

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1186 OF 2024
WITH
INTERIM APPLICATION NO. 4024 OF 2024**

Rakesh Dharmamsingh Rod Age : 35 years; Occ : - Kurla footpath mumbai at Gutha, Tal. Gharonda, Dist. Karnal, Haryana Presently in Nashik Road Central Prison, Nashik		... Appellant
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Versus

The State of Maharashtra Through Kurla Railway Police Station		... Respondent
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- Mr. Sushan N. Mhatre, Advocate for the Appellant.
 - Mr. C.D.Mali, APP for the State.

CORAM : R. M. JOSHI, J.
DATED : 10th NOVEMBER, 2025.

JUDGMENT :

1. By consent of both the sides heard finally.
2. This Appeal is filed by the appellant taking exception to the Judgment and Order dated 08.05.2023 passed by the Additional Sessions Judge, Mumbai in Sessions Case No. 2015 of 2019 whereby the appellant is convicted for the offences punishable under Section 307 of Indian Penal Code, 1860 (for short "IPC") and Section 152 of Railways Act, 1989 and sentenced to suffer 10 years rigorous imprisonment with fine.
3. The facts which led to filing of this appeal can be narrated in brief as under :

4. On 16.07.2019 the informant was returning from his workplace to his residence at Ghatkopar. He boarded Khopoli bound local train at Dadar Station from platform No. 4. He was to travel upto Ghatkopar. Between Kurla and Ghatkopar while he was standing on the footboard in order to get down at his destination station, all of a sudden a stone came to be pelted at the local train which hit to the head of the informant. Due to the said assault, informant sustained bleeding injury to his head and was about to fall out of the local train. Fortunately for him, co-passenger caught hold of him which prevented his fall from the train. He was taken to Rajawadi Hospital and from there he went to lodge report of the incident. When he reached Kurla Railway police station and lodged report, the police having noticed similar another incident have accosted a person. This person came to be identified as the one who pelted stone at informant. The crime came to be registered vide C.R.No. 2700 of 2019 for the offence punishable under Section 307 of IPC read with Section 152 of Railways Act. Investigation was conducted and on completion thereof, chargesheet came to be filed.

5. Before Trial Court charge was framed against the accused and since he denied the said charge, prosecution led evidence of 8 witnesses to bring home guilt of the accused. Prosecution examined Rajesh Pawar, PW-1 injured (Exhibit-17), Amjad Shaikh, PW-2 (Exhibit-19) Scrap businessman,

Sunil Rupwate, PW-3 co-passenger (Exhibit-20), Ratnadeep Chandanshive, PW-4 co-passenger and injured (Exhibit-21), Vijay Bandgar, PW-5 Police Constable (Exhibit-22) who accosted the accused, Dr. Manoj Verma, PW-6 Medical Officer (Exhibit-23), Santosh Gupra, PW-7, Investigating Officer and Surekha Medhe, PW-8 (Exhibit-29). On completion of the evidence of the prosecution incrementing circumstances were put to the accused under Section 313 of Criminal Procedure Code, 1973 ("Cr.P.C.") learned Trial Court after hearing both sides convicted the accused by passing impugned Judgment and order hence this appeal.

6. Learned counsel for the appellant submits that there is no evidence to conclusively prove the guilt of the accused. It is his submission that no motive has been shown by the prosecution for appellant to commit the said crime. It is his submission that testimony of informant, injured Rajesh is not sufficient to prove the identification of the accused as the person who pelted stone on trains. It is his further argument that on the basis of testimony of Amjad, PW-2 it cannot be said that the unprovoked appellant would commit the such act. Finally it is argued that since the prosecution has failed to discharge the burden of prove of guilt beyond reasonable doubt, it is a fit case for setting aside the impugned order and acquitting the accused from the charges.

7. Learned APP opposed the appeal by pointing out the evidence led on

record. It is his submission that there is no reason for Rajesh, Sunil and Ratnadeep to falsely identify the appellant as the person who had pelted the stones on the train and which has resulted into causing of injuries to them. It is his submission that the case of pelting of stone on the train was within the knowledge of the appellant to be so imminently dangerous that in all probability have caused death of the injured. It is his submission that the testimony of injured witnesses gets support from the medical evidence on record and having regard to the facts of the case, no interference is required in the impugned judgment.

8. In order to prove the offence of attempt to commit murder as contemplated by Section 307 of IPC in the present case the prosecution has to prove that the accused is the person who has done the act in question and such act was either with the intention of causing death or the act if committed would have been so imminently dangerous that it would have been all probability caused death and the such act was without any justification for incurring the risk of causing death.

9. In order to prove the charges against the appellant / accused, the prosecution led evidence of injured witnesses so also eye witness to the incident. Rajesh, PW-1 and Ratnadeep, PW-4 are injured witnesses who suffered injuries to the head and hand respectively. The said evidence of the injured witnesses gets support from testimony of Dr. Verma who has

proved the injuries caused to them.

10. The evidence led by these witnesses indicate that the witnesses were in the running local train and for the purpose of alighting at destination station, they were on the footboard of the train. In so far as the identification of the accused to be the person who has pelted the stone is concerned, even if it is accepted that Rajesh has not seen the person who threw stone at the local train, but evidence of Sunil and Ratnadeep is sufficient to establish his identity. Pertinently immediately after the incident they have identified the appellant to be the person who has done the act in question so also before the Court. Though it is now said to be argued on behalf of the appellant that identity of the appellant to be the person who threw/ pelted stone on the train is challenged, in the statement under Section 313 in response to question No.39 appellant has stated that “falsely implicated in this case and had merely pelted stone on the train”. This statement unequivocally shows that the appellant is the person who pelted stone on the moving train.

11. It is matter of common knowledge that either owing to the rush or for the reason of preparing for getting down from the train to the destination station, the passengers tend to be on footboard of train. Needless to say that any person hit by the stone in a moving train is likely to fall from the train and with probably would cause for his death. When

the appellant threw stone on the local train, it would have been within his knowledge that his act is so immanently dangerous that in all probability it would cause death of the passengers in the train.

12. This Court therefore finds the charge for the offences under Section 307 of IPC and 152 of Railways Act being proved against the appellant beyond reasonable doubt by leading cogent and reliable evidence. The order of conviction therefore requires no interference.

13. The learned counsel for the appellant on the point of sentence submits that the appellant had no criminal history nor had any intention to cause injury particularly to the witnesses or to commit their murder and in such circumstances, since the appellant has already spent around six years in the jail, the same would be sufficient punishment for him requiring his release forthwith.

14. Learned APP opposed the said contention by citing seriousness of the crime.

15. The appellant had no criminal history prior to the incident in question. He has already undergone sentence of about six years having arrested on 16.7.2019 and in jail since then. In considered view of this Court, the period spent by him in jail would be sufficient punishment for the appellant for the proved crime against him. As a result of this discussion the follow order :

ORDER

- (i) The appeal stands partly allowed.
- (ii) The order of conviction recorded against the appellant for the offences punishable under Section 307 of IPC and Section 152 of Railways Act stands confirmed.
- (iii) The appellant is sentence to suffered imprisonment for a period already undergone, which shall include default sentence of non payment of fine amount.
- (iv) The appellant be released forthwith.
- (v) Since appellant is in jail and he is represented by Legal Aid counsel, Registry to forthwith forward this order to Jail Authority for its compliance.

16. In view of disposal of appeal, interim application does not survive hence disposed of.

(R. M. JOSHI, J.)