

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.1183 OF 2002

Tejraj Roopchand Doshi)
 Age-65 years, Occ. Business, R/at 29)
 Nanabhai chambers, 5th floor, Gunbow)
 Street, Fort, Bombay-400 001)....Appellant

V/s.

- 1) A.D.Petkar)
 Senior Intelligence Officer, DRI, Zonal)
 Unit, Bombay.)
- 2) A.P.Patil)
 Intelligence Officer, DRI Zonal Unit,)
 Bombay)
- 3) A.V.Redkar)
 Intelligence Officer, DRI Zonal Unit)
 Bombay)
- 4) D.K.Savekar)
 Intelligence Officer, DRI Zonal Unit)
 Bombay)
- 5) The State of Maharashtra)....Respondents

Ms.Vriddhi Maria i/by Mr.M.S.Mohite for appellant.
 Ms.Anamika Malhotra APP for respondent no.5.

CORAM : K.R.SHRIRAM,J
DATE : 25.11.2019

ORAL JUDGMENT :-

1. This is an appeal filed by the original complainant impugning judgment dated 2.8.2002 passed by Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai, acquitting 4 accused who are respondent nos.1 to 4 of charge of section 323 (*Punishment for voluntarily causing hurt*), section 330 (*Voluntarily causing hurt to extort confession, or to compel restoration of property*), section 341 (*Punishment for wrongful restraint*), section 342 (*Punishment for wrongful confinement*), section 348 (*Wrongful confinement to extort confession, or compel restoration of property*) read with section 34 of the Indian Penal Code on the basis of a private complaint by appellant.

2. The facts in brief are that complainant Tejraj Roopchand Doshi was residing at 29, Nanabhai chambers, 5th floor, Gunbow Street, Fort, Bombay-400 001 with his wife and three sons, Bhupendra, Rajesh and Kiran. He had a shop at Bora Bazar Street, Mumbai and he was a cloth merchant.

On 3.3.1993 complainant acquired 25 foreign marked gold bars, which, according to complainant, was acquired by him from one Mr.Moidu Rayaraman, a resident of Kerala who had landed at Mumbai from Dubai that same day. As complainant intended to purchase gold bonds, he had purchased these gold bars from Mr.Moidu. At about

5.00 P.M. complainant sent his son Bhupendra along with servant Ramesh to Zaveri Bazar to test the purity and weight of the 25 gold bars and to obtain necessary certificate. While Bhupendra and Ramesh were going to Zaveri Bazar, they were intercepted and arrested by the officers of D.R.I on suspicion. Subsequently, in the evening the residence and shop of complainant were also searched by D.R.I Officials but nothing incriminating was found. Bhupendra was produced before the Court on 3.3.1993 with remand application. At the same time, bail application was also moved and the Court of the Chief Metropolitan Magistrate granted bail to Bhupendra after perusing a duty paid receipt. On the same day, Bhupendra, it seems, also retracted the confessional statement which he was alleged to have given to officers of the D.R.I. Complainant, because of the alleged ill-treatment of Bhupendra in the alleged illegal seizure of the legally imported gold bars, addressed letters to the Finance Minister on 7.5.1993 and 12.5.1993. Similar letters were addressed on 30.5.1993 and 25.6.1993 to various authorities raising a grievance that his son was ill-treated by D.R.I officers and they also illegally seized the gold bars.

3. It seems on 7.7.1993 at about 11.00 A.M. accused nos.1 & 2 went to the residence of complainant. At that time complainant and

his wife were present in their house. Accused no.2 asked complainant to accompany him to D.R.I office, but as accused nos.1 & 2 did not assign any reason and they were also not having any summons, complainant refused to go with them. At that time, it seems accused no.1 threatened to handcuff complainant and parade him through the street and accused no.2 also pulled out a handcuff. Complainant, though he was unwell, accompanied accused nos.1 and 2 to the D.R.I office at Ballard Estate, Mumbai. When they reached D.R.I office, complainant saw accused nos.3 & 4 were also present. At that time, his servant Ramesh Mali was also brought there and while complainant tried to approach to speak to him, Ramesh Mali was taken away. When complainant asked accused why he was brought without any summons, summons (Exh.P-3) was hurriedly prepared and acknowledgment was obtained. After that, complainant was interrogated till 8.30 p.m. without offering even a glass of water and during the interrogation accused nos.1 & 2 slapped complainant and accused nos.3 & 4 gave him fist blows. According to complainant, accused no.4 picked up fibre plastic rod and started to hit the same on the legs of complainant. Thereafter accused no.4 called two other persons and a typist and under the threat of arrest and obtaining the remand, the statement of complainant was forcibly obtained and his signature was also obtained. In the statement, complainant was

alleged to have stated that he had nothing to do with the seized 25 gold bars and only to rescue his son he fabricated false evidence and wrote to the ministry and all authorities. At 8.00 P.M. complainant was allowed to go.

4. Upon reaching home, complainant narrated the episode to his wife and sons and immediately his family doctor Mahendra Shah (PW-2) was called around 9.30 P.M., who advised him to get treatment from J.J.hospital, which was municipal hospital.

5. On 8.7.1993 complainant approached J.J.hospital and got treated and on 9.7.1993 complainant addressed a letter to the Additional Director General D.R.I, Bombay about the illegal confinement etc., to which reply was received that the complaint was devoid of merits. Again on 30.7.1993 complainant addressed another letter to Director General of D.R.I, to which there was no reply.

6. None of these letters have been exhibited. There is one letter dated 19.7.1993 (Exh.P-5) from the Deputy Director D.R.I addressed to complainant disposing his representation dated 9.7.1993 in which it has been made clear that a copy of the gold import baggage receipt no.B-004478 dated 3.3.1993 has not been available to

D.R.I and D.R.I has checked with Mr.Moidu, the alleged importer and seller of gold, and Mr.Moidu denied he had any gold dealings with complainant or his son at all. Deputy Director thereby rejected the representation as devoid of any merit. It is not clear what were the contents of the letter dated 9.7.1993. If complainant had any complaint, he would have produced copy of the letter dated 9.7.1993 or would have atleast called upon accused to produce the original of that letter to which Exh.P-5 was the reply. Therefore, we will have to proceed on the basis that complainant did not consider it fit to write to Additional Director General of D.R.I about the alleged ill-treatment by the 4 accused.

7. The charges were framed and all the accused pleaded not guilty and claimed to be tried. In the statement recorded under Section 313 of Cr.P.C. the accused had stated that they had summoned the complainant legally as per the summons at Exh.P-3 but had denied that complainant was manhandled or assaulted or there was any illegal confinement. It is their case that only because the son of complainant was arrested, to pressurize them, complainant has filed this false case. The accused had also taken a defence that their action was while discharging their official duty and therefore, sanction as required under Section 197 of Cr.P.C. read with section 155 of the

Customs Act 1962 was required and as no such sanction was obtained, the complaint has to be rejected. On the 2nd defence of sanction, Ms.Maria appearing for appellant stated that the question as to whether such a sanction itself was required, has been referred to a larger bench of this Court, which is still pending and this Court should consider adjourning this appeal until that issue has been decided.

8. Learned Magistrate in para-7 of the judgment says that accused had also filed an application for discharge claiming protection under Section 197 of Cr.P.C. and 155 of Customs Act 1962 and after deciding the application again the case was proceeded further. I have not been able to lay my hands upon the order deciding the said application. Complainant was examined before charge after which PW-2 & PW-3 were examined. PW-2 & PW-3 were also examined before charge. After the charge was framed, no evidence was led.

9. Having considered this appeal and the impugned judgment, the evidence and the documents, in my view, on merits itself the appeal cannot survive and therefore, I do not wish to even consider as to whether such a sanction under Section 197 of Cr.P.C. and under section 155 of Customs Act 1962 was necessary in the facts and circumstances of this case.

10. The entire basis of the case originates on 7.7.1993 when accused nos.1 & 2 are supposed to have gone to the house of complainant, threatened him with arrest, handcuff him and parade him in public and took him into the office of D.R.I without issuing any summons and the person who had witnessed that was the wife of complainant. Wife of the complainant has not been examined. Ms.Maria stated that, that is not the subject matter of the complaint because the real issue starts only after complainant reached in the office of D.R.I. I do not agree with Ms.Maria in as much as if one reads the complaint and the evidence, the so-called illegal act of the accused is supposed to have commenced at the residence of the complainant on 7.7.1993. They first threatened complainant with handcuffing and asked him to accompany them without issuing any summons.

11. The next stage is when complainant reached the office of the D.R.I where complainant states he saw his servant Ramesh Mali being produced but when he attempted to approach him, Ramesh was taken away. Ramesh was not produced as a witness although listed as a witness. Ms.Maria also stated that Ramesh was not a witness to the assault by accused. But in my view certainly Ramesh would have

been able to give some evidence on the atmosphere in the office of D.R.I where complainant was taken.

12. PW-2 and PW-3 are the Doctors who have examined complainant soon after the alleged incident. Complainant says that he was allowed to go home by D.R.I at 8.00 p.m. and PW-2 who was a family doctor examined him at 9.30 p.m. In the certificate dated 8.7.1993 (Exh.P-7) issued by PW-2 he says that complainant was under his care for 'pain on left temporo mandi bular, joint region. Pain and wound contusion on left cheek and blurring of vision on eyes on 7.7.1993'. He also says he advised complainant to go for further treatment and investigation in hospital. He does not say why he advised complainant to go to another hospital and what medication he prescribed.

PW-2 agrees that tenderness is not a visible injury and so also the pain. PW-2 of course, also agrees that contusion injury is also possible by fall. PW-2 mentions about one wound or contusion. PW-2 is not talking about multiple wounds or contusions. Now let us examine the evidence PW-3 who was a doctor attached to J.J.hospital. Medical injury certificate issued by PW-3 is at Exh.P-8. In the certificate PW-3 records that he was informed about the alleged assault of fist blows and fibre plastic rods at about 3.00 p.m. on

7.7.1993 and the patient took treatment from private hospital. PW-3 does not mention about any treatment that he has given and there is nothing on record to show which is the private hospital from which complainant took any treatment. In the certificate (Exh.P-8) issued by PW-3 he is referring to 3 contusions, one on the left cheek, one on left infra orbital region and the other at pinna of left ear. PW-3 also stated in his cross-examination that these injuries which he noticed on complainant are also possible by fall. Therefore, there are clear contradictions between evidence of the two doctors on the injuries sustained. Both the doctors also say these injuries would be caused if somebody falls. In the circumstances, I see nothing on record either by document or in the evidence to conclude the injuries sustained by complainant were caused by accused. This would take care of sections 323 and 330 of the Indian Penal Code.

13. As regards sections 341, 342 & 348 of the Indian Penal Code, again there is nothing to indicate that there was wrongful confinement or wrongful restraint. D.R.I was investigating illegal importation of gold bars. On record is the summons under section 108 of the Customs Act 1962 (Exh.P-3). To summon a person and interrogating him would not amount to wrongful confinement or illegal restraint. At the time of writing the impugned judgment, the

case against Bhupendra Doshi and Ramesh Mali by D.R.I. was still pending. The trial Court has also observed on the receipt Exh.P-4 that receipt talks about 42 bars whereas Bhupendra Doshi was caught with 25 bars and there is nothing to indicate that those 25 bars were part of the 42 bars alleged to have been legally imported. The Court has come to the conclusion that D.R.I officers were within their rights and law and there can be no wrongful confinement or illegal restraint.

14. The only witness to the entire alleged assault is complainant himself. It is settled law that even if complainant is the only witness or even if there is a single testimony, if that testimony is so reliable, Court need not ask for corroborating that evidence. At the same time, if the evidence of that sole witness is not so clinching, then certainly the Court would look for corroboration. Here is a complainant who has lot to explain as to how he came into possession of 25 gold bars which were seized from his son and in his cross-examination he admitted that he has not even paid for those gold bars. The Court has wondered how could someone leave gold bars of such high value without receiving any payment.

15. Secondly, in Exh.P-5 D.R.I has mentioned that they had contacted Mr.Moidu who had denied having any dealing with

complainant or his son. I am not making any observation on this but these are the circumstances which makes the Court feel that the evidence of the sole witness required corroboration.

16. There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case. I agree with the findings and conclusion of the Magistrate.

17. In the circumstances, appeal stands dismissed.

(K.R.SHRIRAM,J)