) Abrasion right para umbilical region of size 3 cm X 1 cm X 1.

According to him, all the above injuries are caused by hard, sharp and pointed object and all the injuries were antemortem in nature. He has further explained that the injuries mentioned at (a), (b) and (c) were on vital part of the body and in ordinary course are sufficient to cause death. According to him, injuries at (a) and (b) were serious in nature. P.W.15 Dr. Bhavar has noticed the injuries to the internal organs, as detailed in para 20 of post mortem, those are as follows:-

- (a) Punctured wound and haemorrhagic collection noted in left pleural region and left lung.
- (b) Punctured wound noted on left side of heart up to inner cavity.

10. According to P.W.15 Dr. Bhavar, the above injuries are corresponding to the injuries mentioned in para 3 (a) and 3 (b). In his considered opinion, the cause of death was due to haemorrhagic shock due to penetrating injuries to heart and left lungs. He has opined that all injuries mentioned in post mortem are possible by knife at Article-1. P.M. report is at Exh. 79 which bears his signature. The defence has merely asked P.W.15 Dr. Bhavar whether the scissors used by the barber can be defined as hard, sharp and pointed object to which P.W. 15 Dr. Bhavar has answered in affirmative. However, the defence has further avoided directly to cross examine P.W.15 Dr. Bhavar as to whether external injuries as noted by him are possible by the scissors used by barber. It is to be noted here that the appellant-accused raised a plea that in exercising his right of self defence the appellant-accused has used the scissors from barber's shop and caused injuries on the person of deceased Somnath. The same will be discussed at length in later stage of the judgment. However, there is nothing in the cross examination to draw any other inference about death. The prosecution has proved beyond doubt that deceased Somnath met with homicidal death.

11. The prosecution case rests upon direct evidence which is discussed as follows:-

a) P.W.1 informant Chandrakant, his father P.W.11 Sopan and P.W.8 Dattu Kadam (barber) are the eye witnesses to the incident. We have carefully gone through the evidence of these three eye witnesses. There is no reason to discard the evidence of P.W.1 informant Chandrakant and P.W.11 Sopan merely for the reason that they are highly interested witnesses. However, we accept that their evidence require close scrutiny. The evidence of eye witnesses is consistent on the point that the appellant-accused had used weapon knife in the assault and caused injuries on the person of deceased Somnath. Their ocular evidence is duly corroborated by medical evidence.

b) The incident had taken place on 10.12.2014 at about 5.30 p.m. P.W.1 Chandrakant Bade was proceeding towards Rajwada for making payment to the labours. The appellant-accused Sameer was seen standing near Marathi school. On seeing him, the appellant-accused Sameer started abusing. P.W.1 informant Chandrakant did not respond to it since he was possessing the money. However, when he was returning after making payment of money to the labours, the appellant-accused Sameer was still standing near the said Marathi school. At that time, P.W.1 Chandrakant had asked appellant-accused Sameer as to whom he was abusing. Thereupon

the appellant-accused Sameer replied that he was abusing to him. Even the scuffle had taken place between them. The main incident had taken place at about 6.30 p.m. P.W.1 Chandrakant thereafter called his real brother deceased Somnath by making him a mobile call. At about 6.30 p.m. deceased Somnath came near said Marathi school. The appellant-accused Sameer alongwith his brother was standing near the hair cutting salon shop of P.W.8 Dattu Kadam. Thus, deceased Somnath and P.W.1 Chandrakant went towards salon shop. It is to be stated here that as per the prosecution evidence, there were strained relations between the appellant-accused Sameer on one side and P.W.1 Chandrakant on the other side due to reason that appellant-accused has developed illicit sexual relations with the wife of P.W.1 Chandrakant. Thus, deceased Somnath asked appellant-accused Sameer as to why he was making call to his sister-in-law (wife of P.W.1 Chandrakant) and abusing his brother. Thereupon, the appellant-accused Sameer took a knife from his pocket and gave blow of knife on the chest and hands of deceased Somnath. The appellant-accused Somnath ran away from the spot. Deceased Somnath fell down in the shop of P.W.8 Dattu Kadam. Blood was oozing from the body of deceased Somnath. He was immediately taken to Tambe Hospital at Sangamner and thereafter shifted to Government Rural Hospital, Sangamner. However, deceased Somnath was declared dead on arrival at Government Rural Hospital, Sangamner. P.W.1 Chandrakant has lodged complaint Exh.34 which corroborates his evidence before the

court.

c) P.W.11 Sopan Bade, the father of P.W.1 Chandrakant and deceased Somnath, has deposed in the similar manner so far as the main incident is concerned. He was alongwith deceased Somnath in their farm house. Deceased Somnath had received a phone call from P.W.1 Chandrakant and deceased Somnath immediately rushed to the spot of incident. However, deceased Somnath told P.W.11 Sopan that there was quarrel between P.W.1 Chandrakant and appellant-accused Sameer. Thus, P.W.11 Sopan also followed deceased Somnath. P.W.11 Sopan has witnessed that the appellant-accused Sameer was giving blow to his son Somnath.

d) P.W.8 Dattu Kadam (barber), in front of whose salon shop the incident has taken place, has also deposed that on 10.12.2014 at about 6.30 p.m. the quarrel was started between deceased Somnath, P.W.1 informant Chandrakant on one side and appellant-accused Sameer on other side. Deceased Somnath was asking the appellant-accused Sameer as to why he is having illicit relations with his sister- in-law and further threatening his brother. Deceased Somnath has questioned the appellant-accused Sameer as to whether he has become gunda. P.W.8 Dattu Kadam has further deposed that the appellant-accused took a knife from his own pocket and gave blow of knife on the chest and stomach of deceased Somnath and blood was oozing. P.W.8 Dattu Kadam deposed that

deceased Somnath came in his shop and fell down. Deceased Somnath was lying in his shop in unconscious condition and thereafter deceased Somnath was taken to the hospital by all persons. Though P.W.8 Dattu Kadam has given certain admissions in his cross examination, however, he has fully supported the prosecution story. In Para 12 and 13 of his evidence, P.W. 8 Dattu Kadam has stated that the appellant-accused Sameer because of the beating came inside the shop and fell down. The palm of the appellant-accused was stained with blood when he fell down in the shop. He has further stated in the cross examination particularly in para 13 that deceased picked up a scissors from his shop and gave blow to deceased Somnath. According to him, scissors was stained with blood and hence, police seized it from his shop. However, no scissors has been seized from his shop nor P.W.8 Dattu Kadam has further accepted the suggestion given by the defence that he is deposing falsely that appellant-accused gave blow of knife on the chest and stomach of deceased Somnath. It appears that in utter confused state of mind P.W.8 Dattu Kadam has given those admissions, however, he has stick up to the story that the appellant-accused Sameer took out a knife from his pocket and inflicted blow on the chest and stomach of deceased Somnath by using the said knife. It is to be repeated here that defence has not put specifically to P.W.15 Dr. Bhavar that the injuries on the person of deceased Somnath are possible by scissors . On the other hand, P.W.15 Dr. Bhavar has positively stated that said injuries on the person of

deceased Somnath are possible by weapon knife (article 1). We find no substance in the submissions made on behalf of the appellant-accused that no such incident had taken place and that the prosecution has failed to prove its case beyond reasonable doubt.

e) All three eye witnesses have consistently deposed that after assault, deceased Somnath went inside the salon shop and fell down on the floor of salon shop. The blood started oozing from the injuries. The contents of spot panchnama Exh.38 corroborate the prosecution story. It corroborates the prosecution story to the extent that in front of salon shop there were blood stains appearing on the sand. One knife was also found on the said sand in front of door of salon shop and further it is also specifically noted in the spot panchnama that there were blood stains on the floor of salon shop. Though learned defence counsel has vehemently submitted that the appellant-accused has sustained injuries on his palm, there were bleeding injuries and P.W.8 Dattu Kadam has also accepted the same, and as such, the possibility of the said blood spots in the salon shop of blood group of the appellant-accused Sameer cannot be ruled out, however, we find no substance in the said submission.

f) There were blood stains on the knife, on the sand and blood spots on the floor of salon shop. In addition to it, blood stains were on the clothes of the appellant-accused Sameer, which came to be seized at his instance. Memorandum panchnama Exh.46 and

recovery panchnama Exh.47 indicate that the appellant-accused Sameer has made disclosure statement showing his willingness to produce his blood stained clothes concealed by him at a particular place and accordingly at his instance his one T-shirt and one jeans pant, having blood stains came to be seized from the hidden place. The prosecution has examined P.W.7 Sunil Gunjal to prove the contents of spot panchnama Exh.46 and 47 respectively. There is nothing in the cross examination to disbelieve the version of P.W.7 Sunil Gunjal. The incident had taken place on 10.12.2014 and after arrest of the appellant-accused, the said recovery was made at his instance on 15.12.2014.

g) The arrest panchnama of the appellant-accused is dated 11.12.2014 marked at Exh.50. It is noted in the contents of said arrest panchnama Exh.50 that there was injury on right hand thumb and index finger of the appellant-accused Sameer.

- i. Even if the bleeding injuries on the person of the appellant-accused Sameer i.e. on his thumb and index finger of right hand are concerned, it is not possible that oozing of blood was so extensive from the said injuries, that it has stained the sand in front of door of salon shop, the knife, clothes of the appellant-accused Sameer and the floor in the salon shop.

ii. Though C.A. reports Exh.101 and 102 respectively speak about same blood group of "B" of deceased Somnath and appellant-accused Sameer, however, as per the C.A. report Exh.100 the blood found on the sand, knife, full shirt, baniyan, full jeans pant, underwear, pyjama, full shirt, full pant etc. almost 12 articles, including clothes of deceased found stained with blood having blood group "B". Furthermore, full pant, T-shirt Exh.F-1 and full jeans pant Exh.F-2 of the appellant-accused also found blood having blood group "B". It is observed in the C.A. report Exh.100 that the clothes of the appellant-accused stained with blood at places. It thus clearly appears that the said blood found on various articles is of deceased Somnath having blood group "B".

h) In addition to this evidence, there is evidence of P.W.10 Gorakh Bade, who went on the spot after the incident was over. He noticed the appellant-accused Sameer fleeing away from the spot and knife in the hand of appellant-accused Sameer fell on the sand. Even P.W.10 Gorakh alongwith other villagers had tried to catch the appellant-accused Sameer but taking advantage of darkness, he ran away. P.W.10 Gorakh has also noticed that deceased Somnath was lying in pool of blood inside of salon shop and P.W.1 Chandrakant and P.W. 11 Sopan (father of deceased Somnath) were also present there. P.W. 10 Gorakh thereafter

called his son Mangesh to come with jeep and accordingly deceased Somnath was taken to Tambe Hospital Sangamner in the said jeep and thereafter he was shifted to Rural Hospital, Sangamner.

i) P.W.9 Yogesh Kale has deposed that some ten days prior to the incident, the appellant-accused Sameer has made statement before him that deceased Somnath is threatening to kill him because of the love affair and appellant-accused Sameer told him that he and co-accused Shubhangi have decided to finish Somnath.

12. Thus, it appears that ocular evidence is consistent on material parts, duly corroborated by the medical evidence and other evidence as discussed in detail in the foregoing paras. The prosecution has proved beyond doubt the incident and the manner in which it has taken place. There is no evidence to draw any other inference that the appellant-accused Sameer has been falsely implicated in connection with the crime.

13. Learned counsel for the appellant has however, in the alternate, submitted that deceased Somnath had himself gone to the place of incident. The appellant-accused Sameer was not armed with any weapon and as admitted by independent witness P.W.8 Dattu Kadam the appellant-accused has used scissors from the salon shop to defend himself. Learned counsel for the appellant submitted

that the appellant-accused has acted in exercise of his right of self defence. The appellant-accused Sameer has also sustained injuries on his person for which no explanation has been tendered by the prosecution. Learned counsel submitted that even if it is considered that the appellant-accused Sameer has exceeded his right of self defence by inflicting injuries on the vital parts of deceased Somnath, however, there was no intention on the part of the appellant-accused Sameer to commit murder.

a) We have given our thoughtful consideration to this submission. It appears from the evidence of eye witnesses, particularly P.W.1 Chandrakant that on the day of incident i.e. on 10.12.2014 at about 5.30 p.m. the appellant-accused Sameer has provoked P.W.1 Chandrakant. The appellant-accused twice abused P.W.1 Chandrakant prior to the incident. In the backdrop to these facts can it be said that the appellant-accused Sameer could make excuse for killing or doing harm to deceased Somnath under the pretext of self defence? P.W.8 Dattu Kadam has also not stated that deceased Somnath, armed with weapon alongwith P.W.1 Chandrakant, had come to the spot of incident. We find it difficult to believe that there was reasonable apprehension of death or grievous hurt at the hands of deceased Somnath, in the mind of appellant-accused Sameer and thus, he had right to exercise self defence at a particular time.

b) It has come in the prosecution evidence that P.W.1 Chandrakant, deceased Somnath and appellant-accused Sameer were born and brought up in the same village and even they were school friends. It was thus obvious on the part of deceased Somnath to go on the spot without any arm to question the appellant-accused Sameer. However, all the eye witnesses have consistently deposed that the appellant-accused Sameer took out a knife from his pocket.

c) In order to consider the case of exercising right of private defence two aspects are necessary to be considered viz.

(i) that the accused had right of defence of person or property, and

(ii) whether he has exercised the right in good faith and without premeditation and without any intention of doing more harm that was necessary for the purpose of defence.

d) Merely because there was quarrel and scuffle between deceased Somnath and P.W.1 Chandrakant on one side and the appellant-accused Sameer on other side and the appellant-accused Sameer had sustained injuries, that does not confer right on the appellant-accused Sameer of private defence extending to the extent of causing death. We find no evidence to draw inference that the appellant-accused Sameer was under such grave apprehension about his safety and thus to assault to the extent done from his side

was absolutely necessary. So far as the injuries caused on the thumb and index finger of right hand of the appellant-accused Sameer are concerned, that might have been the result of resistance by deceased Somnath.

14. We may repeat here that deceased Somnath had sustained several injuries on his person i.e.

- (i) Penetrating stab injury noted on left side of chest, just lateral and below the nipple of size 3 cm X 2 cm organ deep.
- (ii) Stab injury on left lower chest laterally of size 3 cm X 2 cm organ deep.
- (iii) Penetrating stab injury over left lateral aspect of lumbar region of abdomen of size 3 cm X 2 cm..
- (iv) Two CLWs noted over left forearm on medial and lateral aspects of size 2 cm X 1 cm X 1 cm and 1 cm X 1 cm X 1/2 cm. .
- (v) Abrasion on right para umbilical region of size 3 cm X 1 cm X 1.

In the internal examination, P.W.15 Dr. Bhavar, who has conducted the post mortem examination, has noted punctured wound and haemorrhagic collection noted in left pleural region and left lung and punctured wound noted on left side of heart up to inner cavity.

Those injuries are corresponding to external injuries as mentioned in para 3 (a) and 3 (b).

15. We are unable to persuade ourselves that those injuries have been caused on the person of deceased Somnath by exceeding right of self defence. We are of the considered opinion that the manner in which the incident has taken place, motive behind the crime and further external and internal injuries as noted above unmistakably point out that the appellant-accused had assaulted deceased Somnath with murderous intention.

16. Learned counsel for the appellant has placed his reliance on the judgment of the Supreme Court in the case of **Kala Singh @ Gurnam Singh vs. State of Punjab (supra)** wherein the Supreme Court has converted the sentence from one under Section 304 Part I r.w. 34 of I.P.C. to under Section 304 Part-II r.w. 34 of I.P.C. In the facts of the cited case the appellant and deceased had sudden fight as deceased had stolen pigeon of the appellant and in the heat of passion, upon a sudden quarrel, the co-accused (Kehar Singh) who had a rod with him, gave a blow with the rod on the right side of the head of the deceased resulting in his death. It is observed that in the facts of the case, scuffle had taken place on the spur of moment and that sudden fight had taken place in the heat of passion upon a sudden quarrel. It was not a premeditated one and as there was no intention on the part of the appellant and co-accused either to cause

death or cause such bodily injury as is likely to cause death.

In the instant case, however, the appellant-accused Sameer has developed illicit sexual relation with the wife of P.W.1 Chandrakant and the wife of P.W.1 Chandrakant viz. Shubhangi was also co-accused and was tried with the appellant. However, she was given benefit of doubt. It has come in the prosecution evidence that prior to the incident, the appellant-accused Sameer has disclosed his intention to prosecution witnesses to finish deceased Somnath. Furthermore, some one hour prior to the main incident, the appellant-accused Sameer had deliberately provoked P.W.1 Chandrakant twice and in consequence thereof, as expected by him, deceased Somnath had come in search of him alongwith P.W.1 Chandrakant.

17. In the case of ***Bhagwan Swaroop vs. State of Madhya Pradesh (supra)*** relied upon by learned counsel for the appellant, the father of the accused was given lathi blows by complainant party. It is observed by the Supreme Court that the injuries caused were simple or grievous is of no consequence and its fire of gun-shot to defend the person of his father. The facts of this case are altogether different and cannot be made applicable to the facts and circumstances of the present case.

18. In the case of ***Shahajan Ali vs. State of Maharashtra (supra)*** relied upon by learned counsel for the appellant, the facts

are totally different. In the facts of the said case, there was neither prior concert of mind nor common intention to commit murder. During the course of their business activities the accused reached Dhaba where the deceased was present. An altercation took place which led to sudden fight and accordingly the incident had taken place. Thus, the Supreme court has observed that exception 4 to Section 300 of I.P.C. is applicable to the facts of the said case. Accordingly, the conviction of the appellants therein was converted from Section 302 of I.P.C. to Section 304 Part II of I.P.C. The ratio laid down in the said case cannot be made applicable to the facts of the present case.

19. In the case of ***Govindan vs. State represented by the Deputy Superintendent of Police (supra)*** relied upon by learned counsel for the appellant-accused, it is again a case of sudden quarrel. No premeditation or pre-planned incident. In the instant case, the facts are altogether different and clearly indicate that the incident is not a result of sudden quarrel.

20. In the case of ***Sandhya Jadhav vs. State of Maharashtra (supra)*** relied upon by learned counsel for the appellant, the Supreme Court had an occasion to consider the word 'fight' occurring in exception 4 to Section 300 of I.P.C.

21. In view of discussion above, we find no substance in this

appeal. The appeal is thus liable to be dismissed. Hence, we proceed to pass the following order:-

O R D E R

- I. Criminal appeal is hereby dismissed.
- II. The judgment and order of conviction dated 15.3.2021 passed by the Additional Sessions Judge, Sangamner in Sessions Case No. 37 of 2015 is hereby confirmed.
- III. Criminal appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

rlj/