

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1068 OF 2012

ADINATH BADEKAR

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.Nitin Sejpai a/w. Mrs.Pooja Sejpai, Advocate for the Appellant.

Ms.Anamika Malhotra, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 28th JUNE 2018

ORAL JUDGMENT :

1 By this appeal, the appellant/original accused no.1 Adinath Badekar is challenging the judgment and order dated 29th August 2012 passed by the learned Additional Sessions Judge, Raigad at Alibaug, in Sessions Case No.11 of 2010, thereby convicting him of offences punishable under Sections 307 and 504 of the Indian Penal Code as well as under section 3 read with 25 of the Indian Arms Act. For the offence punishable under Section

307 of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 7 years apart from direction to pay fine of Rs.2,000/- or in default to undergo default sentence of rigorous imprisonment for 1 year. For the offence punishable under Section 504 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 6 months, whereas, for the offence punishable under Sections 3 read with 25 of the Indian Arms Act, he is sentenced to suffer rigorous imprisonment for 3 years, apart from payment of fine of Rs.2,000/- or in default to undergo rigorous imprisonment for 6 months. Substantive sentences are directed to run concurrently by the impugned judgment and order.

2 Facts leading to the prosecution of the appellant/accused no.1 along with co-accused, who were acquitted, are thus :

(a) Injured First Informant Maruti @ Babu (PW1) used to do business of supply of building material and he was also working as the contractor. The appellant/accused no.1

Adinath Badekar was in the employment of PW1 Maruti @ Babu and used to reside in the house of PW1 Maruti @ Babu. However, suspecting misappropriation of money, PW1 Maruti @ Babu removed appellant/accused no.1 Adinath from the service. The incident in question took place in front of office of the Panchayat Samiti, Karjat, on 29th July 2009. On that day, on the motorcycle of PW2 Dinanath Kolambe, PW1 Maruti @ Babu went to the office of the Panchayat Samiti, Karjat. When they were standing outside the gate of the office of the Panchayat Samiti, Karjat, appellant/accused no.1 Adinath accompanied by acquitted accused came on the motorcycle. He abused PW1 Maruti @ Babu in filthy language and took out the firearm from the bag carried by him. Frightened PW1 Maruti @ Babu ran for his life and took shelter in the nearby shop named Tip Top Shoe Mart. By chasing, appellant/accused no.1 Adinath also entered in that shop and fired a bullet at injured PW1 Maruti @ Babu, who sustained injuries to his left wrist and abdomen.

- (b) Injured PW1 Maruti @ Babu was then shifted to Sub-District Hospital, Karjat, where he was treated by PW7 Dr.Vibhavari Shiholkar, Medical Officer. At the said hospital, statement of PW1 Maruti @ Babu came to be recorded and accordingly, FIR Exhibit 66 came to be registered against the appellant/accused no.1 Adinath and other accused persons. The injured was then shifted to Purohit Clinic for further medical treatment, where he was treated by PW8 Dr.Paresh Kulkarni.
- (c) Routine investigation followed. Statement of witnesses came to be recorded. Test Identification Parade was then conducted by PW9 Narendra Potkar, Nayab Tahsildar. Clothes of the victim came to be seized vide Seizure Panchnama Exhibit 87 in presence of panch witness PW4 Ganesh Ghare. On the basis of voluntary disclosure statement of the appellant/accused no.1 Adinath, in presence of PW5 Natha Dhule panch, PW11 Sheetal Raut, Assistant Police Inspector, seized the firearm involved in the

crime in question. On completion of investigation, the appellant/accused no.1 Adinath along with co-accused came to be charge-sheeted.

- (d) The learned trial court framed and explained Charge to appellant/accused no.1 Adinath, so also to the co-accused. They pleaded not guilty and claimed trial.
- (e) In support of the charges leveled against appellant/accused no.1 Adinath and the co-accused, prosecution adduced oral as well as documentary evidence. Defence of the appellant/accused no.1 Adinath was that of total denial. However, he did not enter in defence.
- (f) After hearing the parties, the learned trial court was pleased to convict appellant/accused no.1 Adinath of offences punishable under Section 307, 504 of the Indian Penal Code as well as under Section 3 read with 25 of the Indian Arms Act and he was accordingly sentenced, as indicated in the opening paragraph of this judgment.

3 I have heard Shri Nitin Sejpal, the learned counsel appearing for the appellant/accused no.1 Adinath. He argued that the prosecution has failed to prove the alleged incident of assault on PW1 Maruti @ Babu as no independent witnesses are examined by the prosecution in support of its case. Interested testimony of PW2 Dinanath Kolambe and that of PW3 Nana Bhagat is of no avail to the prosecution as PW2 Dinanath Kolambe was friend of the injured and PW3 Nana Bhagat is an employee of friend of the injured. Cross-examination of the injured shows that the incident in question took place in the populous area and was witnessed by several natural witnesses to the incident, who are not examined by the prosecution. The learned counsel further argued that forensic evidence as well as the medical evidence shows that the firearm used was a pellet gun, and therefore, it cannot be said that appellant/accused no.1 Adinath had harboured the intention to commit murder of injured PW1 Maruti @ Babu. None of the doctors examined by the prosecution has spoken about the fact that the injuries caused because of the

firearm were life threatening. On the contrary, medical evidence shows that the pellets did not enter in the abdomen of the injured. Therefore, in submission of the learned counsel, the prosecution has failed to establish the offence punishable under Section 307 of the Indian Penal Code.

4 Per contra, the learned APP supported the impugned judgment and order of conviction and the resultant sentence by arguing that requirement of Section 307 of the Indian Penal Code is not life threatening injury. What is required to be proved is the intention coupled with overt act on the part of the accused. She further argued that, when available evidence is trustworthy, cogent and consistent, then non-examination of witnesses, though available, cannot cast shadow of doubt on the prosecution case.

5 I have carefully considered the rival submissions and also perused the record and proceedings including oral and documentary evidence.

6 Considering the nature of the subject crime, case of the prosecution, to a great extent, hinges on the testimony of injured First Informant Maruti @ Babu (PW1). Even according to the prosecution case, act of firing the bullet after chasing the victim is attributable only to appellant/accused no.1 Adinath. No overt act was attributed to acquitted co-accused. Therefore, the case in hand is that of a single victim and single accused, though other persons were arraigned as accused, for the reasons best known to the prosecution. It is well settled that evidence of injured witness carries great weight, as his presence on the scene of occurrence is established by the fact that he had sustained injuries in the incident in question. Similarly, in such cases with one accused and one injured, theory of false implication does not deserve a moment's consideration, because human nature generally does not permit substitution of an innocent person in place of the assailant. Hence, let us examine what injured PW1 Maruti @ Babu has deposed about the incident in question.

7 Version of PW1 Maruti @ Babu shows that on 29th July 2009, on the motorcycle of PW2 Dinanath Kolambe, who happens to be his friend, and accompanied by PW2 Dinanath Kolambe, he went to the office of the Panchayat Samiti, Karjat. The incident took place after 1.00 p.m. of that day. As stated by PW1 Maruti @ Babu, when he as well as PW2 Dinanath Kolambe were standing in the front of the gate of the office of Panchayat Samiti, Karjat, on a Pulsar motorcycle, appellant/accused no.1 Adinath accompanied by two others came on that spot. Appellant/accused no.1 Adinath rushed towards him, abused him in filthy language and then, took out a firearm from his bag. Fearing for his life, as stated by PW1 Maruti @ Babu, he took shelter in Tip Top Shoe Mart, but by chasing him, appellant/accused no.1 Adinath reached at that shop and fired a bullet at his person, causing bleeding injuries to his left hand and abdomen. PW1 Maruti @ Babu testified that after firing a bullet at him, appellant/accused no.1 Adinath ran away with that weapon. This witness has also spoken about recording of his First Information Report (FIR) Exhibit 66

on the very same day, while he was taking treatment at the Government Hospital of Karjat. Injured PW1 Maruti @ Babu, while in dock, identified appellant/accused no.1 Adinath, as the perpetrator of the crime. He, similarly, identified his clothes as well as weapon of the offence.

8 From cross-examination of this injured witness, it is brought on record that he was knowing appellant/accused no.1 Adinath from the year 2006. Evidence of this injured witness, to the effect that, appellant/accused no.1 Adinath was working with him and was residing at the house of injured PW1 Maruti @ Babu, is not at all challenged in the cross-examination. Thus, PW1 Maruti @ Babu was knowing appellant/accused no.1 Adinath since long and was well acquainted with him. The incident occurred in the broad daylight, and therefore, there cannot be any dispute or doubt in respect of identification of appellant/accused no.1 Adinath, as the author of the crime, by injured PW1 Maruti @ Babu. True it is that atleast three crimes are registered against this injured witness, but unless and until it is brought on record

that this witness has motive to implicate appellant/accused no.1 Adinath in a false case, his evidence cannot be jettisoned. Careful scrutiny of evidence of this injured witness does not reflect any reason for him to falsely implicate appellant/accused no.1 Adinath in the crime in question. His evidence is perfectly in tune with the FIR registered by the police, with due promptitude, on the very same day.

9 Evidence of PW2 Dinanath Kolambe is perfectly consistent with the evidence of injured PW1 Maruti @ Babu. Evidence of this witness shows that when he was accompanying injured PW1 Maruti @ Babu, appellant/accused no.1 Adinath came there on motorcycle, accompanied by two others, and then chased injured PW1 Maruti @ Babu, while holding the firearm, and after hurling abuses at the injured. This witness heard sound of firing and has also witnessed the injured with bleeding injuries, soon after hearing the sound of firing of the bullet. PW2 Dinanath Kolambe has also spoken about identification of appellant/accused no.1 Adinath in the identification parade

conducted by PW9 Narendra Potkar, Nayab Tahsildar. In cross-examination of this witness, nothing is brought on record to dislodge his evidence regarding the incident, so also identification of appellant/accused no.1 Adinath, as the person who chased the victim at the time of commission of the offence, holding the firearm.

10 The third witness examined by the prosecution to prove the incident of sustaining injuries by PW1 Maruti @ Babu is PW3 Nana Bhagat – an employee working in the Tip Top Shoe Mart. This witness has also supported the prosecution case by stating that while he was working at the Tip Top Shoe Mart on 29th July 2009, at about 1 – 1.30 p.m., PW1 Maruti @ Babu rushed into the shop and a person armed with firearm followed him and fired the bullet at PW1 Maruti @ Babu, causing injuries to PW1 Maruti @ Babu. PW3 Nana Bhagat has also spoken about identification of appellant/accused no.1 Adinath in the Test Identification Parade conducted by the prosecution.

11 With this ocular evidence adduced by the prosecution, the prosecution has established the fact that in the afternoon of 29th July 2009, at Tip Top Shoe Mart, near Panchayat Samiti, Karjat, appellant/accused no.1 Adinath had fired a bullet at injured PW1 Maruti @ Babu, causing injuries to him.

12 Evidence of PW7 Dr.Vibhavari Shiholkar and PW8 Dr.Paresh Kulkarni shows that on the day of the incident itself, i.e. on 29th July 2009, they had treated injured PW1 Maruti @ Babu. Evidence of both these Medical Officers is consistent and shows that injured PW1 Maruti @ Babu was having injuries in the nature of contused lacerated wound on his left forearm as well as multiple abrasions over his abdomen.

13 In presence of PW5 Natha Dhule, voluntary disclosure statement of appellant/accused no.1 Adinath came to be recorded by PW11 Sheetal Raut, the Investigating Officer of the crime in question. Confessional statement at Exhibit 89 has resulted in recovery of the firearm from the heap of stones lying near the wall

of the residential house of appellant/accused no.1 Adinath and the same came to be seized by Panchnama Exhibit 19. Evidence of Investigating Officer PW11 Sheetal Raut shows that the said firearm with three deformed lead balls seized during the course of investigation vide Panchnama Exhibit 87, were sent for forensic examination. The report at Exhibit 38 sent by the Assistant Chemical Analyzer shows that deformed lead balls were fired from the gun, at the instance of appellant/accused no.1 Adinath.

14 To my mind, this evidence is clinching. Evidence of Special Executive Magistrate – PW9 Narendra Potkar, to the effect that appellant/accused no.1 Adinath was identified by PW2 Dinanath Kolambe and PW3 Nana Bhagat in the Test Identification Parade, which is gaining corroboration from the contemporaneous Memorandum of the Test Identification Parade, is also not shaken in the cross-examination. With this trustworthy evidence, the prosecution has established the incident of injuring PW1 Maruti @ Babu by appellant/accused no.1 Adinath.

15 So far as offence punishable under Section 307 of the Indian Penal Code is concerned, what is material is the intention harboured by the accused. Such intention is required to be coupled with some overt act. In the case in hand, the prosecution has established overt act in the form of chasing injured PW1 Maruti @ Babu and firing bullet at him by appellant/accused no.1 Adinath, causing bleeding injuries to PW1 Maruti @ Babu. Mere evidence of injured PW1 Maruti @ Babu coupled with that of PW2 Dinanath Kolambe and PW3 Nana Bhagat, it can be gathered that injured PW1 Maruti @ Babu was required to run for his life, being chased by appellant/accused no.1 Adinath, while holding the firearm, and that is how, the incident took place. The fact that appellant/accused no.1 Adinath had come at the office of Panchayat Samiti, Karjat, while armed with the firearm, hurling abuses by him to the injured, thereafter brandishing the firearm and chasing injured PW1 Maruti @ Babu, who was running for his life and ultimately, firing a shot, reflects intention of appellant/accused no.1 Adinath, for the offence punishable under Section 307 of the Indian Penal Code. Hence, it is not possible to

agree with the submission of the learned counsel, that the prosecution has failed to establish the offence punishable under Section 307 of the Indian Penal Code.

16 The sequence of offence that took place and proved by the prosecution by its clear and cogent evidence establishes the offence punishable under Section 504 of the Indian Penal Code.

17 Appellant/accused no.1 Adinath had used the firearm for commission of the crime in question. He was prosecuted with due sanction from the District Magistrate and the copy of the Sanction Order is at Exhibit 130. The firearm was used in commission of the crime in question, and therefore, I do not see any infirmity in conviction of appellant/accused no.1 Adinath for the offence punishable under Section 3 read with 25 of the Indian Arms Act. The punishment imposed on him is also proportionate with the degree of criminality shown by appellant/accused no.1 Adinath.

18 In the result, the appeal fails, and therefore, the order:

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)