

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1056 OF 2008
(Against Conviction)**

Ghanshyam alias Shyam Shripat	]
Sakat	]
Age:21 yrs, Occu:Labour	] .Appellant/
Residing at Tansa Pipeline,	] Original
Ambedkar Nagar, Kurla Terminus	] Accused
Road No.2, Vidyavihar(E),	]
Mumbai.	]
(Presently lodged at Thane	]
Central Prison)	]

V/s.

The State of Maharashtra	] .Respondent
(Through Tilak Nagar Police	]
Station)	]

Ms Rohini Dandekar, Appointed Advocate, for
the Appellant
Mrs.G.P.Mulyekar,APP, for the Respondent/State

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT.I.K.JAIN, JJ.**

DATE : 2ND MARCH, 2015

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

. The appellant/original accused has preferred this Appeal against the Judgment and Order dated 21.07.2008 passed by the learned

Additional Sessions Judge, Sewree, Mumbai in Sessions Case No.519 of 2007. By the said Judgment and Order, the learned Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to life imprisonment and fine of Rs.15,000/-, in default simple imprisonment for four months.

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

Deceased Jagdish was the son of PW-10 Lalita. The appellant was known to the deceased, the mother of the deceased as well as PW-12 Mahesh. Mahesh was the friend of deceased Jagdish. Jagdish and PW-12 Mahesh were residing in Bhim Nagar situated at Vidyavihar in Mumbai. Two years prior to the incident, a scuffle had taken place between the deceased and the appellant. The incident occurred on 21.03.2007 at about 11.20 p.m.. On 21.03.2007 at about 10.00 p.m. PW-12 took his dinner and thereafter, left his house for

smoking cigarette. He met Jagdish. He was chit-chatting with Jagdish. After some time the appellant came there and started to assault Jagdish with Scythe on his neck and other parts of the body. On sustaining injuries, Jagdish fell down. The parents of Jagdish were informed. Thereafter, Jagdish was put in an Auto Rickshaw and taken to Rajawadi Hospital. PW-12 Mahesh lodged FIR Exh.27. The said FIR was under Section 307 of the Indian Penal Code. Thereafter, investigation commenced. On 22.03.2007 Jagdish expired at 5.00 a.m.. The dead body was sent for post mortem. The appellant was arrested. During the course of investigation, blood stained clothes and blood stained Scythe were recovered at the instance of the appellant. After completion of investigation, charge sheet came to be filed.

3. Charge came to be framed against the appellant under Section 302 of the Indian Penal Code. The appellant pleaded not guilty

to the said charge and claimed to be tried. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above, hence, this Appeal.

4. We have heard the learned counsel for the appellant and the learned APP for the respondent/State. We have carefully considered the facts and circumstances of this case, the submissions of learned counsel for both sides, the Judgment and Order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the same, for the reasons mentioned here in below we are of the opinion that the appellant assaulted Jagdish with Scythe and caused his death.

5. The conviction is mainly based on the evidence of PW-12 Mahesh who is an eye witness to the incident. Deceased Jagdish was residing with his family at Bhim Nagar, Vidyavihar in

Mumbai. PW-12 Mahesh has stated that since last ten years he was residing in Bhim Nagar at Vidyavihar in Mumbai. Mahesh has stated that he knew the deceased Jagdish and Jagdish was his friend. Mahesh has further stated that the incident occurred on 21.03.2007. On the night of 21.03.2007 at about 10.00 p.m. Mahesh took his dinner and thereafter, left his house for smoking Cigarette. After some time, Jagdish came to the spot. Mahesh was chit-chatting with Jagdish. After some time, the appellant came to the spot and started assaulting Jagdish with Scythe on the neck and other parts of the body. Jagdish fell on the ground. Thus, the evidence of PW-12 Mahesh shows that he witnessed the appellant assaulting Jagdish with Scythe on the neck and other parts of the body.

6. It is the prosecution case that the appellant assaulted Jagdish with Scythe and caused his death. This is corroborated by the

medical evidence. PW-14 Dr. Iqbal was the first Doctor to examine Jagdish in the Hospital. He noted that Jagdish was unconscious and he found that Jagdish has sustained the following injuries.

- "1. Stab injury over right neck 4 x 4 x 5 cm with muscle cut internal jugular vein transacted, carotid palpable with active bleeding with vertebral artery bleeding.
2. Incise wound 2 x 1 cm right angle of mandible.
3. Incise wound right shoulder 4 x 1 cm muscle deep.
4. Incise wound left fore arm radial aspect sutured 2 cm.
5. Incise wound 2 cm right shoulder near neck supra clavicle region subcutaneous deep."

Dr. Iqbal put the patient on artificial respiration and tried to resuscitate him but Jagdish expired at 5.00 a.m.. After Jagdish

died, his dead body was sent for post mortem. PW-11 Dr.Dere conducted the post mortem on the dead body of Jagdish. Dr. Dere noticed incised wound over occipital region, shoulder, left wrist, right eye brow and right shoulder. Dr. Dere has stated that the injuries seen by him were possible by Scythe and injury No.1 was sufficient to independently cause the death of the person in ordinary course of nature.

7. In addition to the ocular testimony, which has been deposed by PW-12 Mahesh, the prosecution is relying on the evidence of recovery of blood stained Scythe and clothes of the appellant at his instance. PW-5 Rakesh is the panch witness who has deposed about this aspect. He has stated that on 25.03.2007 he was called to Tilak Nagar Police Station. In his presence, the appellant made a statement that he is ready and willing to point out the Scythe and clothes from the place where he had concealed the same. The appellant then led the

police and panchas to his house and produced Scythe and clothes. They were sealed on the spot. The C.A.Report Exh.38 shows that the Scythe was stained with blood of "AB" group. The C.A.Report Exh.27 shows that blood group of deceased Jagdish was of "AB" group. The C.A.Report Exh.43 shows that blood group of the appellant is "O". The finding of blood of "AB" group on the Scythe recovered at the instance of the appellant is a strong incriminating circumstance against the appellant.

8. Panch witness PW-5 Rakesh has also deposed about seizure of clothes at the instance of the appellant. The clothes recovered at the instance of the appellant were stained with human blood. In this connection, we may usefully refer to the decision of the Supreme Court in the case **Gura Singh Vs. State of Rajasthan**¹, wherein it has been observed as under :

¹ (2001) 2 SCC 205

"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 & Chemical Examiner has found that the chadar seized in consequence of the disclosure statement made by the appellant was stained with 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."

9. On going through the record, we find that there is sufficient evidence to prove beyond reasonable doubt that the appellant committed the murder of Jagdish by assaulting him with Scythe. Thus, we find no merit in the Appeal. Appeal is dismissed.

10. Office to communicate this order to the appellant who is in Thane Central Prison.

11. We quantify the legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Ms Rohini Dandekar at Rs.5,000/-.

(SMT.I.K.JAIN, J.) (SMT.V.K.TAHILRAMANI, J.)