

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

**CRIMINAL APPEAL NO.551 OF 2019
WITH
INTERIM APPLICATION NO.2877 OF 2024
IN
CRIMINAL APPEAL NO.551 OF 2019
WITH
INTERIM APPLICATION NO.464 OF 2023
IN
CRIMINAL APPEAL NO.551 OF 2019**

Ramashish Ramjatan Yadav

.... Appellant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Vikas B. Patil (Shirgaonkar) a/w Mr. Ajinkya J. Patil (Shirgaonkar) a/w Mr. Shivraj V. Patil (Shirgaonkar), Advocate for Appellant.
- Ms. Geeta P. Mulekar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

DATE : 01st JULY, 2025

JUDGMENT (PER : SARANG V. KOTWAL, J.)

1. The Appellant has challenged the Judgment and Order dated 15/03/2019 passed by the Additional Sessions Judge, Satara, in Sessions Case No.26 of 2013. There were five accused. The Appellant was the original accused No.1. Except the present

Appellant, all the other accused were acquitted by the learned Judge. The Appellant was convicted for commission of the offence punishable u/s 302 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine, to suffer simple imprisonment for two months.

2. The Appellant is in jail from 29/09/2012. He was granted set off u/s 428 of Cr.P.C. for the period he had undergone as an undertial prisoner. He was acquitted from the charges of commission of the offence punishable u/s 143, 147, 148, 149 and u/s 286 r/w 149 of the Indian Penal Code. He was acquitted from commission of offence punishable u/s 3 r/w 25 of the Arms Act and u/s 37(1)(3) of the Maharashtra Police Act.
3. Heard Mr. Vikas B. Patil, learned counsel for the Appellant and Ms. Geeta P. Mulekar, learned APP for the State.
4. The prosecution case, in short is that on 28/09/2012, there was a procession for Ganpati idol immersion. The

procession passed through a lane where the first informant Namdeo Salunkhe and his family resided and also where the family of Appellant resided. When it passed from in front of the houses, the ladies of the family performed Aarti on the idol. The participants of the procession played music. It is the prosecution case that the Appellant and the other accused danced to the tune of two songs. They wanted to dance more and therefore, they asked the organizers to play more songs. However, the request was turned down and the procession proceeded further. The Appellant got angry. He took out a pistol. He fired in the air. One Govind insisted that the procession should proceed ahead. Therefore, the Appellant fired a shot at Govind which hit him in his stomach. Govind fell down. There was a chaos. Some people tried to catch the Appellant. Govind was taken to the hospital. But he succumbed to his injuries. Govind's brother Namdeo lodged his FIR. The investigation commenced. The police conducted the Spot Panchanama. The dead body was sent for post-mortem examination. The search of the accused No.2's house was taken, and the firearm was seized from there. The articles were sent for forensic examination. According to the

prosecution case, the empties, live cartridge and the bullet found on the spot and the bullet found from the stomach of the deceased matched with the weapon seized from the house of the accused No.2. At the conclusion of the investigation, the charge-sheet was filed, and the case was committed to the Court of Session.

5. During trial, the prosecution examined 10 witnesses including the eyewitnesses, the Panchas, Medical Officer and the police witnesses including the Investigating Officer. The ballistic expert was also examined. The defence of the Appellant was of total denial. The learned Judge relied on the evidence of the eyewitnesses and also on the evidence of the ballistic expert and based on this evidence, recorded the finding against the Appellant.

6. The main witnesses in this case are the two eyewitnesses.

P.W.4 Namdeo Salunkhe had lodged the FIR. He

deposed that the deceased Govind was his brother. P.W.4 was residing with his mother, wife, sister, nephew and the brother Govind. On 28/09/2012, there was a procession for immersion of Ganpati idol. The procession was conducted by Ashtavinayak Ganesh Utsav Mandal at Satara. It started at around 06.00 to 06.30 p.m. A band known as Mayur Disco Brass Band was called for the procession. It passed through a lane. The ladies from the families were performing Pooja and lighting lamp. They performed Aarti in front of different houses. The procession entered the 3rd lane. The accused No.2 Vishnu Yadav had his house in that lane. One Dhanawade family also had their house in that lane. When the procession reached in front of Vishnu's house, his wife performed the Aarti. Vishnu Yadav, the Appellant Ramashish Yadav and two others friends came there. They told the organizers to play two songs to enable them to dance on the tune of those songs. Their request was accepted and two songs were played by the music band. The Appellant and others danced to those tunes. They wanted to dance more. P.W.1's brother Govind and other members of the Mandal said that they were getting late and they should proceed ahead. The Appellant

and others were not allowed to dance and therefore they got angry. The Appellant climbed on the platform of the music band. He removed a pistol and fired in the air. Govind was taking a leading part in taking the procession ahead. The Appellant pointed the pistol towards Govind and fired at him. The bullet hit Govind. Ashish Ghanwat and Pankaj Patil held him as he was falling down. The bullet hit Govind on the right side above his waist. P.W.4 further deposed that he was present there. He ran towards Govind. At that time, the Appellant, Vishnu Yadav, Ram Yadav, Pradeep Dhuliya and others ran inside the house of Vishnu. P.W.4 and others lifted Govind. He was taken to Civil hospital in the vehicle of one Dr. Dhumal. He was admitted in ICU in Civil hospital. In the meantime, one police constable came for making enquiries. P.W.4 went to Satara police station with him and gave his FIR. It is produced on record at Ex.157.

7. The defence took objection for exhibiting that document. But the learned Judge rightly allowed its production. According to the defence, the typed version was not signed and what was produced was a carbon copy of the written complaint.

However, there was a signature of P.W.4 on that FIR and therefore it was allowed to be exhibited. His cross-examination was unnecessarily lengthy and hardly any material was elicited inspite of this lengthy cross-examination. He explained the situation of the houses in the lane where the incident had taken place. He stated that the houses of Vishnu Yadav and Dhanawade were adjacent to each other. He had reached the Civil hospital at quarter to 9 p.m. He returned home at around 01.30 a.m. He was in the Civil hospital upto about 09.45 p.m. Some persons from his area were also present with him, but he could not tell their names. He could not tell exactly at what time Govind was declared dead by the Doctor. When he reached home at 01.30 a.m., some people from his colony were sitting outside their houses. He was then asked about how big was the procession. He could not exactly state how big it was. His FIR mentions that Govind and others were asking the procession to be taken ahead. But it was not mentioned in the FIR that the Appellant had climbed on the platform of the music band. The FIR mentions that some previous quarrel was the reason for the firing. However, the FIR clearly describes the incident.

Therefore, all these omissions are not very material. P.W.4 was asked about those discrepancies. But he could not assign any reason as to why those discrepancies occurred. He further admitted that he did not remember as to whether the Appellant and others ran in the house of Vishnu Yadav. He denied the suggestion that he came to know the names of the accused from the discussion of the people gathered at the Civil hospital. He emphatically stated that he knew the names of the accused. He added that he knew their faces as well as their names. His supplementary statement was also recorded and he denied having stated to the police in his supplementary statement that he knew the accused by their face and came to know their names from the discussion among the people at Civil Hospital and after coming to the police station. This particular portion is in reference to the supplementary statement dated 16/12/2012. There were many other accused persons besides the Appellant, named in the supplementary statement and this particular portion, shown to him from his supplementary statement will have to be looked at in that context. In his FIR, he has clearly named the present Appellant and has described the incident in

detail. He could not tell the name of the four persons who had taken his brother to the hospital. Though, in his FIR there was a reference to the previous quarrel, however, he has stated in his cross-examination that he had not referred to the previous quarrel. PW.4 identified the Appellant in the Court as the person who had shot the deceased with the pistol. He also identified the other accused.

8. The proforma of the FIR at Ex.157 mentions that the offence was reported to the police station at 11.15 p.m. on 28/09/2012 and it was registered under general diary reference No.73, which is also mentioned on the typed copy of the statement of PW.4.

9. PW.3 Ashish Ghanwat was another eyewitness examined by the prosecution. He has deposed the incident in the same manner as is deposed by PW.4. He has described as to how the procession proceeded, how the Appellant and the others wanted to dance and how the Appellant got angry because their request of playing more songs was turned down. The Appellant

fired at Govind because he was taking the procession ahead. After that, the Appellant and others ran inside the house of Vishnu Yadav. He identified the Appellant in the Court.

10. He further deposed that he and the others took Govind to Civil Hospital in the vehicle of Dr. Dhumal. Then he went back. He had dinner at about 10.30 p.m. The police came in the colony. He went there. PI. Gholap was making inquiry. PW.3 was asked whether he was willing to become a Pancha for Spot Panchanama. He agreed. The Spot Panchanama was conducted. One empty of a cartridge was recovered from the spot. Then another Panchanama was conducted in the house search of Vishnu. At that time, the firearm was recovered. The Spot Panchanama is produced on record at Ex.144 and the house search Panchanama was produced at Ex.145. The pistol was kept under the clothes inside the house of Vishnu. A woman in the house told the police in presence of this witness that the pistol was kept by the Appellant. The pistol was described as 'made in USA' having number 7775 written on it. He identified the weapon and the other articles in the Court.

In the cross-examination, he was asked about the description of the houses in that lane. He could not tell about the persons who were standing in the tractor holding the idol. This obviously is not very material. A few omissions from his police statement were brought on record. All these omissions and contradictions were proved through the evidence of the Investigating Officer. To summarize these omissions and contradictions, it has to be noted that he had not told the police that Govind was taking lead in taking the procession ahead and that the Appellant got angry and abused Govind and shot him with a pistol. He had not told the police that the pistol was kept hidden under the clothes when the Panchanama was written. In paragraph No.4 of his cross-examination, he accepted that he did not know the Appellant and that he had not seen him earlier. This is an important admission. He could not tell how many people had gathered for the procession. According to him, there were roughly around 50 people.

11. P.W.1 Jagannath Salunkhe was a Pancha for the inquest Panchanama and for seizure of the clothes of the deceased.

12. P.W.2 Sachin Tambe was a Pancha for arrest of the Appellant. Panchanama was conducted on 29/09/2012 in the morning. At that time, the clothes of the accused were seized. These Panchanamas are produced on record at Ex.134 and Ex.136.

13. P.W.6, P.W.7 and P.W.8 carried the articles to Forensic Science Laboratory.

14. P.W.5 Dr. Aditi Patil, had initially treated Govind and after his death, had conducted the post-mortem examination. Therefore, she is an important witness. She has stated that on 28/09/2012 at 08.45 p.m. when she was on duty at Civil Hospital, Satara, Govind was brought to the hospital by one Sachin Patil and others. He was having an injury on the right side. He was unconscious and gasping. He was admitted. She informed the Satara Police Station. She gave primary treatment to the patient. However, the patient passed away at 10.10 p.m. During post-mortem examination, she noticed two injuries as follows :

Injury No.1 : Penetrating injury oval in shape on right mid-axillary line 25 cm below axilla and 21 cm from umbilicus of size 1 cm x 1 cm x deep cavity. Around wound margin blackish in colour. Margins are inverted. No any active bleeding from wound. Wound is reddish in colour.

Injury No.2 : Contusion of 4 cm x 3 cm, bluish-red in colour over anterior abdominal wall in left lumbar region, 18 cm from umbilicus just about anterior superior iliac spine.

15. During internal examination, three litre blood was seen in the peritoneal cavity. There was injury to the small intestine. The cause of death was haemorrhagic shock due to firearm injury. She further deposed that the bullet taken out from the body was sealed. The bullet, blood sample and skin sample were sent to Santacruz, Kalina, Mumbai, for chemical analysis and Histopathology. She identified the bullet, which was removed during the post-mortem.

16. P.W.9 Vasudeo Patil was examined as the Ballistic Expert. He deposed about the test conducted by him. His report

was produced on record. The main report is at Ex.223 and it mentions that the bullet received from the Medical Officer, General Hospital, Satara and the two empties found at the spot were fired from the same country-made pistol Ex.1, which was recovered from the house of Vishnu Yadav. The only discrepancy in this report was in respect of the number on the weapon; which the defence tried to capitalize. The number mentioned on that weapon was 1115, whereas the number mentioned on the weapon seized from Vishnu's house was mentioned as 7775.

17. P.W.10 PI Annasaheb Gholap was the Investigating Officer. He had conducted the investigation from 29/09/2012. He conducted the Spot Panchanama, seized two empties and one cartridge from the spot, seized one firearm from the house of Vishnu. Then he recorded the statements of the witnesses, had seized the clothes of the Appellant and arrested the Appellant. The omissions and contradictions from the police statement were proved through his evidence in the cross-examination.

This in short is the evidence led by the prosecution.

As mentioned earlier, the learned Judge relied on this evidence and convicted the Appellant. The Appellant was acquitted from the commission of the offences punishable under the Arms Act because there was no sanction under the Arms Act. The promulgated order prohibiting the firearms was not produced and there was no evidence in that behalf. Therefore, he was acquitted under Maharashtra Police Act offence. The main evidence of course remains, the deposition of the eyewitness and Ballistic Expert's examination of the firearm and the bullet.

18. Learned counsel for the Appellant made the following submissions:

The evidence of eyewitnesses is wholly unreliable. Their depositions are full of contradictions and omissions from his police statement. P.W.3 was not knowing the Appellant and therefore it was necessary to have held the Test Identification Parade to enable him to identify the Appellant. Though, P.W.3 was a Pancha for Spot Panchanama and for recovery of

weapon from Vishnu's house search Panchanama, during that time he had not informed the police that he had witnessed the incident. This conduct is unnatural. He had ample opportunity to inform the police that he was an eyewitness. The reason of that assault which he mentioned in the deposition is different from his case in the police statement. For all these reasons, his evidence is unreliable and is required to be discarded.

He further submitted that even the evidence of P.W.4 is not reliable. From his deposition, it appears that he was not at the spot. He could not have given names of the persons who had helped his brother Govind for taking him to the hospital. His evidence is also including many omissions and contradictions, which are material. He is an interested witness. He was the brother of the deceased. He had immediately gone to the police station and the offence was registered u/s 307 of IPC at that time. He also referred to the previous enmity in his FIR, but during the deposition he had not referred to any such enmity. He has stated that he was not knowing the accused by their names. Therefore, even his evidence is not reliable.

Learned counsel laid emphasis on the fact that the firearm which was sent to the Ballistic Expert, had the number 1115 on it, whereas the weapon recovered from the house of the accused No.2 had the number 7775. Therefore, there was a possibility of tampering with the seized weapon. The prosecution has not produced on record the x-ray which would have showed that the bullet recovered from the stomach of the deceased was actually trapped in the stomach. That was an important aspect. The evidence does not show as to whether the bullet was fired from a distant range. The arrest of the Appellant is also doubtful. The Arrest Panchanama was recorded on the next morning. No other eyewitness is examined.

19. Learned APP on the other hand submitted that the improvements and omissions from the police statement of P.W.3 and P.W.4 do not go to the root of the matter. They do not affect the credibility of the witnesses. She submitted that the evidence of the eyewitness is corroborated by the finding of firearm from the house of the accused. According to the prosecution case, as deposed by both these eyewitnesses, after the incident of firing

the accused, had entered the house of the accused No.2 from where the firearm was recovered. The bullet seized from the stomach of the dead body matched with that weapon. This is a strong corroborative piece of evidence against the Appellant.

20. We have considered these submissions. The prosecution has examined two eyewitnesses in support of its case. However, we find that the evidence of P.W.3 is not trustworthy. P.W.3 was a Pancha for two Panchanamas, which were conducted in the night. The Spot Panchanama at Ex.144 was conducted at about 12.15 a.m. and the search of house of accused No.2 was conducted at 01.50 a.m. in the night between 28/09/2012 and 29/09/2012. In both these Panchanamas, there is no reference to the fact that P.W.3 had seen the incident. The Spot Panchanama at Ex.144 mentions that the spot was shown by one Pankaj. The incident is described in the Spot Panchanama, but there is no reference that the incident was informed by P.W.3 to the police. If he had seen the incident, there was no necessity for Pankaj to show the spot because P.W.3 Ashish was aware of the Spot. There was no reference in the

Spot Panchanama that he had seen the incident. In fact, the Spot Panchanama shows that all the information regarding the spot and the exact incident was described by the witness Pankaj, who was not examined as a prosecution witness in this case. Same is the case with the house search Panchanama of the accused No.2. Even at that stage, the P.W.3 had not told the police that he had seen the incident. There is no such reference. P.W.3's statement is recorded subsequently. His conduct does not inspire confidence. He has not told the police about this incident. More over, he has also admitted that he was not knowing the Appellant and he had not seen him earlier. In that case, the learned counsel for the Appellant was right in submitting that in such a case the Test Identification Parade was necessary to enable him to identify the Appellant. The contradictions and omissions from his police statement referred to hereinabove are also not something which can be brushed aside lightly. He had concocted the story to a large extent. Therefore, we are not inclined to accept his evidence as that of a reliable witness. Therefore, his evidence will have to be left out of consideration.

21. However, we find that the evidence of P.W.4 is quite strong and reliable. He was the brother of the deceased. He was present with his brother in his procession. He has described the incident right from its beginning till the end and he had immediately informed the police about this incident. There was no time gap to enable him to conspire with others to concoct a false story. He has clearly stated that he was knowing the Appellant and others and therefore, their names appear in the FIR itself. Some contradictions are tried to be brought on record from his supplementary statement regarding his lack of knowledge about the names of the accused. But that was in reference to his supplementary statement which was recorded subsequently and there is no question that he has referred to the Appellant in the FIR which he had immediately lodged and signed. It clearly names the Appellant as the person who had committed this offence. However, the other minor omissions from his statement referred hereinabove do not go to the root of the matter. We do not find that the evidence suffers from any infirmity. He has deposed that the incident occurred because the Appellant got angry as Govind was insisting that the procession

should move ahead. On the small issue of not being permitted to dance, the Appellant had fired at an innocent person.

22. Learned counsel for the defence tried to argue that Govind was in the crowd and at the highest it can be said that the bullet was fired in the crowd because the crowd was getting offensive against the Appellant. However, there is no such evidence that the Appellant fired to save his life. The evidence is clear that he deliberately fired a shot because he was angry as he was not permitted to dance. P.W.4 has deposed that Govind was instrumental in taking the procession ahead, which was not liked by the Appellant. That had resulted in the Appellant firing at Govind. In any case, the arguments of the learned counsel for the Appellant cannot be accepted because illustration (d) u/s 300 of IPC is very clear, which reads thus:

“(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.”

23. This illustration covers this case completely. Even otherwise, the P.W.4 has stated that Govind was a specific target of the Appellant. Therefore, there is no escape from the fact that the Appellant had deliberately shot at Govind. The Appellant's act does not fall within any of the exceptions to section 300 of the IPC.

24. The deposition of the eyewitness P.W.4 is supported by the medical evidence of P.W.5 Dr. Aditi Patil. The description of the incident given by the P.W.4, is supported by the nature of injuries described by P.W.5.

25. Another telling circumstance against the Appellant is the Ballistic Expert's evidence. P.W.9 has described the test which he had conducted. He has produced the Ballistic Expert's report which mentions that the firearm was sent to him by the police and the bullet was sent by the Doctor. The bullet was recovered during the post-mortem examination of the Govind's dead body. It matched with the seized weapon. The bullet was fired from the same firearm. We are not inclined to give much importance

to the discrepancy in the numbers 7775 and 1115. It is not possible to hold that the weapon sent by the police was changed. The fact remains that the bullet was sent by the Doctor. The firearm which was recovered from the accused No.2's house matched with the same bullet. Not only that, but the empties found at the spot also matched with the firearm. All these are strong corroborative pieces of evidence which corroborate the evidence of the P.W.4.

26. Considering the above discussion, we are of the opinion that the prosecution has proved its case beyond a reasonable doubt, through the evidence of P.W.4 eyewitness, P.W.5 Medical Officer, P.W.9 Ballistic Expert and the Investigating Officer. The learned Trial Judge has rightly convicted the Appellant. It does not call for any interference. Accordingly, the Appeal is dismissed.

27. With the disposal of the Appeal, the connected Applications are also disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)