

RMA

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

CRIMINAL APPEAL NO. 1080 OF 2013
(Through Jail)

Chandrashekhar Appa Dhuri

Age 29 Years, R/at Near Gorai Depot,
In Front of Mangalmurti Garage,
Gorai Road, Borivali (W), Mumbai.

At present lodged at Kolhapur Central
Prison, Kalamba as Convict No. C 5522

.. Appellant
(Org. Accused)

Versus

The State of Maharashtra

(Through Borivali Police Station, Mumbai)

.. Respondent

Appearances:-

<i>Mrs. Nasreen S. K. Ayubi</i>	<i>Advocate (appointed) for the Appellant</i>
<i>Mrs. V. R. Bhonsale</i>	<i>APP for the State</i>

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

DATE : JANUARY 5, 2015.

ORAL JUDGMENT [PER SMT. V.K. TAHILRAMANI, J.] :

1. This appeal is preferred by the appellant - original accused against the judgment and order dated 11.7.2012 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi, Goregaon,

Mumbai in Sessions Case No. 179 of 2011. By the said judgment and order, the learned Session Judge convicted the appellant for the offence punishable under Section 302 of IPC and sentenced him to suffer imprisonment for life and fine of Rs. 1000/-, in default rigorous imprisonment for 6 months.

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

(a) Deceased Gajanan was the father of PW 1 Rama and PW 2 Ankush. Ankush is the first informant in the present case. Rama, Ankush, Gajanan, maternal aunt of Rama and Ankush and some others used to sleep in front of Deepak Stores which is situated in Bhim Nagar Galli in Borivali, Mumbai. The appellant was known to Rama, Ankush, Gajanan and others.

(b) On 13.7.2011 at about 9 p.m., Rama, Ankush, Gajanan and some others had gone to sleep on the platform in front of Deepak Stores.

Thereafter, the appellant came to the spot and he told Gajanan to return his money, otherwise he will assault him. Gajanan stated that he had not taken any money. The appellant then gave 2-3 blows to Gajanan with bamboo stick. Gajanan sustained bleeding injuries. He was shifted to Bhagwati Hospital where he was declared dead. PW 2 Ankush lodged the F.I.R. (Exh. 19). Thereafter, investigation commenced. After completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant under Section 302 of IPC. The appellant/accused 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 against his conviction and sentence.

4. We have heard the learned Advocate for the appellant and the learned APP for the State. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced by the learned Advocates for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the reasons stated below, we are of the opinion that the appellant assaulted Gajanan with a bamboo stick which led to his death.

5. The conviction of the appellant is based on the evidence of two eye witnesses i.e PW 1 Rama and PW 2 Ankush. Rama and Ankush were the sons of Gajanan (deceased). Rama, Ankush, Gajanan and some other persons used to sleep on the platform in front of Deepak Stores which was situated at Bhim Nagar Galli at Borivali. The appellant was known to the deceased as well as PW 1

Rama and PW 2 Ankush. PW 1 Rama has stated that on 13.7.2011, the incident took place in front of Deepak Stores at night. The appellant came to the spot. He was shouting and giving abuses to Gajanan. The appellant was demanding his money from Gajanan. The appellant then gave blows with bamboo stick to Gajanan. Gajanan fell on the ground. He sustained bleeding injuries. The appellant then ran away. Gajanan was taken to Bhagwati Hospital by his sons but the Doctor declared that Gajanan was dead. The evidence of PW 2 Ankush is on the same lines as that of PW 1 Rama.

6. It is the prosecution case that the appellant assaulted Gajanan with bamboo stick and caused his death. This is corroborated by the medical evidence. PW 4 Dr. Rao conducted the postmortem on the dead body of Gajanan. On external examination, he found the following injuries:-

- (i) CLW over left ear horizontally oblique present in the middle 1/3 of the ear;
- (ii) Stick marks seen over the left upper arm lateral aspect

- (iii) On scalp, there was contusion over left temporal region.

On internal examination, Dr. Rao found the following injuries:-

- (1) Extra dural hemorrhage seen over the left temporal and occipital bones;
- (2) There was fracture on left temporal bone;
- (3) Brain - subdural hemorrhage over cerebral hemisphere. The brain was markedly edematous.

According to Dr. Rao, the cause of death was head injury, unnatural. Dr. Rao has opined that the injuries noticed on the body of Gajanan were possible due to blows with bamboo stick - Article 'A'.

7. Another circumstance against the appellant is that when he was arrested, he produced his clothes i.e shirt and pant. These were seized in presence of panch witness PW 5 Vikram. The said panchnama is at Exh. 22. These clothes were sent to C.A. As per C.A. report Exh. 37/C, the clothes were stained with human blood. This is also an incriminating

circumstance against the appellant.

8. The prosecution is also relying on circumstance of recovery of bamboo stick at the instance of the appellant. PW 6 Shaikh is the panch witness who has deposed on this aspect. He has stated that the appellant made a statement that he is willing to point out the place where he had concealed the bamboo. The appellant then led the police and panchas towards Gorai and pointed out the bamboo which he had concealed in dried drainage. This bamboo stick was sent to C.A. As per C.A. report (Exh. 34/C), the bamboo stick was stained with human blood.

9. The Supreme Court in case of **Khujji alias Surendra Tiwari Vs State of Madhya Pradesh**¹ observed that if the group of blood on the weapon or clothes of the accused is not-determined, it does not make the circumstance of no consequence. It has further observed that finding of human blood on weapon and clothes of the accused lends

¹ AIR 1991 SC 1853

corroboration to the prosecution case, more so, when the accused has not explained presence of human blood on the said articles.

10. Further the Supreme Court in the case of **Gura Singh Vs. State of Rajasthan**² 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 & 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."

11. Mrs. Ayubi, the learned Advocate for the appellant

² (2001) 2 SCC 205

submitted that even if it is accepted that the act of the appellant of assaulting Gajanan with a bamboo resulted in his death, the case would not fall under Section 302 of IPC but it would fall under Section 304-II of IPC. She pointed out that the appellant gave only three blows with bamboo to Gajanan. One blow was on the arm which is not a vital part of the body. The other two blows were on the head. She pointed out that the two injuries on the head are CLW over left ear and contusion over left temporal region. On external examination, the injuries were simple in nature. She submitted that looking to these external injuries which were caused to Gajanan and the weapon which is a hollow bamboo stick and the nature of injuries sustained by Gajanan, it cannot be said that the appellant had intention to cause the death of Gajanan. She further pointed out that the quarrel took place between Gajanan and the appellant because the appellant was demanding his own money back from Gajanan. Thereafter as Gajanan did not give him the money, the appellant assaulted Gajanan with a bamboo

stick.

12. From the evidence on record, it is seen that the crime was not premeditated one. It occurred on the spur of the moment because Gajanan did not give money to the appellant. Looking to the nature of the weapon, the number of blows and the nature of the injuries, we are of the opinion that the appellant did not have the intention to cause the death of Gajanan. However, knowledge can certainly be attributed to him that his act is likely to cause death. We say so on the basis of the part of the body i.e head where the injuries were inflicted.

13. Considering the evidence on record, we are of the view that the appropriate conviction would be under Section 304-II of IPC, hence, the conviction of the appellant under Section 302 of IPC is set aside, instead, the appellant is convicted under Section 304-II of IPC. In our view, custodial sentence of seven years rigorous imprisonment and fine amount of Rs.

1000/-, in default simple imprisonment for one month would meet the ends of justice.

14. Appeal is partly allowed to the aforesaid extent.

15. We quantify legal fees to be paid by the High Court Legal Services Committee to the appointed Advocate Mrs. Nasreen Ayubi at Rs. 5000/-.

[SMT. I. K. JAIN, J]

[SMT. V.K. TAHILRAMANI, J]

रविंद्र आंबेकर