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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 112 OF 2007**

Shri. Anil Ramchandra Parab	]
Aged 40 years, residing at Saikrupa	]
Niwas, Baba Kadam Chawl No. 3,	]
Room No.13, Kanjur Marg,	]
Bombay-78	]
Currently lodged at Arthur Road	]
Central Prison	] .. Appellant [Ori. Accused]

Vs.

The State (At the instance of	]
DCB CID, Bombay)	].. Respondent

....

Mr. Shirish Gupte Senior Advocate i/b Mr. Chetan Agarwal
along with Mr. Harshawardhan Salgaonkar Advocate for the
Appellant

Mrs. A.S.Pai A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.A.S.GADKARI, JJ.**

DATED : AUGUST 21, 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 6.11.2006

passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No. 284 of 1986 @ 226 of 2005. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 307 of IPC, under Section 3 read with Section 25(1B)(a) and under Section 5 read with Section 27(1) of Indian Arms Act. For the offence under Section 307 of IPC, the appellant has been sentenced to life imprisonment. For the offence under Section 3 read with Section 25(1B) (a) of the Indian Arms Act, the appellant has been sentenced to imprisonment for two years and fine of Rs.2000/- in default S.I. for three months. For the offence under Section 5 read with Section 27(1) of the Indian Arms Act, 1959, the appellant has been sentenced to imprisonment for five years and fine of Rs.5000/- in default S.I. for six months.

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

 The injured person in the present case is Hansraj Shah. He was given police protection and P.W. 3 PSI Shaikh and Police Constable P.W. 4 Madhav were assigned the duty of protecting him on 6.6.1984. The protection was given to Hansraj Shah since in the year 1983 Nanji Shah the elder

brother of Hansraj Shah was murdered at Kanjur village. On 6.6.1984 Hansraj was called upon to appear as a witness before 22nd Metropolitan Magistrate Court Andheri. P.W. 1 Head Constable Satam and Police Constable P.W. 5 Koyghadi were assigned duty of keeping watch at 22nd Metropolitan Magistrate Court, Andheri. P.W.3 PSI Shaikh and P.W. 5 Koyghadi reported for duty at 22nd Metropolitan Magistrate Court Andheri at about 11.00 a.m. on 6.6.1984. At 2.10 p.m. the case of Saki Naka Police Station was called out. After the case was called out, witness Hansraj Shah was called by the concerned Judicial Clerk (Interpreter). Witness Hansraj Shah came inside the Court and stood near the witness box. Protection squad of Hansraj Shah i.e. P.W. 3 PSI Shaikh and PW 4 Police Constable Madhav were standing next to Hansraj. 5 to 6 advocates were present in the court-hall. So also members of the Public were present in the court-hall. P.W. 1 Head Constable Satam was sitting on the Bench at the back of the court-hall. When the prosecutor was taking to Hansraj Shah, at that time, the appellant who was in 'Khaki dress' came and took out revolver from his pant pocket and fired at Hansraj Shah. Due to firing, Hansraj sustained bullet injury to the left

side of his chest. Immediately P.W. 3 PSI Shaikh opened fire with his service revolver on the person who had fired 3 to 4 rounds at Hansraj. Due to firing, the appellant sustained firearm injury. P.W. 4 Police Constable Madhav who was assigned service revolver of .44 bore also took out his service revolver and fired at the appellant. PSI Shaikh then snatched revolver from the appellant. In the firing, PSI Shaikh also sustained bullet injury on his leg. Thereafter, Hansraj was put in the jeep standing outside the court-hall. PSI Shaikh who had sustained injury, was also put in that jeep and they were taken to cooper hospital. The appellant who had sustained firearm injury, was also taken to cooper hospital. P.W. 1 Police Head Constable Satam lodged FIR. Thereafter investigation commenced. After completion of investigation, the charge sheet came to be filed.

3 Charge came to be framed against the appellant under Section 307 of IPC, under Section 3 r/w Section 25 (1B) (a) and Section 5 r/w 27(1) of the Arms Act. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of total denial and false

implication. After going through the evidence adduced in the present case, the learned Judge convicted and sentenced the appellant as stated in para 1 above, hence, this appeal.

4 We have heard Senior Advocate Shri. Shirish Gupte the learned counsel 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 counsel for the parties, the judgment delivered by the learned Sessions Judge and the evidence on record, for the below mentioned reasons, we are of the opinion that the appellant has committed an offence under Section 307 of IPC, under Section 3 read with Section 25(1B)(a) and under Section 5 read with Section 27(1) of Indian Arms Act.

5 It may be stated here that the injured witness Hansraj could not be examined as he was murdered in the year 1986. Hence, this case is mainly based on the evidence of P.W. 1 Police Constable Satam, P.W. 3 PSI Shaikh, P.W. 4 Madhav and P.W. 5 Koyghadi who are all eye witnesses to the incident. They were all in the court-hall of the learned Metropolitan

Magistrate, 22nd Court, Andheri at the time of the incident. P.W. 1 Police Head Constable Satam has stated that on 6.6.1984 he was assigned court-hall of Metropolitan Magistrate 22nd Court Andheri for keeping watch as one case of Saki Naka Police Station was fixed for hearing on that day before the 22nd Metropolitan Magistrate Court Andheri. He was assigned watching duty in the said court-hall along with P.W. 5 Police Constable Koyghadi. Police Head Constable Satam has stated that he reported for duty at 11 a.m. in the 22nd Metropolitan Magistrate Court at Andheri on that day. On that day, case of Saki Naka police station was called out at 2.10 p.m. After the case was called out, witness by name Hansraj Shah was called by the Judicial Clerk (Interpreter). Witness Hansraj came inside the court-hall and stood near the witness box. Protection squad of Hansraj i.e. one police officer in uniform (P.W.3 PSI Shaikh) and one Constable (PW 4 Madhav) in civil dress were standing at the back of Hansraj. Police Head Constable Satam has stated that when Hansraj Shah was with the public prosecutor, the appellant who was in 'khaki dress' took out revolver from his pant pocket and opened fire towards Hansraj. Due to firing, Hansraj sustained bullet injury on the left side of

his chest. Immediately P.W.3 PSI Shaikh who was protection officer of Hansraj, opened fire with revolver at the appellant. PSI Shaikh fired 3 to 4 rounds. Due to firing by PSI Shaikh, the appellant sustained bullet injury. PSI Shaikh also sustained bullet injury. Then Hansraj was put in the jeep standing outside the court-hall. PSI Shaikh who had sustained injury, was also put in that jeep. Thereafter they were taken to cooper hospital. The appellant who had sustained injury, was also taken in a van to cooper hospital. Hansraj, P.W. 3 Shaikh and the appellant all were admitted in cooper hospital. Police Head Constable Satam then lodged F.I.R.

6 The learned counsel for the appellant submitted that it was not possible for police head constable Satam to have witnessed the incident as he was sitting at the back of the court-hall. However, the evidence of P.W.1 Police Head Constable Satam shows that at the time that the firing took place, he was standing at a distance of 10 feet from Hansraj Shah. In such case, the submission that this witness could not have witnessed the incident, cannot be accepted.

7 The second eye witness is P.W. 3 PSI Shaikh. He has stated that on 6.6.1984 at 9.30 a.m. he was assigned duty of giving protection to Hansraj Shah. Protection was given to Hansraj Shah as in the year 1983 Nanji Shah the elder brother of Hansraj, was murdered at Kanjur village. PSI Shaikh has stated that constable Madhav (P.W.4) was given job of giving protection to Hansraj Shah around the clock. On 6.6.1984 PSI Shaikh and PW 4 Constable Madhav accompanied Hansraj Shah to the Metropolitan Magistrate 22nd Court, Andheri. At that time, PSI Shaikh was carrying .38 bore revolver and it was loaded with six bullets. Constable Madhav was carrying a revolver of .44 bore with six chambers and the same was loaded with bullets. PSI Shaikh was in uniform and constable Madhav was in plain clothes. They reached Andheri Court at about 11 a.m. At about 1.55 p.m. the case pertaining to Hansraj Shah was called out. In the court-hall, Hansraj and P.W.3 PSI Shaikh were standing near the public prosecutor. Suddenly, PSI Shaikh heard the sound of firing. PSI Shaikh has stated that Hansraj who was standing on his left side, suddenly collapsed on his left shoulder. At that time, constable Madhav (P.W.4) was standing behind Hansraj Shah. PSI Shaikh noticed

that the appellant who was wearing 'khaki pant and shirt' and looking like a rickshaw driver, suddenly pointed out gun at him (P.W.3 Shaikh) and appellant was also trying to fire another round at Hansraj. PSI Shaikh then immediately removed his service revolver and fired at the appellant. At that time, appellant had pointed out the gun at PSI Shaikh. PSI Shaikh has further stated that constable Madhav (P.W.4) also removed his revolver and fired towards the appellant who had pointed gun and fired at PSI Shaikh. PSI Shaikh received bullet injury. Because of the firing, the appellant also sustained bullet injury on his stomach and he fell down.

The learned counsel for the appellant submitted that it was not possible for this witness to have seen the actual firing on Hansraj Shah. However, the cross-examination of this witness i.e. P.W.3 PSI Shaikh, shows that he was standing just 2 to 3 feet away from the appellant. In such case, it was very much possible for P.W.3 PSI Shaikh to have witnessed the appellant firing at Hansraj Shah.

8 The next eye witness is P.W.4 Police Constable

Madhav. Madhav has stated that the incident took place on 6.6.1984. On that day, he was assigned the protection duty of one Hansraj Shah who was a businessman. The duty of police constable Madhav was to give Hansraj protection during the day time. While he was on duty, police constable Madhav used to carry service revolver of .44 bore and he used to be in civil dress. On 6.6.1984 also police constable Madhav had his service revolver with him. It was loaded with five live cartridges. Police Constable Madhav went to the residence of Hansraj Shah at Kanjur Marg and he relieved the constable who was on night duty at the residence of Hansraj. Thereafter, he, Hansraj and driver of Hansraj went to Bhandup Police Station. There they picked up PSI Shaikh (PW 3) who was in uniform. PSI Shaikh accompanied all of them to Metropolitan Magistrate 22nd Court, Andheri. PSI Shaikh was carrying his service revolver of .38 bore along with him. Police Constable Madhav has further stated that at about 2.10 p.m. the matter was called out. At that time, Hansraj Shah was standing near the public prosecutor and close to the witness box. Police Constable Madhav has further stated that he was standing by the side of Hansraj. At that time, he heard sound of firing. He

noticed blood oozing out from the left side of chest of Hansraj. Police constable Madhav also noticed one person who was wearing 'khaki dress' and was armed with revolver, was aiming at them, hence, Police constable Madhav immediately took out his service revolver and fired towards him (appellant). Police constable Madhav fired five rounds towards the appellant. PSI Shaikh also fired towards the appellant. Because of firing, the appellant was injured and PSI Shaikh also received bullet injury. All the injured persons were admitted in Cooper hospital. The evidence of this witness shows that he was standing just 7 to 8 feet away from the appellant and he was standing just next to Hansraj. In such case, it was possible for this witness to clearly see the incident of firing by the appellant on Hansraj.

9 The last eye witness is PW 5 PI Koyghadi. He has stated that on 6.6.1984 he was attached to Andheri Police Station as Police Naik. On that day, he was on special duty in the 22nd Metropolitan Magistrate Court Andheri where case of Hansraj was there in Court room no. 22. Hence, he (Koyghadi) was assigned that court room to keep watch on Hansraj. Along

with him, constable Satam (P.W.1) was also on duty at that time. Both of them were in civil dress. They were not having weapon with them. Koyghadi has stated that he attended his duty at 11 a.m. in 22nd Metropolitan Magistrate Court Andheri. Around 2.10 p.m. the case of Hansraj, was called out in the Court. Hansraj was talking to the police prosecutor. At that time, one person wearing `khaki dress' (appellant) suddenly opened fire at Hansraj. Hansraj sustained bullet injury on the left side of chest. PI Koyghadi has stated that PSI Shaikh (P.W.3) and constable Madhav (P.W.4) were by the side of Hansraj. PSI Shaikh opened fire in the direction of the person who was wearing `khaki dress'. Constable Madhav (P.W.4) also opened fire towards the person who was wearing `khaki dress'. In the firing, PSI Shaikh sustained bullet injury on his left leg. The person who was wearing `khaki dress', also received bullet injury and he fell down on the ground. Thereafter all the injured were taken to the hospital.

10 The learned counsel for the appellant submitted that all the four eye witnesses who are examined are police personnel and therefore, they are all interested witnesses,

hence, their testimony should not be relied upon. As far as this submission is concerned, one cannot lose sight of the fact that in the instant case, one of the police witnesses i.e. P.W. 3 PSI Shaikh also sustained bullet injury. All the police personnel were on duty in the court room where the incident occurred. They cannot be described as official witnesses interested in the success of the investigation or prosecution. They are eye witnesses. One of them was injured in the course of the incident. In fact, the testimony of such witnesses does not require any independent corroboration as their evidence is found to be truthful and reliable. This is not a case where police witnesses have been introduced to bolster the case of the prosecution with a view to achieve its success. The injured police witness i.e. P.W. 3 PSI Shaikh as well as other police witnesses are eye witnesses. Two of them were members of the protection party assigned to Hansraj. In our view, independent corroboration to their testimony is not necessary in the facts and circumstances of the present case. Moreover, one cannot lose sight of the realities of the situations. In a case of this nature, it is hardly possible for the prosecution to secure independent witnesses being members of the public

who had witnessed the incident. Moreover, nothing has been elicited in the cross-examination of any of these four eye witnesses which would cause us to disbelieve their testimony.

11 Thereafter, the learned counsel for the appellant submitted that the incident took place on 6.6.1984 and the witnesses have deposed in the court in the year 2005. He submitted that as the appellant was unknown to all the four eye witnesses prior to the incident, test identification parade should have been held. He submitted that not holding a test identification parade is fatal to the prosecution. As far as this contention is concerned, it is seen that the appellant was nabbed at the spot i.e. in the court-hall itself. Thereafter the appellant was taken to cooper hospital. P.W.3 PSI Shaikh was also taken to cooper hospital. Hansraj, the appellant and PSI Shaikh were all admitted in cooper hospital. The evidence of P.W. 1 Police Head constable Satam also shows that the appellant was brought to cooper hospital and admitted in the said hospital. P.W.1 police head constable Satam has stated that he also went to cooper hospital. P.W.4 police constable Madhav has stated that he assisted in removing all the injured

witnesses to the hospital. Thus, not only did the eye witnesses have sufficient time to observe the appellant in the court-hall when they disarmed and nabbed him, but also they had sufficient opportunity to observe the appellant while the appellant was being taken to the hospital and admitted in the hospital. The incident was a sensational one, hence, there was special reason for all the four witnesses to keep the appellant in mind and hence, it is not possible that they would commit any error in identifying the appellant.

12 The learned counsel for the appellant again reiterated that P.W.1 police head constable Satam, P.W.3 PSI Shaikh, P.W. 4 police constable Madhav and P.W.5 PI Koyghadi identified the appellant for the first time in the Court. He submitted that it is an admitted fact that none of these witnesses had seen the appellant prior to the incident which occurred on 6.6.1984. He submitted that no test identification parade was held prior to the identification of the appellant by these witnesses in the court and as such, the evidence of these witnesses directly identifying the appellant in the Court without any previous test identification parade, cannot be relied on.

13 The Supreme Court has considered the evidentiary value of identification of an accused by a witness in the Court for the first time, in a case when the eye witnesses did not know the accused earlier and when no Test Identification Parade has been held. The Supreme Court observed that the real credence of such evidence would depend upon the facts and circumstances of each case. It was observed in the case of **Ramanbhai Naranbhai Patel and Others Vs. State of Gujarat; (2000) 1 SCC 358** that in the absence of Test Identification Parade, it cannot be said that the evidence of any independent witness would become inadmissible, totally useless or irrelevant.

14 In the case of **Ramanbhai Naranbhai Patel (Supra)**, also two witnesses directly identified the accused in the Court but without any previous Test Identification Parade. It was argued that such identification is of no assistance to the prosecution. The Supreme Court observed that as the witnesses were injured in the incident, they could have easily seen the faces of the accused persons who assaulted them and

their appearance and identity would remain imprinted in the minds of the witnesses especially when they were assaulted in broad daylight.

15 The learned counsel for the appellant again argued that as far as the identification of the appellant by the eye witnesses at the time of trial without participating in the test identification parade is concerned, such identification is worthless and, therefore, that part of the evidence should be excluded from the consideration and thus, a vital link in the chain of circumstances would be missing.

16 In connection with the above argument of the learned counsel for the appellant, we may make useful reference to a decision of the Supreme Court in the case of ***Ronny alias Ronald James Alwares and Ors. Vs. State of Maharashtra; (1998) 3 SCC 625***. In the said decision, it is observed that the statement of the witness made in the Court is substantive evidence whereas the evidence of identification in the TIP is not substantive evidence but it is only corroborative evidence. It falls in the realm of investigation. The purpose of test

identification parade is to test the observation, grasp, memory, capacity of a witness to recapitulate what he has seen earlier, the strength or trustworthiness of the evidence of the identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in Court. But if a witness has seen an accused earlier in such circumstances which lends assurance to identification by him in Court and if there is no inherent improbability or inconsistency, his statement in Court about the identification of accused would be relied upon as any other acceptable but uncorroborated testimony. The identification of the accused by a witness if he had an opportunity to interact with him or to notice his distinctive feature lends assurance to his testimony in Court and absence of corroborative evidence by way of test identification parade would not be material.

17 In the case of **Ronny (*supra*)**, the prosecution had relied on the evidence of two witnesses i.e. PW 29 and PW 34. Both these witnesses had directly identified the accused for the first time in Court. The evidence of both these witnesses was relied upon by the prosecution to show that the accused

persons had come to the bungalow of the deceased on the night of the incident. The evidence of both these witnesses was accepted by both the trial Court as well as the High Court that the accused persons were seen entering the bungalow of the deceased on the previous night. The Supreme Court has observed that both the Courts below had rightly accepted the identification of the accused by these two witnesses. The accused persons were not known to both PW 29 and PW 34 prior to the date of incident, however, both these witnesses had a talk with the accused when the accused came to the bungalow. Some talk took place between the witnesses and the accused for about 7 to 8 minutes. Thereafter, the accused persons entered into the bungalow. On the next day, the inmates of the bungalow were found dead. The Supreme Court held that identification of the accused by a witness if he had an opportunity to interact with him or notice his distinctive features lends assurance to his testimony in Court and that the absence of corroborative evidence by way of TIP would not be material.

18 In ***Shyamlal Ghosh Vs. State of West Bengal;***

(2012) 7 SCC 646- para 80, the Supreme Court observed that it is equally correct that Criminal Procedure Code does not oblige investigating agency to necessarily hold TIP. Failure to hold TIP while in custody does not by itself render the evidence of identification in Court inadmissible or unacceptable.

19 In the present case, it is seen that all the eye witnesses had sufficient opportunity to observe the appellant in the court room. It is not as if the appellant fired at Hansraj and immediately ran away from the spot but the appellant was nabbed on the spot and thereafter he was taken to cooper hospital and admitted in the said hospital. In such case, it is seen that all the four eye witnesses had sufficient opportunity to observe the appellant. Moreover, all the four eye witnesses are police personnel who are trained to identify the criminals. Looking to the nature of the incident, there was special reason for all eye witnesses who are policemen to keep the identity of the appellant in mind and to correctly identify him later on. It may be stated at this stage that the appellant was granted bail on 16.10.1984. Thereafter he went to U.A.E. and absconded. Thereafter he was deported back to India in the year 2003.

Thereafter the trial commenced against him. As stated earlier, as all the four eye witnesses were police personnel who are trained to recognize and identify criminals, there would be no mistake on their part in identifying the appellant.

20 It is the prosecution case that the appellant fired at Hansraj with the revolver and thus, committed the offence under Section 307 of IPC. P.W. 7 Dr. Padgaonkar examined Hansraj. He has stated that the patient gave history of firearm injury. The patient was admitted in ICU and he issued medical certificate (Exh. 27). The medical certificate shows that Hansraj sustained one deep incised wound on the left side of chest near subcutaneous 1 inch in diameter. Dr. Padgaonkar has stated that the injury on the person of Hansraj was fatal and such injury is possible by firearm. Thus, the evidence of Dr. Padgaonkar also supports the prosecution case.

21 Dr. Padgaonkar also examined the appellant. He found firearm injuries on the appellant. Dr. Padgaonkar has stated that the patient Anil Parab (appellant) gave him history of firearm injury. This further supports the evidence of eye

witnesses who stated that P.W.3 PSI Shaikh fired at the appellant from his service revolver.

22 The learned counsel for the appellant submitted that this is not a case of murder and it is an admitted fact that Hansraj has survived, he submitted that in such case, the maximum sentence of imprisonment under Section 307 of IPC ought not to have been imposed on the appellant. He further submitted that the appellant fired only one bullet towards the victim Hansraj and this aspect would have to be taken into consideration and the sentence should be reduced.

23 The evidence on record shows that an attempt was made on the life of a person who had already been granted police protection. The act was committed in broad day light within the precincts of the Court premises. The plan was sought to be executed within the view of large number of persons present in Court premises. Though the victim Hansraj was being escorted under the protection of police party and at least one member of escorting party was armed with the firearm, yet, the appellant dared to fire at Hansraj. In the

incident, the victim was injured and so was one police officer. Hansraj was lucky that the injury did not prove to be fatal. When a dastardly act is sought to be executed in such a bold and daring manner, what is the message which the accused intends to convey to the ordinary people of this country? The message is that obedience to law is irrelevant. People must obey the dictates of the law breakers. Neither the Courts nor the police force can give them any protection, for it is the right of the criminals to command total obedience from the citizens of this country. The State has lost its supremacy, in any event, its subjects must disregard the code of conduct established by law and must obey the dictates of those for whom law is meaningless. If they fail to do so, they shall be dealt with in the same manner as the victim in the instant case, notwithstanding the fact that he was under police protection, and the incident was being witnessed by a large number of persons within the Court premises. Such activities have the effect of undermining the very authority of the State and have a terrorizing effect on those who witness such an incident and those who come to know of it. The terror, fear and panic which is caused is unfathomable and tends to completely demoralize

the ordinary man in the street. The blatant manner in which the plan was executed in the instant case leaves no manner of doubt that the intention of the perpetrator was not merely to kill the victim, but also, to send a terrorizing message to the people in general, so that there was no defiance of their command in future.

24 On going through the evidence on record, we are of the opinion that there is sufficient evidence to prove beyond reasonable doubt that the appellant attempted to commit murder of Hansraj Shah by firing at him with the revolver. So also the offences under the Arms Act also stand proved. It is most important to note that the accused has committed the aforesaid blatant act in the open court when 22nd Metropolitan Magistrate Court, Andheri Bombay was in session and therefore, it is certainly a grave act and if appropriate sentence is not awarded to such an act, it would send wrong signals to law abiding citizens in the society. No doubt, the accused has three daughters and aged mother to look after. However, the said aspect cannot mitigate the gravity of the offence committed by the accused.

25 In view of the above discussion, no interference is called for even as far as the sentence imposed on the appellant is concerned.

26 In the result, the appeal is dismissed.

[A.S.GADKARI, J.]

[SMT. V.K.TAHILRAMANI, J.]

Kandarkar