

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.653 OF 2024
WITH
INTERIM APPLICATION NO.1064 OF 2025

Madhurajsing @ Rajasing	)	
Darogasing Badoria	)	
Age 40 Years, Occ. Service	)	
R/at : Prajapati Foundry	)	
F-2 Block, MIDC, Pune	)	
Presently lodged at	)	
Yerwada Central Prison, Pune	)	... Appellant/Appellant Original Accused

Versus

The State of Maharashtra	)	
(At the instance of MIDC Bhosri	)	
Police Station)	)	... Respondent

Ms. Pranali Kakade for the Appellant/Applicant.

Ms. Mahalakshmi Ganapathy, Addl. P.P. for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 4th FEBRUARY 2026

Judgment (Per Sandesh D. Patil, J.)

1) By the present Appeal, the Appellant is challenging the Judgment and Order dated 29th November 2014, passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.613 of 2012, whereby the learned Additional

Sessions Judge convicted the Appellant for the commission of offence punishable under Section 302 of the Indian Penal Code (in short “**IPC**”), and further sentenced the Appellant to suffer the imprisonment for life and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month. The Appellant was also convicted for the offence punishable under Section 506 Part 2 of the IPC and was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-, and in default to suffer rigorous imprisonment for one month. The Applicant was also convicted for the offence punishable under Section 3/25 of the Arms Act and was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for one month. He was granted set-off under Section 428 of the Criminal Procedure Code.

Heard, Ms. Pranali Kakade, learned Counsel for the Appellant and Ms. Mahalakshmi Ganapathy, learned Addl. P.P. for the Respondent-State.

2) The case of Prosecution is that the deceased was working in a Foundry, named, Prajapati Foundry at Pune. There were about 15 persons working in that foundry. The Appellant Rajasing was serving as a watchman in the foundry and one Mr. Darogasing (father of the Appellant) was serving as watchman in the adjacent Bharat Foundry. They were working for last two

years. At that time, there were also other workers working in the foundry. The deceased was one such worker. It is the case of the Prosecution that on 29th May 2012, at about 09.00 p.m., when the Complainant was on duty in the foundry; at that time, the Appellant asked the deceased, as to why he had complained against the Appellant to the Employer. At that time, the Complainant and other workers were present. The altercation ensued between the deceased and the Appellant. One Rajesh Morya, who was the Supervisor intervened and pacified the quarrel. After the verbal quarrel, the deceased went to his room for preparing food and the Appellant also went to resume his duty. While on his way to resume the duty, the Appellant threatened the deceased. At about 09.30 p.m., when the Complainant and the deceased were having dinner, sitting in their room, the Appellant came with a gun and accosted the deceased, and asked as to why he had complained against him to the employer. After saying so, he fired a gun shot on the deceased. The Appellant fled away with the gun. The other workers tried to chase him, but he threatened to shoot them as well. The Supervisor-Rajesh Morya gave a phone call to the Employer. Thereafter, the employer came there immediately. All of them took the deceased to the hospital, where, after examining him, the Medical Officer declared him dead. On that night, P.W.1 -Pheku Sahane, who was the informant went to the M.I.D.C. Police Chowki, Bhosari, Pune, and narrated the incident. The F.I.R. was registered and the same was produced in

the trial at as Exhibit 50.

3) The charges were framed. The Accused pleaded not guilty. The Prosecution in support of their case, examined nine witnesses. P.W. 1-the Complainant, was an eye witness, Sudhakar Borate (P.W.2), is a witness to whom the disclosure about the gun was made. The Prosecution examined P.W.3-Prakash Gaikwad, who was the panch witness to the spot panchnama. The Prosecution examined P.W.4- Rajesh Prajapati, who was the owner of the foundry. The Prosecution examined P.W.5- Rajesh Morya, who was the Supervisor of the foundry. The Prosecution examined P.W.6- Dr. Prakash D. Rokade, who had issued the death certificate. The Prosecution examined the Investigating Officer as P.W.7-Mr Kisan Kathe, who had drawn inquest panchnama, seizure panchnama. P.W. 8-Mr. Rajaram Pharande was examined by the Prosecution, who was the Police Head Constable Photographer. He had clicked photographs of the spot. The Prosecution had also examined P.W.9-Mr. Dattatray Patil, who was Senior Police Inspector and the Investigating Officer.

4) After recording statement under Section 313 of the Cr.P.C., the learned Additional Sessions Judge passed the impugned Judgment and Order dated 29th November, 2014. The learned Trial Court believed the evidence of P.W.1, to come to the conclusion that the Accused/Appellant had shot the deceased.

The learned Trial Court also took into consideration, the evidence of the P.W.3, regarding disclosure panchnama, by virtue of which, the gun, which was used for the purpose of carrying out the assault, was recovered. The learned Trial Court had also considered the evidence of P.W.6, the doctor, who had prepared the postmortem report. The learned Trial Court specifically took into consideration the report of the Ballistic expert which was exhibited by the Prosecution at Exhibit 76. After taking into consideration all the aforesaid evidence, the learned Trial Court had passed the impugned Judgment and Order.

5) The learned Counsel appearing for the Appellant vehemently argued that there was only one injury which was stated to be caused by P.W.1. However, subsequently, two injuries were found. She contended that P.W.4- Rajesh Prajapati, the owner of the foundry had roped in the Accused in order to save himself from the injury caused to the deceased, which according to her was caused by an iron rod, which was made in the foundry. She stated that the panch witness could not be believed. She stated that there were several other workers, who were working in the foundry at the time of incident, however, they were not examined. She laid more emphasis on the fact that the panch witness had specifically stated that there was no hole in the baniyan which was

worn by the Appellant. She argued that if there was firing through the gun, and the bullet had pierced the body of the deceased, then, there would definitely be a hole in the baniyan. She submitted that since the panch witness stated that there is no hole in the baniyan, the case of the Prosecution was not believable. She pressed for acquittal of the Appellant.

6) The Learned A.P.P. submitted that there is an eye witness, who had witnessed the entire incident, in the nature of P.W.1. She stated that there is no reason as to why the said eye witness could be disbelieved. She submitted that there is nothing to substantiate that there was any enmity between the P.W. 1 and the Appellant. As far as the argument of the learned Advocate for the Appellant; that there was no hole in the baniyan, is concerned, she specifically relied on the ballistic report which is at Exhibit 76, to contend that there was a hole which is noted in the forensic report of the baniyan which was at Exhibit 5. The said report, is consistent with firing of the gun shot. She contended that the recovery was also believable. She contended that there is no cross examination to the evidence of P.W.2. She stated that postmortem report also shows that the cause of the death is due to firing by the gun. She pressed for dismissal of the appeal.

7) We have gone through the depositions in the case along with the documents exhibited. The first witness which is examined by the Prosecution is P.W. 1 – Pheku Sahane. He stated that he was working with Prajapati Foundry, Pune, at the time of incident. He stated that there were in all 15 workers, working in that foundry. He stated that one Darogasing (father of the Accused) and Rajasing alias Madhurajsing (Accused) were working as watchmen in the foundry since last two years, prior to the date of incident. He stated that the deceased and other workers were also working in the foundry. The said witness stated that on 29th May 2012, at about 09.00 p.m, when he was on duty in the foundry, at that time, the Accused asked deceased, as to why he had complained against the Accused to the employer. At that time, there were other workers present as well. The altercation ensued between the Accused and the deceased. At that time, Rajesh Morya (P.W.5), who was the Supervisor intervened in their dispute. Thereafter, the deceased came to his room for preparing food and the Appellant went to resume his duty. However, while going, the Appellant threatened the deceased. The said witness further stated that at about 09.30 p.m., he and the deceased were taking dinner sitting on thermocol sheets. At that time, the Accused came there with a gun and accosted the deceased as to why he had made a complaint to the employer and saying so, he fired a gun shot on the chest of the deceased. The Accused fled away with the gun. While the other workers were trying to chase the Accused,

he threatened them that he would shoot them as well. At that time, the Supervisor Rajesh Morya gave a phone call to the employer- Rajesh Prajapati (P.W.4), who was the owner of the foundry. The said person came there in his car and took the injured to the hospital, where after examination, the injured was declared dead by the doctor. On the night of incident, P.W. 1 went to the M.I.D.C. Bhosari Police Station and lodged the complaint, which was recorded by the Police as the F.I.R. The same was marked as Exhibit 50.

In the cross examination, the said witness was asked as to whether there were two separate owners of Prajapati Foundry and Bharat Foundry. He stated that on the date of the incident, the workers of Prajapati Foundry were working upto 07.00 p.m. He stated that workplace of the workers in that foundry is at the distance of 50 feet from the main gate. He stated that he was residing in one room with the deceased and some other workers. He stated that he and the deceased were cooking their food, whereas the other workers were cooking their food separately. He stated that the Accused and his father were sitting in the security cabin. He stated that on the fateful day, in the shed, the process of preparing *dyes* of iron work was going on. He stated in the cross examination that the employer had permitted the deceased to stay with P.W. 1 in that room. He further stated that when they were having food, at that time, the Accused came. The barrel of that gun was put near the stomach of the deceased and the

shot was fired. He stated that deceased was in a sitting position. The person using the gun was in a standing position. He stated that the blood oozing from the stomach trailed on to the thermocol sheet to some extent. He stated that they reached YCM hospital at about 10.00 p.m. He denied the suggestion that the Accused had not shot the bullet from the gun on the stomach of the deceased.

8) P.W.2-Sudhakar Borate stated that on 4th June 2012, he was called by the Police at the Police Station, Bhosari M.I.D.C. for conducting panchnama. At that time, the Accused disclosed that he wanted to show and produce a gun kept by him. Accordingly, memorandum panchnama of disclosure was drawn. The said panchnama was exhibited at Exhibit 55. Thereafter, the panch, policemen and the Accused boarded the Jeep. At the instance of the Accused, the driver took the jeep at the Material Gate of Telco Company. At that time, the Accused asked to stop the vehicle at the gate of Telco Company. The Accused alighted and he took the Police near one open chamber. He entered in the said chamber and removed the straw and took out one article wrapped in a chaddar. He removed that chaddar and took out a gun body, barrel, six cartridges and one empty cartridge. Those articles were separately packed. The seizure panchnama was prepared. The same was exhibited at Exhibit 56.

In the cross examination, he denied that the gate of the company was closed. There was no security personnel present at the gate. He identified the signature on the seal pasted on the brown papers wrapped on the gun.

9) The next witness is P.W.3- Mr. Prakash Gaikwad. P.W. 3 is the pancha to spot panchnama. He stated that on 30th May 2012, he was called by the Police to the spot of incident for conducting panchnama. At that time, he saw two thermocol sheets having blood, a piece of cloth having blood stains thereon and two dining plates, one empty cartridge lying there. The Police, accordingly had drawn the panchnama. The same was produced and exhibited at Exhibit 58. Nothing much was put to the said witness in the cross examination.

10) P.W. 4 – Rajesh Kumar Ramji Prajapati, is the owner of the foundry in which the incident had taken place. He stated that the Accused was serving as a Watchman in Prajapati Foundry. He stated that the father of the Accused was serving as a watchman in Bharat Foundry. He stated that Prajapati Foundry and Bharat Foundry, both were run by him. He stated that the workers were preparing food as per their convenience and were dining as per their convenience in their room. He stated that on 29th May, 2012, at about 9.30

p.m, he received a phone message from Rajesh Morya (P.W.5), the Supervisor, informing about the firing which took place at the foundry. He immediately rushed to the spot in his car. He along with others took the injured (deceased) to the Y.C.M, Hospital, Pimpri. The medical officer examined the injured and declared him dead.

In the cross examination, he stated that the Accused was not given appointment as security personnel holding a gun. However, his father (Darogasing) was appointed as security personnel with licensed gun in Bharat Foundry. He stated that he did not remember as to whether he had stated before the Police that he had asked the workers, as to how the incident had occurred.

11) P.W. 5- Rajesh Morya was the Supervisor of the Prajapati Foundry. He stated that on 29th May 2012, at about 09.00 p.m. a quarrel had ensued between the Accused and the deceased on the count that the deceased was providing information against the father of the Accused to the Employer. He intervened and pacified that quarrel. He stated that the deceased and the Accused went to their respective places. He stated that he returned to the room for preparing food. Thereafter he came downstairs for walking. He stated that he heard the commotion from the backside and thereby, he rushed

there and saw that the Accused was running away and other workers were chasing him. He also chased the Accused, however, the Accused threatened him that he would be gunned down too and, therefore, he could not apprehend the Accused. He stated that the Accused fled away with that gun, and thereafter, P.W. 5 returned back towards the workers. There he saw the deceased lying in the injured state with abdominal wound. It was a gun shot injury. He took a mobile hand set from one of the workers and immediately informed Rajesh Prajapati (P.W.4), the owner of the foundry. After P.W.4 came, the deceased was immediately taken to Y.C.M. Hospital.

In the cross examination, he had stated before the Police that the deceased was complaining that the father of the Accused was not attending his duty properly. He stated that he did not know the reason, why the facts were not written in the same form in his police statement.

12) The next witness P.W. 6- Dr. Prakash D. Rokade was the Medical Officer attached to Y.C.M. Hospital, Pimpri. He stated that on 29th May 2012, he was on duty in that hospital. He stated that on that day the dead body of Surendra Chaturi Prasad (Yadav) was taken to Y.C.M. Hospital, by Bhosari MIDC Police. He conducted autopsy on the dead body and found two external injuries. He found deep punctured wound over mid aspect of abdomen. He

also found abdominal walls burst open, abdominal contents exposing with injured intestine. He stated that these two injuries were sufficient in the ordinary course of nature to cause death. He opined that the cause of death was due to 'traumatic and hemorrhagic shock, due to injury to the intra abdominal vital organs'. He noted the findings in the postmortem report. The postmortem report was exhibited through him at Exhibit 62. He also issued the advance cause of death certificate, which was marked below Exhibit 63. He specifically stated that such type of injuries are possible by means of firearm like a gun.

In the cross examination, he stated that he found close shot injury to the abdomen. He denied that in the case of close shot injury there is always an exit wound. He stated that he had not taken X-ray photographs of the body of the deceased. Since there was no exit injury, there was a possibility that the bullet was lodged inside the body. He stated that he did not find the bullet inside the body. He stated that the injury no.1 is possible by means of heated iron bar, if it is used with considerable force.

13) P.W. 7- Kisan Kathe was the PSI attached to Bhosari M.I.D.C. Police Station. He stated that on 29th May 2012, the Complainant came to the Police Station at about 10.00 p.m. and narrated the incident to him. He stated that he

jotted down the complaint as per the version of the Complainant. On the basis of the complaint, offence was registered as Crime No.12 of 2012. The report was exhibited by him at Exhibit 66. He further stated that on directions of the I.O., he proceeded to YCM Hospital and drew inquest panchnama, which was exhibited at Exhibit 67. He further stated that after the autopsy, the clothes which were on the person of the deceased were seized in presence of the panchas. That panchnama was marked and exhibited at Exhibit 68.

In the cross examination, he stated that he found only one injury on the abdomen. He stated that after the autopsy was conducted, those clothes were handed over to a constable. He stated that he had not found any hole or burn on that baniyan. He denied the suggestion that in order to save the owner of the foundry P.W. 4 -Rajesh Prajapati, a false complaint was filed against the Accused.

14) The next witness P.W. 8- Rajaram Pharande was employed as Police Head Constable Photographer. He stated that he went to Prajapati Foundry for taking photographs. He had taken the photographs. He stated that he accompanied the personnel of I-car to that spot with the camera. He met P.I. Mr. Patil, who was present there. He inspected the spot. He stated that the panchas were also present.

In the cross examination, he stated that when he reached there, the dead body was not lying at the spot of the incident.

15) P.W.9- Dattatray Patil was the Investigating Officer. He stated that the offence was registered as Crime No.12 of 2012. He stated that he took over the investigation of that crime. He stated that he visited the spot of incident in Prajapati Foundry and found a pool of blood on the thermocol sheet. He noticed empty cartridge lying near the thermocol sheet. He stated that one photographer, namely, Rajaram (P.W.8), came there in the investigation car. He stated that before his arrival, the body of the victim was taken to Y.C.M. Hospital by P.S.I. Kathe (P.W.7). He stated that on 30th May 2012, in the noon, PSI Surve of Crime Branch produced the Accused before him along with his report. That report was exhibited at Exhibit 71, wherein it was recorded that the Accused was found at Railway Station, Pune. At that time, he effected his personal search. Personal Search Panchnama was recorded and clothes were seized. That panchnama is at Exhibit 72.

In the cross examination, he denied that the false complaint was lodged to save the owner of the foundry.

16) After considering the evidence led by the prosecution, it is clear that in the present case, P.W. 1, who is the eye witness was present at the place, where the said incident had taken place. He has very precisely narrated as to what had occasioned on that fateful night. He has also categorically narrated that on 29th May 2012, initially a quarrel ensued between the Accused and the deceased. He stated that the Accused had threatened the deceased of dire consequences. He stated that thereafter the deceased as well as he himself went to the room and both were having dinner. At that time, the Accused came with a gun. He also had stated that the Accused pointed the gun and asked the deceased why he was complaining against him to the employer. He further stated that he shot the Accused in the abdomen. We have perused the cross examination of said P.W. 1 in detail. The said witness has stuck to the version in his examination in chief and there was nothing, which could cast doubt upon the truthfulness of the witness. It is pertinent to note that he was an eye witness, who had not only seen the Accused fighting with the deceased before committing the assault, but he had also seen the actual assault. There is no reason to disbelieve the said witness.

17) The evidence of P.W.2 clearly states as to how the gun used for the assault was recovered at the instance of the Accused. The said disclosure

panchnama, marked at Exhibit 55 and the seizure of the articles marked at Exhibit 56, would undoubtedly show that the Accused had knowledge as to where he had hidden the weapon. That weapon was found hidden in an isolated factory. It was also wrapped carefully in a chaddar (bedsheet/blanket) and it is from that chaddar (bedsheet/blanket), the said weapon was extracted and therefore, it is clear that the recovery was in consonance with Section 27 of the Evidence Act.

18) The spot panchas had sufficiently described the surroundings of place of the incident. The spot panchnama was exhibited at Exhibit 58. P.W. 4, who was the owner of the foundry also stated that he came immediately running, after he was informed about the incident. He categorically stated that the father of the Accused was having a weapon, as both of them were working as watchmen in his foundry. The evidence of P.W.5- Rajesh Morya is also important. This witness was the Supervisor working in the foundry. He had stated as to how on 29th May 2012, there was a quarrel between the Accused and the deceased at 09.00 p.m. He also stated as to how, when he came downstairs for a walk, he heard commotion and he went to the place. He stated as to how the Accused had fled from the spot. He stated that he tried to apprehend the Accused. However, the Accused threatened him with the gun

and therefore, he could not apprehend him. Although several questions were posed to the said witness in the cross examination, the credibility of that witness could not be shaken.

19) The postmortem note clearly shows that the injury caused to the deceased is in consonance with the statement made by P.W.1 that injury was caused due to firing of the gun by the Accused. The advance death certificate, which is at Exhibit 63, also corroborate the same.

20) As far as the submission of the learned Advocate appearing for Appellant that there is an admission by P.W 7 that there was no hole in the baniyan is concerned, the same can adequately be dealt with after perusing Exhibit 76, which is the examination report by the Directorate of Forensic Science Laboratory. The said report clearly states that :-

“The empty in Ex.3 is a fired 12 bore shotgun cartridge case. The characterisc feature of the firing pin impression on the empty in Ex.3 tally with that on the cartridge test fired from 12 bore hammer shotgun Ex.1 (examined under comparison microscope), showing that the empty in Ex.3 has been fired from the 12 bore shotgun Ex.1.”

21) The learned Additional Sessions Judge had clearly relied upon these

observations and had correctly come to the conclusion that he himself had seen baniyan and there were two holes in the baniyan. He, therefore, correctly disbelieved the contention of the learned Counsel appearing for the Appellant that there were no holes in the baniyan.

22) The learned Trial Judge has correctly appreciated the evidence on record. The learned Trial Court has correctly considered the ballistic report Exhibit 76 and the evidence of the eye witness, the evidence of recovery panch, who had recorded the disclosure panchnama. The Judgment and Order passed by the learned Trial Court is, therefore, not perverse or incorrect.

23) For the reasons mentioned above, we are of the opinion that there is no merit in the Appeal. We, accordingly, dismiss the Appeal.

24) Since, we have dismissed the Appeal, the connected Interim Application stands disposed of accordingly.

25) The Registry is directed to send a copy of this Judgment to the Appellant, as he is in jail.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)