

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

CRIMINAL APPEAL NO.946 OF 2015

Mr. Ramesh Jayashram Pardeshi
Age : 20 years, Occ.: Tailoring
Residing at : Room of Munnabhai,
Jadav Vasti, Ghorpadi Village,
Dist. Pune

.... Appellant

Vs.

The State of Maharashtra
(At the instance of Senior Inspector
of Police, Lashkar Police Station,
Pune

.... Respondent

Ms. Devyani Kulkarni, appointed advocate for the Appellant
Mr. S.S. Pednekar, APP for the State.

Coram : *Smt. Sadhana S. Jadhav, J.*
Date : *27th March 2019*

JUDGMENT :

1 Heard the respective counsel.

2 The appellant herein is convicted for the offence punishable under Section 307 of Indian Penal Code and sentenced to suffer rigorous imprisonment for six years and to pay a fine of

Rs.3,000/-, in default to undergo rigorous imprisonment for six months by the learned Additional Sessions Judge, Pune vide judgment and order dated 25th August 2015.

3 Such of the facts necessary for the decision of the appeal are as follows :

The appellant herein happens to be a Tailor by profession. He was working with Latif Tailors. The complainant (injured) was also a Tailor and was working with Radhika Tailors. The original accused no.2 (acquitted) was working with Dinanath Tailors. All the three tailoring shops were situated at Clover Centre Camp at Pune. It is the case of the prosecution that PW-1- Mangesh Ram Ajore Pardeshi was running a Bhishi scheme for the Tailors. The monthly contribution amount was Rs.2,500/-. The scheme had become operative only from February 2010.

4 On 22nd April 2010, PW-1, Mangesh Pardeshi had been to Clover Centre at 9.00 am. as he had to give urgent delivery of clothes. He had given Rs.12,500/- to the present appellant towards

Bhishi amount. In all seven persons were members of the said Bhishi scheme. On that day, Mangesh Pardeshi had demanded Rs.12,500/- from the appellant. There was verbal altercation between both of them. According to the prosecution, the appellant and the acquitted accused had been to the shop of Mangesh Pardeshi. That the present appellant had drawn the scissor from the drawer of the shop of PW-1 and inflicted injuries on his back and head. He was admitted to Sasoon Hospital. His statement was recorded in Sasoon Hospital and on the basis of the said statement, Crime No.67 of 2010 was registered against the present appellant and the co-accused for the offence punishable under Section 307 of Indian Penal Code. Upon completion of investigation, the charge-sheet was filed against the accused on 20th July 2010. The case was committed to the Sessions Court and registered as Sessions Case No. 545 of 2010.

5 The prosecution has examined 10 witnesses to bring home the guilt of the accused.

6 The case rests on the evidence of PW-1 Mangesh Ram Ajore Pardeshi, the injured, PW-3 Sudhir Chhaganrao Kirve and PW7

Shabana Ibrahim Shaikh, who happens to be the eye witness to the incident. The evidence of PW-5, Dr. Archana Namdeo Shede and PW-10 Dr. Narayan Bhagwan Khare would also be relevant.

7 PW-1 Mangesh Ram Ajore Pardeshi has deposed before the Court in consonance with the first information report, which is marked as Exhibit '32'. It is elicited in the cross-examination that for each month, an amount of Rs.18,500/- was collected by PW-1. In the second month of the scheme, he had given the amount to the accused-appellant as he had taken the contribution of the first month i.e. February and March and had been given it to the accused-appellant. The draw of bhishi was to be drawn from 1st to 10th day of each month. According to the complainant, the appellant owed Rs.12,500/- to the injured-complainant as they both had not deposited the amount in the Bhishi scheme for the month of February. According to the complainant, the appellant had not paid the contribution for the months of March and April and probably that was the bone of contention between the injured and the appellant. It is elicited in the cross-examination that after the incident, he had

handed over his clothes and scissor to the police. He has later volunteered by stating that he did not know as to who had handed over his clothes and scissor to the police. He has also admitted that his physical constitution is better than that of the accused-appellant.

8 The injured was hospitalised for a period of 10 days. The injury certificate issued by Sasoon General Hospitals, Pune on 23rd April 2010, which is at Exhibit 43 would indicate that the patient has about 7 stab wounds on intra-scapular region, out of which 2 are deep, one is reaching to the pleura and 4 incised wounds on back and occipital region. The patient had sustained left haemothorax. The injury certificate is proved by PW-5, Dr. Archana Shede, who had examined PW-1 on 22nd April 2010. According to PW-5, except injury no.1, all other injuries are simple in nature. It is elicited in the cross-examination that if assault is done by opening the scissor, there is possibility of two holes (incise wounds). In the injury certificate at Exhibit 43, there is no injury, which would indicate that the injury was inflicted by opening the scissor. PW-5 has expressed her inability to state as to how many assailants must have assaulted the injured.

9 PW-3, Sudhir Chhaganrao Kirve has posed as an eye witness to the incident. According to him, he had seen the present appellant assaulting Mangesh by scissor on his back. However, he has elaborated that after sustaining injury Mangesh had started running and had fallen down. It is admitted in the cross-examination that in fact there was a scuffle between the injured, the appellant and the co-accused and the said scuffle had taken place inside Radhika shop. He has further elaborated that at the time of incident, Mangesh fell down and then started running again and the persons gathered had rushed towards Mangesh. He is not sure as to whether Mangesh had assaulted Ramesh. Similarly PW-7, Shabana Ibrahim Shaikh was working in a tailoring shop i.e. Mischief and Latif was the Master in the said shop. It appears that she was a co-worker with the co-accused Dinanath. According to her, she had initially heard the noise of shouting and then she saw the present appellant beating on the back and head of another person by scissor. She has admitted that the present appellant was accompanied by Dinanath i.e. co-accused and he had also participated in assaulting Mangesh. It is

pertinent to note that he has categorically stated that after the incident, the accused had fled from the spot of incident. She has denied to have seen any other person involved in the said scuffle.

10 The co-accused was granted benefit of doubt by the Sessions Court despite the fact that the evidence would indicate that the appellant and the co-accused had entered into the shop of the complainant together. Moreover, the eye witnesses had stated that soon after PW-1 was assaulted on the back by the appellant, the injured had started running from the place of offence. The possibility that there was more than one person, who had assaulted the injured cannot be ruled out. The recovery of scissor from Radhika Shop also speaks volumes for itself. Since, there is no material to indicate that after the incident the accused had immediately visited Radhika shop to conceal the scissor. Also the fact that the scissor was recovered at the instance of the injured cannot be ignored. Hence, the recovery of the scissor under Section 27 of Indian Evidence Act after five days of the arrest of the accused cannot be held to be an incriminating circumstance against the accused.

11. The records would indicate that the accused-appellant had sustained contused lacerated wound on the right index on dorsal aspect and the said injuries had to be sutured. The accused-appellant was examined by PW-10, Dr. Narayan Bhagwan Khare on the same day at 11.25 pm. PW-10 has proved the injury certificate, which is at Exhibit 67. It is pertinent to note that the bleeding injuries sustained by the accused-appellant are not reflected in the arrest panchanama although the appellant was arrested within a few hours after the incident. The arrest panchanama, which is at Exhibit 57 is silent about the injuries on the person of the accused.

12 Learned counsel for the appellant submits that on the basis of the evidence adduced by the prosecution, it is more than clear that the accused-appellant had also sustained bleeding injuries, which needed to be sutured. However, there is no explanation of the injuries on the person of the accused. The complainant has not stated that he had assaulted the present appellant. It is clear that the accused-appellant and his associates had not entered shop of

Radhika Tailors with an intention of assaulting the injured. Since PW-1 has categorically stated that the scissor with which he was assaulted was taken from Radhika Tailors itself. Learned counsel for the appellant submits that the possibility that the injured PW-1 was an aggressor cannot be ruled out.

13 Learned counsel for the appellant has submitted that the very fact that the eye witnesses have contended that it was PW-1, who had caused injuries to the present appellant and therefore the accused-appellant had a right of private defence. It is true that the accused has stated in his statement under Section 313 Cr.P.C. that it was the injured PW-1 who had assaulted the appellant and the same is corroborated by the injury certificate at Exhibit 60. Learned counsel for the appellant has placed reliance on the judgment of Hon'ble Supreme Court in the case of Moti Singh Vs. State of Maharashtra, reported in Equivalent citations : JT 2002 (2) SC 133 and (2002) 9 SCC, 494. The Hon'ble Supreme Court has held in paragraph 10 of the said judgment as under :

“... If the evidence adduced by the prosecution would indicate that the accused were put under a situation where they could reasonably have apprehended grievous hurt even to one of them, it would be inequitable to deny the right of private defence to the accused merely on the ground that he has adopted a different plea during the trial. The crucial factor is not what the accused pleaded, but whether the accused had the cause to reasonably apprehend such danger. A different plea adopted by the accused would not foreclose the judicial consideration on the existence of such a situation.”

14 Learned APP submits that in fact the evidence of PW-1 is sufficient to hold that the present appellant is the author of the injuries sustained by the complainant i.e. PW-1. The Court cannot be oblivious of the fact that two persons were charged with an offence punishable under Section 307 read with 34 of Indian Penal Code.

15 In view of above discussion and upon taking into consideration the judgment of the Hon'ble Apex Court in the case of Moti Singh (Supre), the appellant deserves to be acquitted by extending him benefit of doubt.

16 It would be difficult to part with the judgment without appreciating the efforts taken by learned counsel Ms. Devyani

Kulkarni who was appointed to espouse the cause of the accused.

Hence, the following order :

ORDER

- (I) The appeal is allowed.
- (II) The conviction of the appellant for the offence punishable under Section 307 of Indian Penal Code vide judgment and order dated 25th August 2015 is quashed and set aside.
- (III) Fine amount if paid, be returned to the accused-appellant as per rule.
- (IV) The professional fees of Learned Counsel, Ms. Kulkarni is quantified as per rules. The fees to be paid within three months from today.

(Smt. Sadhana S. Jadhav, J)