

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.46 OF 2008**

Sandeep Suresh Gurav @ Khatmal
age 28 years, Hut No.35, Near Vijay
Nagar, Buddha Mandir, Dhobighat,
Transit Camp, Dharavi, Mumbai 17,
presently at Nashik Central Jail

... Appellant

v/s

The State of Maharashtra

... Respondent

Mrs Nasreen S.K. Ayubi, Advocate appointed for Appellant.
Mrs A.S. Pai, APP for State.

**CORAM: V.K.TAHILRAMANI &
B.P. COLABAWALLA, JJ.**

DATE : 05TH MAY 2015

ORAL JUDGMENT (PER SMT V.K. TAHILRAMANI J.):

1. The Appellant - original accused has preferred this Appeal against the judgment and order dated 30th November 2007 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.1006 of 2006. by the said judgment and order, the learned Additional Sessions Judge convicted the Appellant under section 302 of IPC and sentenced him to suffer life imprisonment and to pay fine of Rs.300/- in default to suffer RI for 8 days.

2. The prosecution case briefly stated is as under :-

The deceased Raju Gangaram Bhale was younger brother of PW 1 - Mahadeo Gangaram Bhale. They were residing in Vijay Nagar, Dharavi, Mumbai. As the house was small, Raju used to sleep outside the house i.e. in Vijay Nagar Maidan. On the night of 10th September 2006, Raju as usual slept outside the house in Vijay Nagar Maidan. At about 1.00 a.m. one Rajesh came running to the house of Mahadeo and told him that Raju was assaulted. Raju also came in an injured condition towards the house. Mahadeo noticed that Raju had sustained bleeding injuries on his stomach and right wrist. Mahadeo then tied the injuries and took him to Sion Hospital in a taxi. Mahadeo asked Raju about the incident whereupon Raju told Mahadeo that Khatmal assaulted him with knife. Raju was admitted in Sion Hospital and after about one hour, he succumbed to injuries. Meanwhile Mahadeo lodged FIR (Exh.12) under section 307 of IPC against the Appellant. The Appellant was arrested. The blood-stained clothes, which were on the person of the Appellant at the time of incident were recovered at his instance, so also blood-stained knife was recovered at the instance of the Appellant. After completion of investigation, the

charge-sheet was filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the Appellant – original Accused under section 302 of IPC. The Appellant pleaded not guilty to the said charge and claimed to be tried. His defence was that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the Appellant as stated in paragraph 1 above, hence this Appeal.

4. We have heard the learned Advocate for the Appellant and the learned APP for the State. We have carefully considered their submissions, the judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, for the below mentioned reasons, we are of the opinion that the Appellant assaulted Raju with knife and caused his death.

5. Two eye-witnesses have been examined in this case viz. PW 2 – Ganesh and PW 3 – Rajesh, they have not supported

the prosecution. The conviction is based on the oral dying declaration made by the deceased Raju to his brother PW 1 - Mahadeo and on the circumstances of recovery of blood-stained knife and blood-stained clothes at the instance of the Appellant.

6. PW 1 - Mahadeo stated that Raju was his younger brother. Raju was residing with him at Vijay Nagar in Dharavi, Mumbai. As the room they were residing in was small, Raju used to sleep outside the room in Vijay Nagar Maidan. On 10th September 2006, Raju went to sleep in Vijay Nagar Maidan. At about 1.00 a.m. one Rajesh came running to the house of Mahadeo and told him that Raju was assaulted. In the meanwhile, Raju also came to the house in an injured condition, Mahadeo saw that Raju had sustained bleeding injuries on stomach and right wrist. Mahadeo tied the injuries and took him to Sion Hospital. Mahadeo asked him what had happened. Raju told him that Khatmal had assaulted him with knife. Raju was admitted to Sion Hospital. Meanwhile, FIR of Mahadeo was recorded. The said FIR was recorded under section 307 of IPC. It was lodged at 2.05 a.m. on 11th September 2006. Meanwhile, Raju expired after about one hour of admitting him

in the Hospital. Thus PW 1 - Mahadeo's evidence shows that Raju had made oral dying declaration to him that he had been assaulted by the Appellant with knife.

7. The evidence of PW 1 - Mahadeo shows that his brother Raju told him that Khatmal had assaulted him with knife. The evidence of PW 2 - Ganesh shows that he knew Khatmal because he was his neighbour and the name of Khatmal was Sandesh Suresh Gurav (Appellant). PW 2 - Ganesh has identified the Appellant in Court as the one who was called Khatmal. PW 1 - Mahadeo has also stated that he knew Khatmal and he identified the Appellant as Khatmal. In addition, PW 3 - Rajesh has also stated that he knew Khatmal and he identified the Appellant as Khatmal. As stated earlier, the evidence of PW 1 - Mahadeo shows that an oral dying declaration was made by his brother Raju to him wherein Raju told him that Khatmal had assaulted him with knife.

The oral dying declaration is corroborated by the fact that the injuries as seen from the medical evidence were inflicted by sharp weapon like knife. PW 5 - Dr Dere conducted

the post mortem on the dead body of Raju. On external examination, he found four injuries :-

- “1. stab wound of 4 x 2 cm with omentum protruding.
2. CLW of 2 x 1 cm over Rt wrist
3. contusion mark linear of 8 x ½ cm just below sternal angle
4. lapratomy sutured wound present over the abdomen.”

Dr Dere stated that stomach was sutured for tears, there was haemoperitoneum peritoneum suture. According to Dr Dere, cause of death was shock, following stab over abdomen (unnatural). According to Dr Dere, injury No.1 can be caused by sharp weapons. Dr Dere has categorically stated that injury sustained by Raju was not due to slipping or falling.

8. The next circumstance against the Appellant is the recovery of blood-stained clothes and knife at his instance. PW 6 – panch witness Nadar has deposed about this aspect. Nadar has stated that on 14th September 2006, he was called to act as a panch witness alongwith another panch witness to Dharavi

Police Station. The appellant was sitting in the Police Station. The Appellant then showed his willingness to show the knife and blood-stained clothes. Thereafter they went to Sion area. The appellant himself opened the lock of hut and showed one suitcase. The Police then seized one green colour checked shirt (Art.5), one black colour full pant (Art.6) and one folding knife (Art.7). Panch witness Nadar stated that all the articles were sealed in his presence. These articles were sent to the Chemical Analyser. As per Chemical Analyser report, the pant and shirt of the appellant were stained with human blood.

9. In connection with the fact that the clothes of the Appellant were stained with human blood, we may usefully refer to the decision of the Supreme Court in the case of Gura Singh v. State of Rajasthan¹ wherein it has been observed as under :-

“In view of the authoritative pronouncement of this Court in Teja Ram case (1999) 3 SCC 507, we do not find any substance in the submissions of the learned counsel for the Appellant that in the absence of the report regarding the 'origin of the blood, the Trial Court could not have convicted the accused. The Serologist and Chemical Examiner has found that the chadar seized in consequence of the disclosure statement made by the appellant was stained with

¹ (2001) 2 SCC 205

human blood. As with lapse of time the classification of the blood could not be determined, no bonus is conferred upon the accused to claim any benefit on the strength of such a belated and stale argument. The Trial Court as well as the High Court were, therefore, justified in holding the circumstance as proved beyond doubt against the appellant."

10. On going through the record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the Appellant committed the murder of Raju by assaulting him with knife. Thus, we find no merit in the Appeal. Appeal is dismissed.

11. Office to communicate this order to the Appellant who is in Nashik Central Jail, Nashik.

12. We quantify legal fees to be paid to Advocate Mrs. Nasreen S.K. Ayubi by the High Court Legal Services Committee at Rs. 5,000/-.

(SHRI B.P. COLABAWALLA, J.) (SMT V.K. TAHILRAMANI, J.)