



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 42 OF 2018

Satyam Venkatrao Hatte
Age: 25 years, Occu.: Auto Driver,
R/o Dhanora, Tq. Kandhar, Dist. Nanded
At present MIDC, Nanded ..APPELLANT

VERSUS

State of Maharashtra ..RESPONDENT

**AND CRIMINAL APPEAL NO. 201 OF 2018
AND CRIMINAL APPLICATION NO. 527 OF 2018**

Sunil @ Sunya Gangadhar Kokate
Age: 25 years, Occu.: Pvt. Service,
R/o Patoda, Tq. Naigaon, Dist. Nanded
At present MIDC, Nanded ..APPELLANT

VERSUS

State of Maharashtra ..RESPONDENT

....
Mr. N.S. Ghanekar, Advocate for appellants
Mr. S.J. Salgare, A.P.P. for respondent - State
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 13th SEPTEMBER, 2024
PRONOUNCED ON : 11th OCTOBER, 2024

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. Both these appeals take exception to a judgment and order of conviction and consequential sentence dated 30th November, 2017 passed by Additional Sessions Judge, Nanded ('trial Court') in Sessions Case, No. 44 of 2014. Alongwith the present appellants, three more persons were put

on trial before the trial Court for the various offences including main offence of committing murder of one Chingya in furtherance of their common intention of their unlawful assembly, the trial Court acquitted original accused nos. 2, 3 and 5 of all the offences they were charged with. Neither the State nor the victim has preferred appeal against the acquittal. As such, case of the prosecution that offence was committed by five persons in furtherance of their common intention, stood not proved and attained finality as well.

2. Original Accused No.1 – Sunil Kokate (appellant in Appeal No. 201 of 2018) and Accused No.4 – Satyam Hatte (appellant in Appeal No. 42 of 2018) have been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code ('I.P.C.'), and therefore, sentenced to suffer imprisonment for life and fine of Rs.2,000/- each. In default of payment of fine, they have been directed to undergo rigorous imprisonment for six months.

3. The facts of the prosecution case, disclosed from the F.I.R. (Exh.54), are as follows :-

PW 1 – Yadav was a close friend of Chingya @ Mohammad Aavesh Mohammad Asif. On 27th December, 2013 by 12:00 noon, Chingya met PW 1 – Yadav. He took Rs.50/- from Chingya and both of them went to Pankaj Nagar, Dhanegaon to find whether income certificate of PW 1 – Yadav was ready. After having verified the same, both of them went towards Chandasing Corner. On the way, PW 1 – Yadav received a phone call of one Raju Jadhav. He called him to Padmavati Beer Bar. Both of them,

therefore, went there. Three others were in the company of Raju Jadhav. All of them were consuming liquor. By little past 03:30 p.m. the other three, who were in the company of Raju Jadhav, left the beer bar. Chingya, Yadav and Raju Jadhav remained in the beer bar until 07:00 p.m. By little past 07:00 in the evening the trio left the beer bar and went to a tea hotel adjoining Santosh Bar, near bus stand. In the meanwhile, Chingya left them to answer nature's call (urinating/peeing). He went towards the wall of Santosh bar towards bus stand. After a while, PW 1 – Yadav heard commotion from that side. He heard, "This is Chingya. Beat him up" (*हा चिंग्या आहे. याला मारा*). He and Raju, therefore, rushed towards Chingya. Chingya was running to save himself. He entered a bylane. Both the appellants alongwith three others (since acquitted) were chasing him. Appellant – Satyam intercepted PW 1 – Yadav. PW 1 – Yadav saw Chingya lying on the road. Appellant – Sunil Kokate was sitting on his person and assaulted on Chingya's chest. Satyam then released PW 1 – Yadav and sat on the person of Chingya. All of them then fled towards CIDCO. PW 1 – Yadav went close to Chingya. Took his head on his lap. Covered his wound with a handkerchief and rushed him to Government Hospital, Nanded. The medical officer there declared Chingya dead.

4. PW 1 – Yadav, therefore, immediately lodged the F.I.R. (Exh.54) with Nanded Rural Police Station. A crime vide C.R. No. 393 of 2013 was registered. Investigation commenced. Crime scene panchanama (Exh.59) was drawn. Four of the accused, including the appellants before us, were

arrested within half an hour from the vicinity of the crime scene. The other one was arrested on the following day. Inquest and autopsy were conducted on the mortal remains of deceased – Chingya. Clothes on his person and that of all the accused were seized. Appellant – Satyam made a disclosure statement (Exh.78) pursuant to which a knife came to be seized from a dry well, under panchanama (Exh.79) drawn in the presence of panchas. All the seized articles were submitted to R.F.S.L., Aurangabad for chemical analysis and report. Statements of the persons acquainted with the facts and circumstances of the case were recorded. Upon completion of investigation, charge-sheet was filed against five accused.

5. The trial Court framed charge (Exh.26). The appellants pleaded not guilty. Their defence was of false implication.

6. On appreciation of the evidence of ten witnesses besides documentary evidence adduced in the case, the trial Court acquitted the three accused and convicted the appellants as stated above.

7. Learned counsel for the appellants would submit that the prosecution case before the trial Court was of the offence to have been committed in furtherance of exercise of common object of unlawful assembly. The trial Court acquitted three of five persons. The State did not prefer appeal against acquittal. The case was in fact based on sole eye witness account of PW 1 – Yadav. The another so called eye witness happened to be a chance witness. On arrest of the appellants and the acquitted persons,

the police officer had noticed injuries on their person. He even admitted they to have suffered in the very quarrel. The prosecution did not explain as to how the appellants and other three suffered injuries. As such, the prosecution has suppressed the genesis of the case. The crime scene panchanama (Exh.59) indicates that there were broken beer bottles. It might be a case of clash between two groups. The deceased had a criminal history. Number of crimes were registered against him. No overt act has been attributed to the appellant – Satyam. According to learned counsel, it may at the most be a case falling under any of the exception to Section 300 of the I.P.C. so far as regards the one who assaulted the deceased with the knife. There is no evidence to indicate that appellant - Satyam was not in the know that appellant – Sunil Kokate was armed with a knife and he was going to assault Chingya on his vital part. Learned counsel meant to say that appellant - Satyam, therefore, could not be attributed to have shared common intention to commit an offence of murder. He ultimately urged for allowing the appeals.

8. Learned A.P.P. would, on the other hand, submit that the case is based on eye witness account. The deceased suffered not less than seven injuries. PW 1 – Yadav was in the company of the deceased since 12:00 noon until post incident as well. He was an eye witness. There is another eye witness as well. Due to passage of time, a minor inconsistency between the evidence of all the eye witnesses was bound to occur. Learned A.P.P., therefore, relied on a judgment of the Apex Court in case of **Shahaja alias**

Shahajan Ismail Mohd. Shaikh Vs. State of Maharashtra, AIR Online 2022 SC 1011 and particularly drew our attention to paragraph no.27 and sub-clauses thereof viz. (I) to (XIII). He also adverted our attention to paragraph nos. 106 to 115 of the Apex Court judgment in case of ***Ramanand alias Nandlal Bharti Vs. State of Uttar Pradesh, AIR Online 2022 SC 655.***

9. On the question of injuries on the persons of the appellants and acquitted accused as well, he would submit that the prosecution was under obligation to prove serious injuries on their person. He meant to say that the prosecution was under the obligation to explain superficial and minor injuries. He meant to say that a motive behind the crime has been proved by the evidence of PW 8 - Pravin. It was a brutal murder.

10. According to learned A.P.P., since the case was based on the evidence of an eye witness, no fault could be found with the order of conviction and sentence as well passed by the trial Court. He, therefore, urged for dismissal of the appeals.

11. Considered the submissions advanced. Perused the evidence on record and the judgment impugned herein as well. Let us now advert thereto and appreciate the same.

12. PW 9 – Dr. Santosh was serving as Assistant Professor with Dr. Shankarrao Chavan Government Medical College, Nanded at the relevant time. He was on duty on 28th December, 2013. Dr. R.D. Awasare and he

conducted autopsy on the dead body of Chingya. His evidence indicates to have noticed following injuries on the person of the deceased :-

- "1. Abrasion present over right side of face 2 cm lateral to lateral canthus of eye of size 5 cm. X 2.5 cm. reddish.*
- 2. Lacerated wound present over right temporal region situated 5 cm. above right pinna, of size 1.5 cm. X 0.5 cm. X tissue deep, obliqually placed, reddish.*
- 3. Abrasion present over front of left shoulder of size 3 cm. X 2 cm., reddish.*
- 4. Abrasion present over superior aspect of left shoulder of size 3 cm. X 2 cm., reddish.*
- 5. Abrasion present over posterior aspect of left shoulder situated 5 cm. from injury No.4 of size 4 cm. X 2 cm., reddish.*
- 6. Contusion present over back scapular region as rail-track contusion oblique, of size 5 reddish in colour. cm. X 2 cm. with central pale area,*
- 7. Stab wound present over front of abdomen on epigastric region in mid line obliqually placed, lower right side angle acute, of size 4.2 cm X 2 cm. X cavity deep, on approximation 4.5 cm. in length, situated 2 cm. below xiphoid process and 14 cm. above umbilicus, margins clean cut. Stab is directed upward, backward and slightly to left piercing through skin, subcutaneous tissue, rectus sheath and muscles of abdomen in mid line, peritoneum, left dome of diaphragm, inferior surface of pericardium, inferior surface of right ventricle. Margins clean cut, reddish.*
- 8. Abrasion present over dorsal aspect of right forearm 11 cm. above wrist, of size 3 X 1 cm, reddish.*
- 9. Incision present over right middle finger, dorsal aspect of size 0.5 cm. X 0.1 cm X subcutaneous tissue deep, reddish.*
- 10. Incision present over antero lateral aspect of left thigh, obliqually placed, situated 23 cm. above knee, 23 cm. from anterior superior iliac spine, of size 4.5 cm. X 2 cm. X subcutaneous tissue deep, reddish."*

13. In his opinion, the deceased died due to stab injury to heart (Injury No.7). The postmortem report finds place at Exhibits 91 and 92. The witness then tendered in evidence final cause of death certificate (Exh.95)

reiterating therein that the deceased died of stab injury to his heart. In his opinion, injury nos. 1 to 5, 8 and under scalp injuries were possible by hard and blunt object like brick, while injury no.7, due to which Chingya breath his last, was caused by sharp and pointed object, like knife. According to him, injury nos. 9 and 10 were possible by sharp cutting object. In his opinion, injury no.7 was sufficient to cause death in the ordinary course of nature. In view of PM report, we do not propose to refer to contents of inquest panchanama (Exh.61) in detail.

14. According to PW 9 – Dr. Santosh, injury nos.1 and 2 were only on vital part of the body, while injury nos. 3 to 5 were not on the vital part. According to him, abrasions were simple in nature. There were no blood clots under the scalp. There was no injury to ribs and sternum. He admitted the suggestion that if a person is sitting on epigastric region of abdomen, then injury no.7 was not possible to be caused.

15. This suggestion appears to have been given to contradict the evidence of PW 1 – Yadav, who claimed to have seen appellant - Sunil Kokate to have sat on the person of Chingya and then assaulted on his chest with a sharp object.

16. The fact remains that evidence of PW 9 – Dr. Santosh undoubtedly indicates Chingya met with homicidal death. The question is whether the appellants are responsible for his murder.

17. PW 1 – Yadav's evidence in examination-in-chief is almost consistent with his F.I.R. (Exh.54), meaning thereby his evidence before the Court has been corroborated by his previous statement in the nature of F.I.R. (Exh.54). A bit repetition is bound to occur while referring to the evidence on record.

18. It is in the evidence of PW 1 – Yadav that Chingya met him in his society on 27th December, 2013. He borrowed Rs.50/- from him. Then both of them went to Pankaj Nagar, Dhanegaon in Setu Kendra and then went to Chandasing Corner. He received a phone call of his friend Raju Jadhav. Both of them then went to Padmavati Beer Bar. It was 03:30 p.m. Raju Jadhav was accompanied by three persons viz. Akash Sonkamble, Nitin Pawale and Gajanan Gajbhare. After a while, those three left the bar. The trio remained in the bar till 03:00 p.m. Then they went to a hotel for tea. While he and Raju were taking tea, Chingya left to answer nature's call (urinating/peeing). After a little while he heard, "This is Chingya. Catch him. Beat him." Therefore, he alongwith Raju rushed towards the site from which they heard the commotion and aforesaid words. While they were running towards that place, both of them got separated from each other. He (PW 1 – Yadav) saw Chingya running from Santosh Bar towards bus stand. The appellants and those three acquitted were chasing him. While running away, Chingya dashed against the fencing between the bus stand and hotel. He fell down. As he was (PW 1 – Yadav) approaching Chingya, appellant – Satyam caught him. Appellant – Sunil Kokate sat on the abdomen of

Chingya and inflicted a blow on the chest of Chingya with a sharp weapon. According to him, PW 6 - Vikas came to rescue him. Sunil Suryawanshi (since acquitted) shown Vikas a dagger and prevented him from rescuing Chingya. Appellant – Sunil Kokate then got up from the person of Chingya. Appellant – Satyam then released him (PW 1 – Yadav) and sat on the abdomen of Chingya. The other three (since acquitted) rushed to beat him (PW 1 – Yadav). PW 6 - Vikas saved him. All of them then ran towards CIDCO. According to him, Sunil Suryawanshi (since acquitted) was shouting, “*मारा साल्याला. खुपसा. मी बघून घेतो.*” (“Kill him. Stab. I will see”).

19. It is further in his evidence that Chingya walked about ten steps with the support of the compound wall of bus stand. He then fell down. PW 1 – Yadav took Chingya on his lap. Covered his wound with the handkerchief. Vikas, Fazil Bhai, Deepak and he took Chingya to Government Hospital, Nanded in an auto-rickshaw. Chingya suffered multiple injuries. Doctor examined and declared him dead. He then lodged the report of the incident.

20. He was subjected to a searching cross-examination. It was suggested to him that he went to Chingya for borrowing money on 27th December, 2013. This suggestion indicates that both i.e. PW 1 – Yadav and Chingya were together on the given day. His evidence suggests that there were two beer bars viz. Padmavati Beer Bar and Santosh Beer Bar. Both the bars were on the opposite side of each other. Adjacent to Santosh Beer Bar,

there is bus stand. There was a tea hotel. There was one isolated place whereat people use to go to pee.

It has also been brought on record during his cross-examination that on that day he had consumed liquor. His statement was recorded by the Magistrate. He did not state the Magistrate to have consumed one quarter of MB liquor. It pertains to his statement under Section 114 of Cr.P.C. According to him, after 07:30 p.m. he did not see Raju Jadhav. He did not know that the appellants and others in their company were neither in Padmavati Bar nor in Santosh Bar. He admitted that the appellants and three others were not at Hari Om Tea House. His evidence further indicates that police seized his clothes and handkerchief as well. His clothes were stained with blood of Chingya. By 08:45 p.m. police had called him to police station to identify the accused persons. No documentation took place in that regard. He was confronted with certain portion in the F.I.R. It was suggested to him that he did not state appellant - Sunil Kokate had sat on the person of Chingya and assaulted. Close perusal of the F.I.R. indicates that same finds place in the F.I.R. The trial Court ought not to have allowed such questions to be put or at least brought on record since it was not an omission at all. Learned A.P.P. in-charge of the case ought to have raised objection while such question was put. Be that as it may.

21. PW 1 – Yadav claimed ignorance about appellant – Sunil Kokate had sustained incised wound on his back on the given day. In short, he

claimed ignorance of the appellants and others to have suffered injuries on the same day. It was suggested to him that those five had been to the police station to lodge the report of having been beaten by people. He denied that original accused nos.1 to 3 including one of the appellants herein had rescued Chingya from those persons. His evidence further disclosed that brother and brother-in-law of Chingya had accompanied him to the Court, while his evidence was to be recorded. The entire tenor of the cross-examination indicates the appellants and those three acquitted disowned to have assaulted Chingya on the given day. According to them, Chingya was assaulted by some others and they had intervened to save him. The same, therefore, be turned out to be false defence.

22. PW 2 – Sk. Ismail is a witness to the crime scene panchanama (Exh.59). His evidence indicates that broken pieces of Kingfisher beer bottles, one goggle and one shirt stained with blood and soil were taken charge of / seized by the police in his presence. A panchanama to that effect was drawn vide Exhibit 59. He identified those articles when shown to him during recording of his evidence. While those articles were shown to him, they were in the container / packet bearing a wax seal.

23. Perusal of the crime scene panchanama (Exh.59) indicates it was a place in a lane in between Hari Om Hotel and ST Bus pick-up shed. A bamboo sheet was found broken. Blood stains were noticed at various places in the lane. A black goggle, broken pieces of beer bottle were also lying at the place.

24. PW 3 - Rais Khan was a witness to inquest panchanama (Exh.61), while PW 4 – Sayyed Khurshid was a witness to the seizure of blood stained clothes of the appellants and three others. Those panchanamas find place at Exhibits 65 to 68 and 69 to 73. Exhibit 74 is a panchanama pertaining to seizure of clothes of acquitted accused – Sunil Suryanwanshi. According to this witness, the clothes were seized in his person. Those were shown to him during recording of his evidence and he identified the same.

25. PW 5 – Sk. Samsheer is a witness to a disclosure statement made by appellant – Sunil Kokate. It is in his evidence that appellant – Sunil Kokate made a statement that he will produce the knife. Here, learned counsel for the appellants would submit that this witness did not state the appellant to have stated a place wherefrom he would produce the knife. Memorandum of statement of appellant - Sunil Kokate is at Exhibit 78. He then led the police officials and the panchas to CIDCO via Dhawale corner. Then he took them to a place nearby Durga Devi Temple. The jeep was halted at the instance of appellant – Sunil Kokate. He then led them to a well nearby the temple. It was a dry well, containing debris. Appellant – Sunil Kokate took out a knife from the well. It was seized under panchanama (Exh.79).

During cross-examination of this witness it has been brought on record that appellant – Sunil Kokate had suffered injury to his forehead. Bandage was applied to the forehead injury. He was handcuffed.

26. PW 6 – Vikas was another eye witness. His evidence indicates that Chingya was residing in his locality, and therefore, he had known him. According to him, by 07:30 p.m. on 27th December, 2013 he was proceeding towards Chandasingh corner to recharge his cell phone. According to him, in the lane between Santosh Bar and bus stand accused persons (five in number) were beating up Chingya. He, therefore, went there. When he tried to rescue Chingya, Sunil Suryawanshi (since acquitted) threatened him with a dagger. One Ansar Bhai was also there. He was also not allowed to save Chingya. He, therefore, went towards Chingya from the front side of the bus stand. He saw Chingya was lying on a bamboo sheet. He saw appellant – Satyam hit on Chingya's head with a brick. When he attempted to catch Satyam, appellant – Sunil Kokate caught him from behind. That time PW 1 – Yadav came there. Appellant – Sunil Kokate then left him and sat on the person of Chingya and stabbed on his chest. While appellant – Satyam caught hold of PW 1 – Yadav. Accused persons thereafter ran away towards CIDCO. He alongwith PW 1 – Yadav, Deepak, Raju and Fazil Bhai brought Chingya to Government Hospital, Nanded in an auto-rickshaw. The medical officer there declared Chingya dead.

27. He was subjected to a searching cross-examination. According to him, he admitted that from coming towards Chandasing corner from Dhanegaon one has to go by Hyderabad-Nanded road. Chandasing corner was opposite to Santosh Bar. There were 10-15 hotels. 4-5 mobile recharge shops were also there. He had not been to Hari Om Hotel. It takes 5 to 10

minutes by walk to reach Chandasing corner from his residence. He, however could not state name of the shop whereat he recharged his cell phone on that day. He claimed ignorance that PW 1 - Yadav had consumed liquor on the given day. According to him, they were with him in the hospital till 12:00 midnight. He admitted to have not been knowing the accused persons by their names. According to him, he had facial acquaintance with them. He was confronted with the statement before the Magistrate, wherein he stated to have seen the accused persons first time on the give day. According to him, on the same day he was summoned to the police station for identification of the accused and there he came to know about their names. He could not state whether there were injuries on the persons of the accused when he saw them in the police station. He admitted to have not been shown the cement brick by police.

28. PW 8 – Pravin was a witness to some previous incident that was said to be the motive for the offence. It is in his evidence that he knew the accused persons since they were his neighbours. According to him, four months before the day of the incident, appellant – Satyam had shown him the girlfriend of appellant – Sunil Kokate. Two days thereafter both the appellants caught him near Kohinoor Mill and beat him up. Appellant – Sunil Kokate even questioned him whether he said anything about his lover. He then ran away from there. Again after two days Prabhakar Yede (acquitted accused) caught him in front of Rubi Hall. Both the appellants and Vijay Dhage were with him. Prabhakar questioned him as to whether there is

quarrel between him and Sunil Kokate. Sunil Kokate said he doesn't know and let him go. Still Prabhakar started beating him (Pravin). That time Chingya was passing by that road. Since Chingya was knowing him, he started beating up those accused. That time Prabhakar chased Chingya with stones. Chingya then fled away. He (Pravin) too ran away. After 3-4 months he learnt about murder of Chingya.

29. It appears that the aforesaid incident is sought to be projected as motive for committing murder of Chingya. Since PW 8 - Pravin is not a witness to the incident in question, we do not propose to refer to his cross-examination. Only some material portion relating to himself brought on record during cross-examination is to the effect that crime vide C.R. No. 376 of 2014 was registered against him in December 2014. He was even arrested on 11th December, 2014. He was remanded to police custody for four days. He was behind the bars for three months. It was only in February 2015 he was released on bail. He was confronted with his police statement which is silent to state that four months before the incident in question, Satyam shown him lover of appellant - Sunil Kokate. It was a material omission amounting to contradiction. He even could not give day, date and month in which appellant – Satyam had shown him the girlfriend of appellant – Sunil Kokate. In view of above, we do not propose to rely on the evidence of PW 8 – Pravin.

30. PW 7 – Suresh was a Police Naik. He carried the seized articles

to R.F.S.L., Aurangabad on 01st January, 2014. Copy of the forwarding letter under the signature of PW 10 – Mundhe is at Exhibit 84.

31. PW 10 – Mundhe was the Investigating Officer. His evidence discloses that on 27th December, 2013 the informant, PW 1 - Yadav had come to the police station and reported about the incident. The F.I.R. (Exh.54) was thus lodged. He then rushed to the crime scene and prepared crime scene panchanama (Exh.59). It was shown by the informant himself. A blood stained shirt of the deceased was seized from the crime scene besides a goggle stained with blood, broken pieces of beer bottle stained with blood and earth as well. He then referred to the seizure panchanama (Exh.59). According to him he deposited the seized articles with Muddemal clerk. He arrested Accused Nos.1 to 4 from the nearby of the crime scene within half an hour of the incident. They were intoxicated. Injuries were on their person. He, therefore, referred them for medical examination. Their injury certificates were brought on record vide Exhibits 100 to 103. Then he seized clothes on their person. Those were stained with blood. He referred to panchanamas Exhibits 65 to 68 in that regard. He also seized clothes on the person of the informant under panchanama Exhibit 70 and clothes of Deepak and Vikas as well under panchanama Exhibits 69 and 70, respectively. Clothes on the person of Vikas were also stained with blood. On 29th December he arrested accused Sunil Suryawanshi (acquitted). It is further in his evidence that appellant – Sunil Kokate made a disclosure statement that he will produce the knife. Accordingly, he led the police

officials and the panchas to CIDCO via Dhawale corner. Then he took them to a place nearby Durga Devi Temple. The jeep was halted at the instance of appellant – Sunil Kokate. He then led them to a well nearby the temple. It was a dry well, containing debris. Appellant – Sunil Kokate took out a knife from the well. He sent all the seized articles to R.F.S.L., Aurangabad.

32. PW 10 – Mundhe had requested the Medical Officer to give opinion as to whether the injuries on the person of the accused were self-inflicted. A communication in that regard is at Exhibit 107. No response was received thereto. During cross-examination, he admitted that accused nos. 1 to 4 had suffered injuries in the quarrel. He had recorded statement of the accused persons in respect of the injuries sustained by them. Those statements, however not made part of the charge-sheet. He denied that accused had come to the police station to lodge the report that some unknown persons had beaten them up. He admitted to have found no cement brick at the crime scene. According to him, PW 6 - Vikas met him on 28th December for the first time. No T.I. Parade was held for identification of the accused. The C.A. reports find place at Exhibit 112 to 114.

33. Admittedly, the incident took place by little past 07:30 p.m. on 27th December, 2013 in a lane adjoining to Santosh Bar and the bus stand. In the said incident, Chingya lost his life. Postmortem report (Exh.92) discloses the deceased died of stab injury to heart.

34. The prosecution had filed the charge-sheet against five persons, including the present appellants alleging them to have had formed unlawful assembly in furtherance of common object thereof committed murder of Chingya. Admittedly, three of the five accused have been acquitted by the trial Court. The State did not prefer appeal against them. One of the three acquitted was alleged to have armed with a dagger. Be that is it may.

35. The fatal injury i.e. stab on the chest has been attributed to appellant – Sunil Kokate. PW 1 – Yadav's evidence indicates that on the given day he was in the company of deceased – Chingya. He received a phone call of Raju Jadhav, who asked him to come at Padmavati Beer Bar. Therefore, they went there. It was 03:30 p.m. Raju Jadhav was accompanied by three more persons. Those three left the beer bar mid way. PW 1 – Yadav, Raju Jadhav and the deceased remained together. By 07:00 p.m. they left the beer bar to take tea. They, therefore, went to Hari Om Tea Hotel. The deceased left the hotel to answer nature's call (urinating/peeing). After a while, PW 1- Yadav claimed to have heard noise emanating from the lane wherein the deceased had gone to answer nature's call. The shout was, "हा विंग्या आहे. याला मारो". He, therefore, rushed towards Chingya. Appellant – Satyam caught him (Yadav) hold so as to prevent him from intervening in the quarrel to save Chingya (deceased). His evidence further indicates that Satyam then freed him. There before appellant – Sunil Kokate had sat on the person of the deceased and gave a knife blow on his chest. The said blow proved fatal. Six more injuries were noticed on the person of

the deceased. Most of them were in the nature of abrasion and simple in nature. PW 1 – Yadav's evidence did not disclose that appellant – Satyam sat on the person of the deceased. He did not attribute Satyam with any assault to the deceased.

36. It is PW 6 – Vikas, who claimed to have been in that area to recharge his cell phone. He could not state in which shop he recharged his cell phone. In our view, he happened to be a chance witness. His evidence indicates that he too went to rescue Chingya. However, Sunil Suryawanshi (acquitted accused) prevented him by showing him a dagger. He, therefore, went towards Chingya from the opposite side i.e. from the front side of the bus stand and saw appellant – Satyam to have sat on the person of the deceased and hit on his head with a brick.

37. PW 6 – Vikas then claimed to have had accompanied the deceased to the hospital. Police were there. Still he did not disclose the incident. His statement was recorded on the following day. He happened to be a chance witness. We, therefore, do not propose to rely on his evidence. The fact, however remains that PW 1 – Yadav is an eye witness to the incident. He lodged the F.I.R. within one and half hour of the incident. His evidence before the Court gets corroborated by the F.I.R. (Exh.54). The C.A. report (Exh.114) indicates his clothes were stained with blood of the deceased. The blood group of the deceased was "A". It is reiterated that a fatal blow was given by the appellant – Sunil Kokate with a knife on the vital part of the deceased. The same indicates his intention to commit murder of

Chingya. PW 6 – Vikas did not know any of the appellants or the acquitted accused by name. They were shown to him at the police station. However, no T.I. Parade was held. Be that as it may.

38. True, learned counsel for the appellants would submit that the appellants and those acquitted had injuries on their person. The prosecution ought to have explained their injuries. He adverted our attention to the evidence of PW 10 – Mundhe, Investigating Officer, who testified the accused to have suffered those injuries in the quarrel. He, however not testified in which quarrel they suffered those injuries. True, four of the five accused were drunk when they were overpowered within half an hour of the incident from the vicinity of the crime scene. None of the appellants nor any of the acquitted accused had come with a defence before the trial Court to have had suffered the injuries as a result of a scuffle between them on the one hand and the deceased on the other. On the contrary, their stand was vague. First they came with a case that the deceased was being assaulted by others. They intervened and thereby suffered injuries. The other defence was that they had quarrel with some other persons and they assaulted them. Therefore, they had been to the police station to lodge the report.

39. The injury certificates of the appellants and those acquitted are on record. The same indicates them to have suffered injuries simple in nature. True, one of the appellants i.e. Sunil Kokate had suffered injury to his back. It is reiterated that when the appellants and the acquitted accused themselves had come with a case to have suffered injuries at the hands of

someone else, learned counsel representing them could not be heard to say the prosecution to have been under obligation to explain the injuries on their person. Moreover, the injuries were simple in nature.

40. Based on the evidence of PW 1 – Yadav and the other evidence on record, the trial Court has rightly convicted appellant – Sunil Kokate for committing murder of Chingya. The question is whether conviction of appellant – Satyam for the very offence under Section 34 of the I.P.C. is justified. For better appreciation, Section 34 of the I.P.C. is reproduced below :-

“34. Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

41. Admittedly, it was not the case of prosecution that the appellants and the acquitted accused were brandishing deadly weapons. There is no evidence to indicate that appellant – Satyam knew that in the assault, appellant – Sunil Kokate was going to stab the deceased with the knife. There is no evidence to indicate appellant - Sunil Kokate to have been armed with a knife and the same was known to appellant – Satyam. While appellant - Sunil Kokate had sat on the person of the deceased and gave a knife blow, that time appellant – Satyam was far away from both of them. He had caught hold of PW 1 – Yadav. The same at the most indicates that appellant – Satyam had shared intention with appellant – Sunil Kokate to assault the deceased i.e. to voluntarily cause him hurt. At the cost of repetition it is

stated that the prosecution case before the trial Court was altogether different. It was an offence said to have been committed in furtherance of common object of the unlawful assembly. Had appellant – Satyam sat on the person of the deceased and assaulted him with a brick, blood of the deceased would have been on the clothes of Satyam. The C.A. report (Exh.114), however indicates that the blood stains on the clothes of Satyam were not that of the groups of the deceased. Blood group of the deceased was 'A'. Articles 11 to 13 were the clothes of Satyam. His blood group was 'B'. No blood of deceased was found on the clothes of Satyam. Article 25 – knife bears blood of group 'A'. According to the prosecution, the appellants were taken into custody within half an hour of the incident. Clothes on their person were seized immediately. Non-finding of stains of blood of the deceased on the clothes of appellant – Satyam indicates he even did not come in the contact with the deceased – Chingya. At the most he could be said to have shared common intention with appellant – Sunil Kokate to voluntarily cause hurt to the deceased, an offence punishable under Section 323 read with Section 34 of the I.P.C. We have reason to say so since the evidence of PW 1 – Yadav is to the effect that he heard shouts of the appellants and their companions, "हा विंभ्या आहे. याला मारा". As such, there is evidence to indicate appellant – Satyam to have had no intention to commit murder of Chingya. His conviction for the offence under Section 302 with the aid of Section 34 of the I.P.C. is, therefore, liable to be set aside replacing the same with the offence punishable under Section 323 of the I.P.C. He was already behind bars for over 275 days.

42. For all the aforesaid reasons, both the appeals stand disposed of in terms of following order :-

ORDER

- (I) Criminal Appeal No. 201 of 2018 stands dismissed. However, appellant – Sunil @ Sunya Gangadhar Kokate stands acquitted of the offence punishable under Section 34 of the Indian Penal Code.
- (II) Criminal Appeal No. 42 of 2018 is partly allowed.
- (III) Impugned judgment and order dated 30th November, 2017 passed by Additional Sessions Judge, Nanded in Sessions Case No. 44 of 2014 thereby convicting and consequently sentencing appellant – Satyam Venkatrao Hatte for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code is hereby set aside.
- (IV) Instead, appellant – Satyam Venkatrao Hatte is convicted for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code, and therefore, sentenced to suffer imprisonment for the period which he had already undergone (275 days) and to pay fine of Rs.1,000/- (Rupees One Thousand).
- (V) Appellant – Satyam Venkatrao Hatte is already on bail. He, therefore, need not be surrendered back to the jail. His bail bonds stand cancelled.
- (VI) Criminal Application No. 527 of 2018 stands disposed of.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD