
(2013) 09 BOM CK 0151
In the Bombay High Court
Case No : Criminal Appeal No. 418 of 2011

Laxman

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 307

Citation : (2013) 6 ABR 164 : (2013) 4 BomCR(Cri) 433

Hon'ble Judges : K.U. Chandiwal, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : Satej S. Jadhav, for the Appellant; S.G. Nandedkar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—The appellant-accused, who is in jail, has been convicted for the murder of his uncle Bhanudas Gangadhar Mohite, u/s 302 of the Indian Penal Code 1860 (IPC-in brief) and has been sentenced to suffer imprisonment for life and to pay fine of Rs. 2000/- i/d to suffer imprisonment for six months. He was also charged with the offence of attempt to commit murder of his father Eknath but (as the father turned hostile) he has been acquitted of that charge u/s 307 of IPC. The accused has filed this appeal against his conviction u/s 302 of IPC. The State has not filed any appeal regarding acquittal of accused u/s 307 of IPC.

2. Before referring to the case of prosecution, it would be appropriate to refer to the relations between the accused and major witnesses examined in the matter, who are his own near relatives. The family tree relevant for the matter is as under:-

CASE OF PROSECUTION

3. (a) Eknath and accused Laxman were residing in the village Revgaon, Tq. And district Jalna, while deceased Bhanudas with his family and Rameshwar with his

family were residing in their respective fields, which are nearby each other. Field of Eknath is also nearby. P.W. 7 Eknath although was residing in the village, used to sleep in the field to guard his cattle. Deceased Bhanudas also used to sleep in the field of Eknath with him to look after the cattle. The house of P.W. 4 Rameshwar was at a distance of 50 ft from the house of Bhanudas.

(b) Accused Laxman was always picking up quarrel with his father Eknath and was even assaulting Eknath, as he wanted to reside separate from his parents.

(c) The incident occurred in the night between 14.5.2010 and 15.5.2010. Deceased Bhanudas had gone to sleep in the field of P.W. 7 Eknath. At about 11.00 p.m. P.W. 3 Gajanan and P.W. 5 Vitthal were at their homes. They heard noise of abusing by accused from the direction of field of their uncle P.W. 7 Eknath. These brothers alongwith their uncle Rameshwar (P.W. 4) started to proceed towards the field of P.W. 7 Eknath. P.W. 7 Eknath came running towards them and informed them that accused Laxman has raised issue of partition of property and dealt axe blow on his leg and hands. Eknath told them to save their father. The complainant alongwith his brother and uncle rushed towards the spot and found that Bhanudas was lying in bleeding condition and yelling, while accused Laxman with an axe held by him was giving blows of axe to Bhanudas. The complainant, his brother and uncle shouted warned and proceeded towards the accused, however, accused scared them by raising the axe and threatening with dire consequences of elimination. The accused, taking advantage of commotion, sneaked from the spot.

(d) The complainant and others brought a Rickshaw and took Bhanudas to Government Hospital at Jalna. Injured Eknath also went to the hospital. P.W. 8 Dr. Rajendra Shejule, received the injured at about 1.15 a.m., on 15.5.2010 and sent an intimation (Exh. 35) to the police outpost at hospital. Looking to the condition of Bhanudas, doctors in the hospital at Jalna referred him to the Government Medical College and Hospital at Aurangabad. Bhanudas expired on the way. P.W. 8 Dr. Rajendra informed police accordingly at about 2.40 a.m. (Exh. 36).

(e) Doctor examined P.W. 7 Eknath, who had suffered incised wounds on his both arms and left leg. In the morning at about 8.30 a.m., P.W. 3 Gajanan filed F.I.R. P.S.I. P.W. 12 Sk. Salim investigated the matter. On the same day, inquest panchnama (Exh. 12) was drawn. Postmortem was conducted between 10.00 to 11.00 a.m. (Exh. 39). The clothes of the deceased (Exh. 18) and Eknath (Exh. 21) came to be seized and police drew spot panchnama (Exh. 20) at 1.00 to 2.00 p.m. Incriminating material was collected from the spot. On the same day, the accused was arrested (panchnama Exh. 14) at 18.00 hours. At the instance of the accused blood stained axe was taken charge under panchnama and blood stained clothes were also seized. Seized articles were forwarded under letter to Chemical Analyzer and C.A. report was received. After completion of investigation, charge sheet came to be filed under Sections 302 and 307 of IPC.

4. Chief Judicial Magistrate, Jalna committed the case to the Court of Sessions. The learned Sessions Judge, Jalna explained charge (Exh. 8) under Sections 302 and 307 of IPC. The accused pleaded not guilty and claimed to be tried. The defence of the accused, as it appears from the cross examination and statement u/s 313 of the Code of Criminal Procedure 1973 (Cr.P.C. in brief), is that at the relevant time, he was at his own home and came to know that somebody had beaten P.W. 7 Eknath and deceased Bhanudas and they were taken to the hospital. He also proceeded to the hospital and he helped in lifting deceased Bhanudas and his father from stretcher. He claimed that he has not committed the crime.

5. The prosecution examined in all 12 witnesses. The accused examined his wife.

ARGUMENTS

6. Learned advocate for appellant says, there are contradictions in the evidence of P.Ws. 3, 4 and 5. There are contradictions as to where Eknath met these three witnesses and where he told them about the incident taking place. It is claimed that there is difference in the evidence of the three eye witnesses as to what exactly they saw after they reached the field of Eknath. P.W. 5 has not referred to the presence of P.W. 4 when they reached the spot. Their conduct is unnatural, as physically they did not try to intervene and stop the accused. There is difference between ocular and medical evidence. The recovery of axe is doubtful as panch P.W. 6 stated that axe was recovered from the house of the accused while the panchnama refers to recovery of axe from bushes near Nala. The statement of D.W. 1 Vanita is that at the time of incident, accused was at home. Thus, according to the accused, he is entitled to benefit of doubt and should be acquitted. Another limb of submission is, the incident and assault is not premeditated and asserted to change conviction u/s 304-II IPC.

7. Against this, the argument of learned A.P.P. for the State is that there is direct evidence of three eye witnesses, P.W. 3, 4 and 5. Even P.W. 7 has not denied the incident although he claimed that he does not know who was the assailant. The minor differences in the version of witnesses shows that they are not tutored and the evidence is not stereo-type. The motive of the crime was dispute of land. Although the accused has taken defence of alibi, except examining his wife, no other evidence has been brought. There is no reason why P.Ws. 3 and 5 would save real assailant of their father and there is no reason why P.W. 4 Rameshwar would depose against his nephew-the accused.

CULPABLE HOMICIDE

8. We have gone through the record and heard the parties. Unnatural death of Bhanudas is not in controversy. It is also not challenged that it was culpable homicide amounting to murder. P.W. 9 Dr. Sushama conducted postmortem and the report is at Exh. 39. The surface wounds and injuries noted in column 17 of inquest panchnama Exh. 39 are as under:-

1. Chop wound, 5 cm x 1 cm x bone deep over occipital, margin sharp, edges red and swollen
2. Chop wound 3 cm x 1 cm x bone deep over rt. Parietal bone margin sharp, edges red and swollen
3. Abrasion 10 cm x 1 cm over upper part of left forearm posteriorly vertically.
4. Multiple small abrasion present over chest.
5. Contusion 6 cm x 1 cm over left axilla
6. Abrasion 17 cm x 1 cm in size horizontal over mid part of abdomen extending from mid line.
7. Abrasion 14 cm x 1 cm in size about 3 cm above injury No. 6 and parallel to lateral part of it.
8. Contusion 10 cm x 3 cm. Over left lateral part of abdomen.
9. Sutured wound 9 cm in length, horizontal over upper of left thigh anteriorly.
10. Sutured wound 7 cm vertical over upper part of left thigh laterally.
11. Sutured wound 6 cm in length, horizontal over mid part of left thigh laterally.
12. Sutured wound 8 cm in length horizontal over lower part of left thigh anteriorly.
13. Sutured wound over mid part of left leg horizontal 3 cm in length.
14. Abrasion 7 cm x 1 cm vertical over upper part of left leg laterally.
15. Chop wound 8 cm x 2 cm x bone deep over upper part of right leg medially and posteriorly underline vessels cut. Margin sharp, edges red and swollen.
16. Chop wound 4 cm x 1 cm over mid part of right leg medially.

The doctor noted fracture of right tibia present over upper part and fracture of left 6th rib present in middavicular line. The injuries were ante mortem. In the internal examination, doctor found hemorrhage under scalp injury. She opined that death occurred on account of hemorrhagic shock due to multiple injuries. In the cross examination of doctor, she accepted the proposition as correct, that abrasions as noted are possible by scuffle. Looking to the evidence of the doctor, it is apparent that Bhanudas suffered unnatural death and died due to injuries inflicted on him. Thus, prosecution has proved culpable homicide of Bhanudas.

UNDISPUTED FACTS

9. Some facts are not in dispute.

(a) Injured Eknath and the accused were living in the village while deceased Bhanudas and his family were living in their field by making a house. Nearby in another field P.W. 4 Rameshwar was living in his house. Injured P.W. 7 Eknath

used to go and sleep at his field as he had kept his cattle there, as he was in the milk business.

(b) The incident occurred in the night between 14.5.2010 and 15.5.2010, in field. During that night also deceased Bhanudas and injured Eknath had gone to sleep in the field of Eknath.

(c) In the night, there was assault on Bhanudas and Eknath in which both came to be injured.

(d) After the incident, both were taken to the Civil Hospital, Jalna for treatment and Bhanudas expired in the same night due to the injuries.

(e) That there was blood of deceased Bhanudas and injured Eknath on the clothes of accused.

MOTIVE

10. (a) Motive is established by P.W. 3 complainant as to, dispute over share in agricultural property. It was suggested and P.W. 3 admitted that it was true that on 2-3 occasions prior to the incident there was even slapping between accused and his father Eknath and that Eknath was not carrying good opinion about his son. It appears Eknath used to abuse his son as he was disobeying him.

(b) In the F.I.R. filed by P.W. 3 Gajanan, Exh. 24, also he had reported about quarrels regularly taking place between P.W. 7 Eknath and the accused Laxman for small reasons and accused Laxman used to slap and that Laxman wanted to separate from his parents.

(c) Thus, accused had anger against his father P.W. 7 Eknath which appears to be the reason why he attacked his father.

As regards Bhanudas, he was brother of Eknath and both were on the spot at the time of incident. Although P.W. 3 Gajanan stated that accused Laxman was not on visiting terms to their house, still he also deposed that, his father did not have inimical terms as such with the accused. There is evidence of P.W. 4 Rameshwar, brother of deceased that there used to be quarrel between the accused Laxman and deceased Bhanudas also on account of partition of land. This evidence of P.W. 4 Rameshwar is not denied or challenged in the cross examination. What is appearing from the record is that deceased Bhanudas and injured Eknath were not agreeable with the demand of accused for partitioning the land of P.W. 7 Eknath.

(d) Thus, accused had motive to vent his anger against his father as well as his uncle. What appears from evidence is that once he attacked his father and uncle, but father escaped midway, he continued and took out his anger and inflicted number of injuries, on the person of Bhanudas.

ACTUAL INCIDENT

11. (a) Coming to the actual incident, the evidence of P.Ws., 3, 4 and 5, is

consistent with regard to certain details. They corroborate each other that they were at their homes, which are nearby the field of Eknath and heard hue and cry due to noise of abusing from the side of field of Eknath. They were deliberating to go to the field of Eknath, when they saw Eknath rushing towards them in injured condition and asking them to go and save Bhanudas. These three witnesses thereafter rushed to the field of Eknath and saw accused on the spot with an axe in his hand and Bhanudas lay in injured condition.

(b) Regarding other details, learned counsel for the accused has tried to say that there are differences as P.W. 3 deposed that after hearing the voice of abusing from land of his uncle, he and P.W. 5 Vitthal had gone to the house of P.W. 4 Rameshwar and from there they were proceeding to the spot and on the way they met their uncle who came running; while P.W. 4 Rameshwar has deposed that on hearing hue and cry from the land of Eknath, P.W. 3 Gajanan and his brother P.W. 5 Vitthal came to his house till which time his brother Eknath also reached his house and told about the incident.

The houses are near the field of Eknath, as these witnesses got attracted due to shouting and abuses. What appears from the evidence is that almost simultaneously in the process of deliberating and starting to go to the spot P.W. 7 Eknath reached these witnesses. The slight differences in the version rather lends credence to the evidence as different witnesses, after a span of time may recall the incident with slight variations. It does not make difference as to whether Eknath told these witnesses about the incident which was taking place after reaching the house of Rameshwar or while these witnesses were on their way from the house of Rameshwar.

(c) The evidence of P.Ws. 3 to 5 gets support from P.W. 7 Eknath himself who although got injured seriously in the incident preferred to turn hostile, because of his son being the accused and is thus supporting the defence. P.W. 7 Eknath has deposed that in that night one of his cattle came to be untied and because of that he woke up and raised a cry. Due to the cry of P.W. 7 Eknath, deceased Bhanudas also woke up. P.W. 7 claims that at that time he received a blow of axe, which was inflicted on his leg. He claimed that he did not know as to who inflicted the blow of axe on his leg. However, he claimed that he ran towards the house of deceased Bhanudas while Bhanudas remained at his house. He claimed that on reaching there, he met P.W. 3 Gajanan, P.W. 4 Rameshwar and P.W. 5 Vitthal and he told them to go to his land and to see what had happened there and accordingly these three witnesses went there and later brought Bhanudas in injured condition. In the cross examination by the accused, it got cleared that this witness had firstly gone to the house of P.W. 4 Rameshwar and P.W. 5 Vitthal and P.W. 3 Gajanan were there in that house and that they saw his injury which was on his right leg. On course, this witnesses claimed that they had given water to him and they went to his land after about 10 minutes. Being father and also hostile witness, admission in cross examination of P.W. 7 needs to be ignored. What survives even from cross examination of P.W. 7 is the fact that the

assailant on the spot was armed with axe.

(d) It is argued for accused that P.W. 5 did not refer to Rameshwar going to the spot with the brothers. The above discussion shows that P.Ws. 3, 4 and 5 did meet P.W. 7 Eknath, who told them about the incident, which was still taking place. In this background, the arguments raised by the learned counsel for the accused that P.W. 5 did not depose that he had gone to the house of P.W. 4 Rameshwar and that P.W. 4 Rameshwar had also accompanied to the spot needs to be ignored. It cannot be said that evidence of P.Ws. 3 and 4 vis-a-vis evidence of P.W. 5 Vitthal are in different sets. It is not a case that P.W. 5 has deposed that P.W. 4 Rameshwar was not present. Silence of the witnesses from village in the atmosphere of Court, about part of the fact cannot be read as non existence of the fact.

(e) The evidence of P.W. 3 Gajanan shows that when they met P.W. 7 Eknath, Eknath told them that accused Laxman gave a blow of axe on his leg and they should go and at least save the life of Bhanudas. P.W. 4 Rameshwar has also corroborated Gajanan in this regard. Even P.W. 5 Vitthal has deposed that when they met Eknath he had said that accused Laxman beat him with the help of axe on his leg and is also beating deceased Bhanudas. No doubt P.W. 7 Eknath has turned hostile and in Court did not depose that he had told about accused Laxman assaulting but while giving F.I.R., Exh. 24, P.W. 3 had informed the police about P.W. 7 Eknath giving such information. It is true that the evidence of P.Ws, 3, 4 and 5 is hearsay as regards part of incident before they themselves reaching the spot. However, what is relevant is what injured P.W. 7 Eknath, said when incident was still taking place.

(f) The evidence of P.W. 3 Gajanan shows that when they rushed to the spot, he saw that his father Bhanudas was lying on the ground and accused Laxman was there and he saw Laxman was beating his father Bhanudas with the help of axe. Even P.W. 4 Rameshwar has deposed that on reaching the spot he saw Bhanudas was lying on the ground having substantial bleeding injuries on his leg and on back portion on his head and accused Laxman was present on the spot holding axe in his hand. From the evidence of above witnesses, it is clear that they did see accused Laxman on the spot with an axe. P.W. 3 Gajanan has deposed regarding accused giving blows by an axe.

As regards P.W. 5 Vitthal he did depose that on reaching the spot they saw that deceased Bhanudas was lying on the ground and accused Laxman was beating him with the help of axe. However, P.W. 5 Vitthal appears to have been confronted with this statement to police on the point that he had not stated to the police that accused Laxman was beating deceased Bhanudas with the help of axe. He claimed that he had stated so. From the evidence of P.W. 12, Investigating Officer, the omission in this regard is proved as regards the part of beating.

12. (a) It has been argued by the learned counsel for the appellant-accused that

P.W. 3 Gajanan deposed in the cross examination that in their presence accused Laxman gave only one blow of axe on the person of deceased Bhanudas and has deposed that it did not happen that Laxman gave several blows of axe on the person of deceased father. This is tried to be argued to say that ocular and medical evidence did not match.

There is no substance in the argument. What can be seen from the evidence available on record is that P.Ws. 3, 4 and 5 when they reached the spot, the incident taking place must be in the last portion. The evidence of these witnesses shows that after these witnesses reached the spot and saw what was happening, the accused had run away and the witnesses saw that Bhanudas was lying on the ground with various injuries. P.W. 3 in his F.I.R. Exh. 24 had informed that when they reached the spot he saw accused Laxman with axe in his hand giving blows to his father. In the cross examination, P.W. 3, when asked further had asserted that he had stated that accused Laxman gave one blow of axe on the person of his deceased father. Evidence of P.W. 3 needs to be read in proper manner and isolated sentence cannot be picked up. What emerges from reading of evidence is that when these persons reached the spot, they had seen accused Laxman giving at least one blow of axe in their presence which could have been the last one, as accused appears to have then run away. It is natural for a person reaching the spot and witnessing such culmination of incident to infer that the other injuries are also of the axe blows given by the person giving the last blow and running away. As such, there is no contradiction in the F.I.R. filed, the oral evidence and medical evidence. There is no substance in the argument that ocular and medical evidence did not match.

(b) Evidence of P.W. 3 read with F.I.R. filed by him, which he claimed in the evidence to be true and correct shows that when they saw accused giving blows of axe they did shout. It needs to be repeated that silence of witness coming from small village about a part of the fact cannot be read as non existence of the fact. Even if these persons stood at 50 feet not gathering courage to go towards accused out of fear that cannot be said to be unnatural. They had just seen P.W. 7 Eknath run away from the spot with injuries and thereafter saw their father lying injured with accused having axe in his hand. In this situation, different persons may react differently but only because these persons failed to gather courage to physically intervene, that by itself does not make their conduct unnatural. There cannot be a photographic narration from rustic villagers, closely related to accused and deceased.

(c) Learned counsel for the appellant-accused referred to the cross examination of P.W. 3 Gajanan in para 10 to submit that omissions have been proved with reference to his evidence that he and his father had taken dinner at 9.00-9.30 p.m.; that land of his uncle Eknath is at a distance of 300 ft; that house of uncle Rameshwar is at a distance of 50 ft from his house and, that he had not told the police that he saw accused from a distance of 50 feet.

These are apparently minor omissions. The witnesses is agriculturist and in milk

business from the village. His idea of time and distance given much weight ignoring his evidence regarding actual incident.

(d) The prosecution brought on record the evidence of P.W. 6 Santosh Uttamrao Mohite and P.W. 10 Sahebrao Magaj regarding disclosure and discovery by the accused of axe and his blood stained clothes. P.W. 10 turned hostile. However, P.W. 6 has supported the prosecution and there is evidence of P.S.I. Shaikh Salim (P.W. 12). The evidence is that on 17.5.2010 when accused Laxman was in police custody he disclosed that he will show where the weapon-axe used in the assault has been concealed and also stated that his clothes have been concealed in the house and agreed to produce the same. The panchnama Exh. 29 and evidence of P.W. 10 and 12 P.S.I. Shaikh Salim shows that accused took the panchas and police to a spot where there was Nala and axe concealed in the bushes was produced, which had blood stains on the handle and on the sharp side of the axe. The evidence further is that the accused took them to his own house and from the said house, produced his blood stained clothes which were seized and recovery panchnama Exh. 30 was prepared. What the learned counsel for the accused is pointing out is that panch Santosh has deposed that accused gave disclosure statement that he will produce the weapon axe used in the assault and clothes which were concealed in his house. The evidence of this witness is that accused Laxman entered his house and took out one axe and one shirt and pant which had blood stains. He deposed that accordingly panchnama Exh. 30 was prepared. He even identified the paper slip of his signature which was put on the axe at the time of seizure.

It is correct that the oral evidence given by this witness claims that axe was recovered from the house of accused while panchnama shows that it was recovered from bushes in the Nala. At the time of oral evidence, the panchnama Exh. 30 was read over to this witness and he had admitted the contents thereof which were read over to him are true and correct. When the panch was clearly deposing as correct about the contents of the panchnama, which was being read over to him in the court, it was failure on the part of Public Prosecutor, taking examination in chief not to seek clarification from the witness. Apparently, evidence available need not be simply brushed aside only because the attention of the witness was not drawn to the part of the document.

Even ignoring such panchnama regarding recovery of axe, it is a matter of record that P.Ws. 3 to 5 did see accused on the spot with axe and there is evidence that he had given blows by axe. In fact, his father P.W. 7 Eknath who in his evidence has tried to protect his son also deposed that the assailant had used axe for inflicting the blows.

(e) As regards the recovery of blood stained clothes, there does not appear to be any infirmity or challenge. Even the Chemical Analysis reports, which are at Exh. 48 to 51 collectively show that the blood stains found on the clothes of the accused were of blood group of P.W. 7 Eknath and deceased Bhanudas. Of course, explanation of the accused is that these blood stains were received as he

assisted in picking his father and uncle to the hospital. This defence is being discarded looking to the case of the prosecution, which is proved.

(f) It is argued for the appellant-accused that Bhanudas had some abrasions and even contusions. According to learned counsel for the accused, such injuries could not have been by axe. Learned A.P.P. submitted that the evidence shows that the axe was used not only by the sharp side but also from the blunt side.

P.W. 7 Eknath, who saw the initial part of the incident has turned hostile. Some part of the incident after P.W. 7 Eknath ran away from the spot is something which is in the exclusive knowledge of the accused. It is clear from the record that there were shouts and abuses and when Bhanudas was being injured, he was also shouting and (when P.Ws. 3 to 5 saw him,) was already lying on the ground. In the circumstances, some part of the incident is matter of inference and it cannot be said that medical evidence is not matching with the prosecution case.

INTENTION TO KILL

13. Learned counsel for the accused submitted that the evidence is that accused had dispute with his father regarding partition of land and there was no specific motive to kill Bhanudas and that what can be gathered from evidence is that when P.W. 7 Eknath ran away after some injuries, accused may have in a rage, inflicted 16 injuries noticed in the post mortem report Exh. 39. Learned counsel argued that in the facts and circumstances of the matter, it cannot be concluded that accused had intention to murder Bhanudas. Learned counsel relied on the case of Ankush Shivaji Gaikwad Vs. State of Maharashtra, .

In the above matter of Ankush, the facts are different. In that case, deceased and his wife were in their field when the appellant Ankush alongwith two other persons was walking past the field of the deceased and a dog owned by the deceased started barking at them. Angered by the barking dog, the appellant-accused in that matter had hit the dog with iron pipe and this led to exchange of hot words and scuffle between the deceased and the appellant and the appellant accused hit iron pipe on the head of deceased and the deceased fell on the ground. Then accused and other two persons had run away. On those set of facts, the Hon'ble Supreme Court observed that it was not a matter of Section 302 but of Section 304 Part II of I.P.C.

In the present matter, the facts are quite different. Here the accused had definite quarrel with his own father for partition of property. The said demand was not being supported by his father and his uncle Bhanudas. The accused had gone to the spot armed with an axe and started abusing and committed the crime. Evidence of P.W. 8 Dr. Rajendra read with injury certificate of Eknath Exh. 37 shows that Eknath had incised wounds on his right upper arm and left upper arm and on his left leg which were caused by sharp edged weapon like axe. Deceased Bhanudas had 16 injuries out of which injury Nos. 1, 2, 15 and 16 were chop wounds, as can be seen from para 9 (supra). Intention of the accused clearly

appears to have been to kill, as his demands were not being met. It is incidental that P.W. 7 Eknath who appears to have been well built managed to run away from the spot and escape. Thus, the conclusion of the subordinate court that offence punishable u/s 302 of IPC is established need not be disturbed. We do not find any substance in the appeal.

The Appeal is dismissed.