

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.1134 OF 2015
WITH
CRIMINAL APPLICATION NO.786 OF 2017
IN
CRIMINAL APPEAL NO.1134 OF 2015**

Mr.Baba @ Ranjan Rukhmuddin Shaikh,
Aged 33 years, residing at Hajuri Darga,
Noori Road, Thane.

... **Appellant/
Applicant**

V/s.
The State of Maharashtra,
(At the instance of Wagle Estate Police
Station).

... **Respondent**

.....

Mrs.N.S.K.Ayubi, Appointed Advocate for the Appellant/Applicant.

Mr.S.V.Gavand, APP for the Respondent/State.

....

CORAM : A.M.BADAR J.

DATED : 21st JANUARY 2019.

ORAL JUDGMENT :

1 Though this appeal is of the year 2015, appellant/
accused No.1 Baba @ Ranjan is undergoing jail sentence and the
appeal is listed by the Registry for final hearing in view of the
Order dated 25th September 2017 passed by the co-ordinate Bench
of this Court (Coram : Smt.Bharati H. Dangre, J). Hence, the
appeal is taken up for final hearing.

2 By this appeal, the appellant/accused No.1 is challenging the Judgment and Order dated 03/11/2015 passed by the learned Additional Sessions Judge, Thane in Sessions Case No.650 of 2012 thereby convicting the appellant/accused No.1 of the offence punishable under Section 307 of the Indian Penal Code as well as under Section 3 read with Section 25(1-B) of the Indian Arms Act. For the offence punishable under Section 307 of the Indian Penal Code, the appellant/accused No.1 is sentenced to suffer simple imprisonment for four years apart from direction to pay fine of Rs.500/- and in default to suffer simple imprisonment for one month. For the offence punishable under Section 3 read with Section 25(1)(b) of the Indian Arms Act, the appellant/accused No.1 is sentenced to suffer imprisonment for one year apart from direction to pay fine of Rs.500/- and in default to suffer simple imprisonment for fifteen days. The substantive sentences are directed to run concurrently by the learned trial Court. The co-accused came to be acquitted by the impugned Judgment and Order.

3 Brief facts leading to the prosecution of the appellant/accused No.1 and his resultant conviction can be summarized thus :

- (a) First Informant Abdul Choudhary was resident of Asif Ali Chawl located near Hajuri Darga area of Wagle Estate, Thane. He was having two sons named Naseer Hussain and Yusuf Choudhary (P.W.No.4). After completing education in

Computer Engineering at Chennai, Yusuf Choudhary returned to this parental house at Wagle Estate prior to 20 to 25 days of the incident.

- (b) According to the prosecution case, appellant/accused No.1 Baba @ Ranjan was a noted goon of the locality and was having several offences registered against him. Appellant/accused No.1 Baba @ Ranjan was not having cordial relations with P.W.No.4 Yusuf Choudhary and by making a phone call to P.W.No.4 Yusuf Choudhary, appellant/accused No.1 Baba @ Ranjan had questioned him as whether P.W.No.4 Yusuf Choudhary wants to assault him.
- (c) The incident of murderous assault on P.W.No.4 Yusuf Choudhary by appellant/accused No.1 Baba @ Ranjan took place near the hair-cutting saloon at Dharande Wadi on 08/07/2012. Injured P.W.No.4 Yusuf Choudhary was sitting outside the saloon. Appellant/accused No.1 Baba @ Ranjan came there in a four-wheeler vehicle. He fired a bullet at the abdomen of injured P.W.No.4 Yusuf Choudhary from a pistol. The injured suffered gun-shot injury. When a person attempted to rescue him, the appellant/accused No.1 Baba @ Ranjan threatened him. After the appellant/accused No.1 Baba @ Ranjan left the spot, injured P.W.No.4 Yusuf Choudhary was taken to the Jupiter Hospital, where he was treated by P.W.No.9 Dr.Pankaj Joshi.

- (d) In the meanwhile, a person named Munna Kasai telephonically contacted P.W.No.1 Abdul Choudhary and informed him to rush back to the house. P.W.No.1 Abdul Choudhary, at the relevant time, who was at Hotel, rushed back to his house and saw his injured son P.W.No.4 Yusuf Choudhary in an ambulance near his house. His son told him the fact that the appellant/accused No.1 Baba @ Ranjan had fired a bullet causing injury. Accordingly, P.W.No.1 Abdul Choudhary lodged report (Exhibit 11) with the Wagle Estate Police Station on 08/07/2012. It has resulted in registration of Crime bearing No.135 of 2012 for the offences punishable under Sections 307 and 506(II) read with Section 34 of the Indian Penal Code and under Section 3 read with Section 25 of the Indian Arms Act against appellant/accused No.1 Baba @ Ranjan as well as co-accused named Mauris.
- (e) During course of the investigation, the spot of the incident came to be inspected in presence of P.W.No.2 Rehmatulla Khan and under spot panchanama (Exhibit 30) a fired bullet cartridge(empty) came to be seized. Appellant/accused No.1 Baba @ Ranjan came to be arrested by P.W.No.5 Sunil More, Police Inspector. On 14/07/2012, appellant/accused No.1 Baba @ Ranjan made a voluntary disclosure statement (Exhibit 20) and showed his willingness to recover the pistol. The said statement came to be recorded in presence of

P.W.No.6 Ashok Keni, panch witness. Appellant/accused No.1 Baba @ Ranjan then lead the panch witnesses and police team to his house at Hajuri Darga area, recovered a pistol as well as two cartridges which came to be seized by preparing seizure panchanama (Exhibit 21). On completion of routine investigation, appellant/accused No.1 Baba @ Ranjan so also the co-accused came to be charge-sheeted.

- (f) Both accused pleaded not guilty and claimed trial.
- (g) In order to bring home the guilt to the appellant/accused No.1 Baba @ Ranjan, the prosecution has examined in all nine witnesses. First Informant Abdul Choudhary is examined as the P.W.No.1 and the report lodged by him on 08/07/2012 is at Exhibit 11. Panch witness Rehmatulla Khan is examined as the P.W.No.2 and the spot-cum-seizure panchanama is at Exhibit 13. Dr.Dipak Bhagat, who examined appellant/accused No.1 Baba @ Ranjan medically, is examined as the P.W.No.3. Injured Yusuf Choudhary is examined as the P.W.No.4. Investigating Officer, Sunil More, Police Inspector is examined as the P.W.No.5. Panch witness Ashok Keni is examined as the P.W.No.6. Eye-witness Zabiulla Khan is examined as the P.W.No.7. The Additional Commissioner of Police, Pratapsing Patankar is examined as the P.W.No.8 and the order sanctioning prosecution of appellant/accused No.1

Baba @ Ranjan for the offence under the Indian Arms Act is at Exhibit 47. Dr.Pankaj Joshi of the Jupiter Hospital is examined as the P.W.No.9.

- (h) The defence of the appellant/accused No.1 Baba @ Ranjan was that of total denial. He, however, did not enter in the defence.
- (i) After hearing the parties, the learned trial Court acquitted the co-accused Mauris and convicted appellant/accused No.1 Baba @ Ranjan by the impugned Judgment and Order and sentenced him as indicated in the opening paragraph of this Judgment.

4 I heard Mrs.Ayubi, the learned Advocate on the Panel of the Legal Aid of this Court, who was appointed to represent appellant/accused No.1 Baba @ Ranjan. She vehemently argued that evidence adduced by the prosecution is totally unbelievable and testimony of the injured as well as that of the eye-witness needs to be rejected. The prosecution has not established the motive harboured by the appellant/accused No.1 Baba @ Ranjan to commit the offence. The co-accused is acquitted, but on the basis of similar evidence, appellant/accused No.1 Baba @ Ranjan is wrongly convicted.

5 The learned Additional Public Prosecutor supported the impugned Judgment and Order as well as resultant sentence by contending that the evidence of the injured witness is supported by the medical evidence adduced by the prosecution.

6 I have carefully considered the rival submissions and also perused the Record and Proceedings including oral as well as documentary evidence adduced by the prosecution.

7 The prosecution has examined injured P.W.No.4 Yusuf Choudhary and his evidence is being relied upon heavily in order to establish the guilt of appellant/accused No.1 Baba @ Ranjan in the crime in question. Immediately after the murderous assault, injured P.W.No.4 Yusuf Choudhary was taken to the Jupiter Hospital, where he was examined by P.W.No.9 Dr.Pankaj Joshi. Evidence of P.W.No.9 Dr.Pankaj Joshi shows that the injured had suffered a gun shot injury on the abdomen. This medical evidence makes it clear that P.W.No.4 Yusuf Choudhary had suffered a wound in the incident in question. Such an injured witness is a stamped witness whose presence on the scene of the occurrence cannot be doubted. Evidence of the injured stands on high pedestal as generally an injured person rarely spares the culprit for roping in an innocent person. If evidence of an injured witness is found to be believable and trustworthy, then the same can be accepted to base conviction.

8 In the instant case, injured P.W.No.4 Yusuf Choudhary has categorically deposed that he was knowing appellant/accused No.1 Baba @ Ranjan because of his dominating nature in the locality and as he was having criminal antecedents. With this, injured P.W.No.4 Yusuf Choudhary stated before the Court that on the date of the incident, appellant/accused No.1 Baba @ Ranjan came to the spot in four-wheeler vehicle and fired a bullet, which hit his abdomen. As per version of injured P.W.No.4 Yusuf Choudhary, when a person tried to rescue him, appellant/accused No.1 Baba @ Ranjan threatened him. This injured witness has duly identified appellant/accused No.1 Baba @ Ranjan as a person, who fired a bullet at his abdomen.

9 Motive to commit the crime is also brought on record from cross-examination of this injured witness. It is seen that before the incident, appellant/accused No.1 Baba @ Ranjan made a telephonic call to the injured and questioned the injured as to whether the injured wants to beat him. Except this, there is nothing in cross-examination of injured P.W.No.4 Yusuf Choudhary to disbelieve his version in respect of murderous assault on him.

10 Evidence of injured P.W.No.4 Yusuf Choudhary is gaining corroboration from the situation prevalent on the scene of occurrence, which was examined in presence of P.W.No.2 Rehmatulla Khan by Investigating Officer P.W.No.5 Sunil More.

Congruous evidence of both these witnesses goes to show that a fired cartridge (empty) was found lying outside the hair-cutting saloon. The same came to be seized vide spot-cum-seizure panchanama (Exhibit 13).

11 Evidence of injured P.W.No.4 Yusuf Choudhary is gaining further corroboration from the medical evidence as well as the forensic evidence. Evidence of P.W.No.5 Sunil More, who examined the injured immediately after the incident goes to show that injured P.W.No.4 Yusuf Choudhary was having intrinsic wound of the bullet at left upper quadrant of abdomen having size 1.5 x 1.5 cm. apart from multiple perforations of small intestine mesenteric tears as well as hemoperitoneum. These injuries were noticed during operation. P.W.No.9 Dr.Pankaj Joshi further stated before the Court that upon examining the report of C.T.Scan and upon perusal of X-ray plate, he found the bullet in right buttock fracture of right hip bone (ilium-ala). Contemporaneous documentary evidence in the form of Medico Legal Certificate at Exhibit 52 is corroborating version of P.W.No.9 Dr.Pankaj Joshi. This evidence is lending assurance to the testimony of the injured, who claimed to have been hit by the bullet fired at him by appellant/accused No.1 Baba @ Ranjan.

12 P.W.No.5 Sunil More, Police Inspector had arrested appellant/accused No.1 Baba @ Ranjan on 12/07/2012. Evidence of this witness so also that of pancha witness P.W.No.6 Ashok Keni

shows that appellant/accused No.1 Baba @ Ranjan made disclosure statement on 14/07/2012 showing his willingness to recover the weapon. Duly proved disclosure statement of appellant/accused No.1 Baba @ Ranjan is at Exhibit 20 and admissible portion therein is to the effect that appellant/accused No.1 Baba @ Ranjan has stated to the Investigating Officer that he will recover the weapon. As per testimonies of P.W.No.5 Sunil More, Police Inspector and P.W.No.6 Ashok Keni, panch witness, appellant/accused No.1 Baba @ Ranjan then lead them and others to his house located at Hajuri Darga area. He took key of the cupboard of his wife from his house and after opening the cupboard in his house, appellant/accused No.1 Baba @ Ranjan took out a pistol as well as two live cartridges. As seen from the evidence of these witnesses, those articles came to be seized vide panchanama (Exhibit 21).

13 P.W.No.5 Sunil More, Police Inspector had deposed about sending the seized articles for forensic examination. Report of the Ballistic Expert of the seized articles is at Exhibit 70. The relevant portion of this report reads thus :

“Result of Analysis :

Exhibit 1 is a country-made pistol in working condition. It is capable of chambering and firing 7.56 mm pistol cartridges. Residue of fired ammunition-nitrite was detected in the barrel washings of the country-made pistol

Exhibit 1, showing that the country-made pistol was used for firing prior to its receipt in the laboratory.

Two 7.65 mm pistol cartridges, one each from Exhibit 2A and 2B were successfully test fired through the country-made pistol Exhibit 1.

Exhibit 3 is a fired 7.65 mm pistol cartridge case. The characteristic features of the firing pin indentation on the empty in Exhibit 3 tally with those on the test fired cartridges from country-made pistol Exhibit 1, (examined under comparison microscope) showing that the empty in Exhibit 3 has been fired from country-made pistol Exhibit1.

Detection of metallic lead and copper in absence of blackening and powder residues around the periphery of encircled shothole on front side of full shirt Exhibit 4 and corresponding on front side of sandow baniyan Exhibit 5 is consistent with wife and passage of copper jacketed bullet having been fired from beyond the powder range of the weapon.”

14 This evidence adduced by the prosecution makes it clear that the empty cartridge seized from the spot of the incident was that of a bullet fired from the pistol recovered at the instance of appellant/accused No.1 Baba @ Ranjan, which was also found to be fired recently.

15 It is thus clear that oral evidence of the injured is gaining corroboration from the scientific evidence adduced by the prosecution on record. Apart from this, evidence of P.W.No.7

Zabiulla Khan is also important. He is an eye-witness to the incident in question. His testimony shows that on 08/07/2012, in his presence, appellant/accused No.1 Baba @ Ranjan along with co-accused came to the spot of the incident by a car and thereafter, appellant/accused No.1 Baba @ Ranjan fired a bullet from his pistol at P.W.No.4 Yusuf Choudhary. Thus, the prosecution has successfully proved the fact that by firing a bullet at P.W.No.4 Yusuf Choudhary, appellant/accused No.1 Baba @ Ranjan had injured him.

16 Now, the question which falls for consideration is whether appellant/accused No.1 Baba @ Ranjan had harboured an intention to commit murder and with the requisite knowledge, he fired a bullet at the injured. Intention coupled with an overt act is sufficient to make out the offence punishable under Section 307 of the Indian Penal Code. In the case in hand, weapon of offence is a bullet and the part of the body chosen for the assault is abdomen of the injured P.W.No.4 Yusuf Choudhary. Seriousness of injuries caused to the injured P.W.No.4 Yusuf Choudhary can be seen from the evidence of P.W.No.4 Yusuf Choudhary, who testified that the wounds suffered by the injured P.W.No.4 Yusuf Choudhary would have been fatal if the injured was not operated immediately. This evidence is sufficient for making out the offence punishable under Section 307 of the Indian Penal Code.

17 Appellant/accused No.1 Baba @ Ranjan was also found to be possessing a fire arm without license for the same from the competent authority and his prosecution for the offence punishable under Section 3 read with Section 25 (1-B) of the Indian Arms Act is with a valid sanction as seen from the evidence of P.W.No.8 Pratapsing Patankar, the then Additional Commissioner of Police.

18 The net result of foregoing discussion requires me to hold that no case for interference in the impugned Judgment and Order of conviction is made out. Unfortunately, the learned trial court has taken a very lenient view in the matter while imposing the sentence on the appellant/accused No.1 Baba @ Ranjan in respect of proved offences. The State has not questioned the sentence imposed on appellant/accused No.1 Baba @ Ranjan for proved offences.

19 In the result, the appeal fails and,therefore, the Order :

ORDER

- (i) The Appeal is dismissed.
- (ii) In view of disposal of the Appeal, Criminal Application therein bearing No.786 of 2017 also stands disposed of.
- (iii) The Appeal is accordingly disposed of.

(A.M.BADAR J.)