



Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL APPEAL NO.1 of 2016.**

Mr Darson D'souza, S/o Ashok  
Desai D'Souza, Unemployed, Opp.  
Municipal Building, Cuncolim,  
Salcete, Goa. ... Appellant.

*V e r s u s*

State  
Through PP Hon'ble High Court of  
Bombay at Panaji, Goa. .... Respondent.

Mr Arun Bras De Sa with Mr Mark Valadares Advocates for the  
appellant.

Mr Shailendra G. Bhobe, Public Prosecutor for the respondent.

**CORAM: BHARATI DANGRE J.**

**Date: 25<sup>th</sup> July 2025.**

***ORAL JUDGMENT***

1. An incident dated 14.6.2012 at 17.30 hours near Grace Plaza building, Cuncolim, preceded by an earlier day tiff dated 13.6.2012 in 'Sea Shell' bar, is the cause for the present proceedings which involved the two accused, who came to be chargesheeted for the offence punishable under Sections 307, 324

read with Section 34 of IPC and under Section 5 read with Section 27 of the Arms Act, 1959.

Since the accused no.2 stood acquitted on conclusion of the trial by the Additional Sessions Judge, South Goa in Session Case no. 22/2014, the present appeal is filed by the accused no.1/ Mr Darson D'Souza, who is convicted under Section 323 of IPC and sentenced to undergo simple imprisonment for one month and on being convicted under Section 326, he is directed to undergo rigorous imprisonment of one year with fine amount.

2. I have heard Mr A. Bras De Sa, the learned counsel for the appellant and Mr S. G. Bhohe, the learned Public Prosecutor for the State.

Upon the chargesheet being filed before the Judicial Magistrate, First Class, Margao in connection with Crime No. 56/2012 dated 14.6.2012, on the complaint filed by Mr Anthony Fernandes being examined as PW1 offence under Sections 307, 324 read with 34 of IPC was invoked. Subsequent to filing of the chargesheet, on committal of the case to the Sessions Judge he framed charges against the accused, charging them with an offence punishable under Section 307 r/w 34 of IPC, as they were accused of assaulting Irfon Fernandes with the sword on his right hand thumb and index finger causing its amputation, with the

intention and knowledge that under such circumstances that if by that act they would have been guilty of murder. Similarly, they were also accused of assaulting Anthony Fernandes in the bar, with the common intention, on being armed with deadly weapon and hence they faced charge under Section 307 r/w 34 of IPC.

In the said incident, since Ms Sara D'Costa, a lady residing in the neighbourhood, also intervened and she also sustained injury, the charge was framed against both the accused of voluntarily causing hurt to her with a common intention with a sword, used for stabbing and therefore committed an offence punishable under Section 324 r/w 34 of IPC

3. In the wake of the accused persons pleading not guilty, they were subjected to trial by the Additional Sessions Judge.

4. In support of its case, the prosecution examined 10 witnesses which included three the injured namely Anthony Fernandes (PW1), Irfon Fernandes (PW5), Sara D'Costa (PW3). One Mr. Jeston Rodrigues, an eyewitness to the incident who was present in the bar was examined as PW2. In addition, one Mr Melbert Fernandes (PW6), who was also present at the site being an employee of the victims is also examined as an eyewitness. Three medical experts in the form of Dr Senha Kamat (PW4) and Dr. Francisco Vaz (PW7) and Dr Manish Patel(PW8) are examined

to establish the injuries sustained. Two witnesses i.e Tukaram Chawan (PW9) and Ditendra Naik (PW10) are examined as they carried out the investigation and filed the chargesheet.

Since the accused persons adopted the stand of complete denial on completion of the evidence of the prosecution and upon them being confronted with the evidence brought on record by the prosecution under Section 313 of Cr.P.C., the accused no.2 himself entered into the witness box and was examined as AW1.

The complaint, hurt certificates as well as medical legal certificates issued by the Medical experts were included in the trial along with the scene of offence panchanama drawn on 14.6.2012, the attachment panchanama and also the report of the chemical analyser, in an attempt to group the blood of the accused persons.

5. On the basis of the evidence brought on record by the prosecution, and on appreciation of the same along with the cross examination of the prosecution witnesses by the counsel for the accused, the learned trial Judge appreciated the evidence in its entirety. In the wake of the evidence brought on record, a conclusion was drawn that the prosecution had proved its case beyond reasonable doubt through the injured as well as two eye witnesses who corroborated their version and also on appreciating the evidence of accused no.2 who examined himself as a defence

witness. The trial Judge held that the prosecution has successfully established that the accused no.1 Darson is the author of injury caused to PW5 Irfon Fernandes, PW1 Anthony Fernandes and PW3 Sara D'Costa.

As far as the version of AW1 Taiwan @ Sameer D'souza about who came to the spot first and how the incident actually occurred, the trial Judge clearly recorded that the version is completely new, as this is neither reflected in the cross examination nor in the 313 statement of the accused. It is categorically recorded that it was improbable that the person would come charging with danda and try to hit, if at all he was greeted and in any case the defence, which is sought to be projected through AW1 has not surfaced in the cross examination of the witnesses which had unequivocally established that it was Darson who was the assailant and thereafter by way of private defence, the wooden stick was picked up by Irfon Fernandes and this version remained unshattered in the cross examination of PW1 as well as PW5 and therefore, while recording the finding of guilt as against Darson D'Souza accused no.1, the conviction was recorded under Sections 323 and 326 considering the nature of injuries sustained by the victims and he was acquitted of the offence under Section 307 and Section 5 and 27 of the Arms Act. Taiwan D'Souza, accused no.2 was acquitted of

all the offences with which he was charged, namely under Sections 307, 324 of IPC and Section 5 read with 27 of the Arms Act.

6. The learned counsel Mr De Sa while assailing the impugned judgment and the finding rendered by the learned Additional Sessions Court, has vehemently asserted before me that there is inconsistency in the version of the prosecution, which has failed to establish the charge levelled against accused no.1 beyond reasonable doubt. He made an attempt to narrate the manner in which the incident occurred and specifically by relying upon the evidence of Sameer @ Taiwan i.e accused no. 2 who was acquitted, he would submit that the prosecution has failed to bring on record any material to establish that a phone call was received by Anthony, pursuant to which he spoke to Taiwan and the accused persons came on spot with a premeditated approach of assaulting.

Relying upon the testimony of AW1, who had categorically deposed that he requested his brother to come along with him to 'Sea Shell' restaurant to compromise the matter and therefore with Darson he proceeded to the bar and restaurant and after parking the vehicle opposite the bar went to greet Anthony. According to his version he greeted Anthony and Irfon, Melbert and Jeston who were present in the bar but immediately thereafter Irfon came with danda charging towards him and tried

to hit him as a result of which he attempted to block the blow by his right hand. When he inquired as to why they are assaulting him, if they wanted to compromise the matter, they continued with the assault and at that time according to him, Anthony came with the sword and mounted an assault on him, as a result he caught hold of the sword with his right hand and sustained cut injury to the right palm. He was extensively cross examined and he denied the suggestions even that Anthony told him that Darson was abusing and threatening and also denied the suggestion that Darson was sitting in the car and he went towards him to tell what Anthony was telling.

7. Mr De Sa would rely upon his discharge summary certificate (Exh. 66), which reflects that he had sustained a contused lacerated wound on the right palm extending the middle ring finger with an approximate size of 7-8 cm. The certificate indicates that a procedure would be required to be carried out to treat the injury, and he was discharged from the hospital on 16.6.2012. It is therefore Mr De Sa's submission that when accused no. 2 had sustained an injury on account of the assault, it is an error on the part of the trial Judge to believe the one sided story of the prosecution, when in fact one sword was also found on the spot and seized.

8. Per contra, Mr Bhobe, learned Public Prosecutor has taken me through the evidence of the prosecution witnesses and also through the cross examination, which in no way affect the credibility of the witnesses, who were examined by the prosecution and in particular as regard the evidence of PW1, PW3 and PW5 the victims of the incident along with the two eye witnesses, who were the natural witness present on the spot as they were employees at the bar, who have deposed in sync with one another and their evidence is corroborated with medical evidence/hurt certificates, which are proved by the doctors examined by the prosecution.

9. According to Mr Bhobe, since the prosecution has discharged its duty of establishing its case beyond a reasonable doubts with no scope being left for interference and merely because one of the accused has entered into the witness box as a defence witness, and he was unable to destroy the evidence of the prosecution which was unequivocally brought before the Court through examination in chief and the cross examination.

He would therefore support the judgment which has recorded a finding of guilt against the present appellant and submit that the Sessions Judge has appropriately sentenced him under Sections

326 and 323 of IPC and therefore, the impugned judgment did not warrant any interference.

**10.** With the able assistance of the respective counsel, I have perused the evidence on record as the prosecution alleged that on 14.6.2012 at 17.30 hours, present appellant along with his brother Mr Taiwan i.e accused no. 2 in furtherance of their common intention armed with deadly weapon i.e sword arrived in their wagon R near the bar and restaurant 'Sea Shell', belonging to the complainant and assaulted him by sword, causing grievous injuries on his body and also assaulted his brother Mr Irfon Fernandes, thereby causing amputation of his right hand thumb and committed an offence.

Fortunately for the prosecution, both the injured i.e the complainant(PW1) Anthony Fernandes and his brother (PW5) Irfon Fernandes are examined as witnesses.

PW5 Irfon Fernandes, referred to an incident which had occurred on the previous night, when Darson entered into the restaurant and ordered for liquor and food which was refused since the kitchen was closed. Being agitated by the refusal, Darson threatened Irfon and left the place.

As per PW5, on 14.6.2012 while the bar was open one wagon R stopped in the parking area and Taiwan, accused no.2, came out of

the vehicle and had a discussion with PW1 Anthony and went back to the vehicle. Darson, who was sitting in the vehicle, alighted with the sword in his hand and rushed towards Irfon. When Irfon saw that Darson was to mount to assault on him, he picked up wooden danda kept near the shutter in order to protect himself and when Darson mounted an assault by sword he used the danda as a shield and sustained injury on the right thumb which was cut and kept hanging from his palm.

As per the version of PW5 Irfon when Darson was about to assault him with another blow, his brother Anthony Fernandes (PW1) came on the spot caught hold of Darson and in an attempt to remove the sword from him, received injury on the right hand.

PW3 Sara D'Costa residing in the neighbourhood on hearing the commotion in the neighborhood, arrived at the spot and attempted to rescue two brothers but she also sustained injury.

11. The version of PW5 is corroborated by PW1 who lodged the complaint as he deposed in sync with him and also referred to the incident dated 13.6.2012 and while narrating about the happening on 14.6.2012, PW1 has deposed that Darson called on the mobile of his friend Melbert Fernandes (PW6) who was working for him in the bar and PW1 was asked to speak to Darson. Thereafter Darson questioned him as to why food was not served

to him on the previous night and threatened that he would stab him with a knife.

He disconnected the phone and made a phone call to the brother of Darson i.e.Taiwan (accused no.2) and informed him about the threat, who pacified him by stating that he would come to the bar and then would have a talk.

According to PW1 at about 3.45 p.m, while he along with his brother, PW2 and PW6 were standing outside the bar, Taiwan arrived in wagon R and stepped out and took him to a corner and asked him to settle the matter. PW1 told him about the abuses and the threats given by Darson and Taiwan returned to the Wagon R and started talking to someone who was present inside the car.

About three minutes thereafter Darson stepped down with the sword in his hand and rushed towards him and all those who were standing there. He attacked his brother, Irfon by the means of a sword in his hand which forced his brother to pick up a bamboo stick, in defence but he sustained injuries on the right thumb and the index finger.

When he attempted to rescue his brother, and tried to pull the sword from his hand he sustained injury on his right hand and right leg.

**12.** The injuries sustained by the aforesaid two witnesses are proved by the prosecution by examining medical experts. As far as Irfon Fernandes is concerned, he was examined by PW7 Dr Francisco Vaz who had issued a Medico Legal Certificate and referred to the injuries sustained by him.

PW7 Dr.Francisco Vaz specifically deposed that he examined Irfon Fernandes and referred him to Dr Manish Patel, Cosmetic Surgeon, for replantation of right thumb at interphalangeal joint level and partial amputation of right ring finger, which was done by Dr. Manish Patel.

**13.** Dr. Manish Patel is examined as PW8, who deposed that he examined Irfon Fernandes on 14.6.2012 with a diagnosis of total amputation of the right thumb with partial amputation of the right ring finger of the right hand. He also deposed that he carried out replantation of the right thumb at interphalangeal joint level and also carried out partial amputation of the ring finger of the right hand. He produced the hurt certificate (Exh. 32) and deposed that the amputation can be caused by sharp edged weapon like sword.

As far as PW1 Anthony Fernandes is concerned, he was also examined by PW7 Dr. Francisco Vaz who had given history to him by stating that two brothers were fighting at the bar and when he went in between them, one of them picked up a sword and injured

his left thumb. He deposed that he sustained a contused lacerated wound about 3 cms X 2 cms and sutured the same. He also deposed that he had other sutured injuries on the right hand, and he had issued a Medico Legal Certificate (Exh. 28).

14. The deposition of the victims is thus corroborated by medical certificates issued by the medical experts who treated their injuries and therefore the prosecution succeeded in establishing that injuries were sustained by PW1 and PW5 in the incident, in which the accused and his brother Taiwan participated.

15. The aforesaid version of the prosecution case finds further corroboration from PW3 Sara D'Costa, who herself had sustained an injury and was examined by PW4 Dr. Sneha Kamat who issued a hurt certificate, referring to abrasion on arm being described as simple injury.

The two other eye witnesses PW2 Jeston Rodrigues and PW6 Melbert Fernandes have also corroborated the version of PW1 and PW5.

The arguments advanced on behalf of the appellant by Mr De Sa that they are interested witness deserve no consideration as they are the natural witnesses who were present, when accused arrived at the site with the intention of assault as the present

appellant got out of the vehicle with the sword, clearly indicating that he had intention to cause harm to PW1 and his brother Irfon on account of the incident that has transpired the earlier evening.

When the cross examination of these witnesses is carefully perused, it do not leave any scope for showing any indulgence, as despite of various suggestions being given, the witnesses appeared to be consistent in regard to the narration of their version about the incident that occurred on 14.6.2012 at the bar “Sea Shell”. Pursuant thereof PW1, one of the injured who had lodged the complaint.

16. The prosecution has also included in the evidence, the scene of offence panchanama drawn on 14.6.2012 proved by PW10 Shri Ditendra naik, who was attached to Cuncolim Police Station where the subject offence was registered under Sections 307, read with 34 of IPC.

He categorically deposed that he had conducted a scene of offence panchanama in the presence of two panch witnesses and attached the bamboo stick with blood stains, one laterite stone with blood stains and pieces of stones drawn as samples, along with the clothes and the sword having stain marks. He had also proved the attachment panchanama (Exh. 46) drawn on 2.7.2012

and procured the report from the Central Forensic Science Laboratory, Hyderabad on 20.8.2014.

17. In the wake of the aforesaid evidence brought on record, the prosecution has proved its case beyond reasonable doubt through its witnesses, three of them are the injured and two are the eye witnesses.

In my considered opinion the prosecution has brought home the guilt of the accused but on appreciating the evidence the trial Judge did not find the evidence sufficient to convict the accused no.2 Taiwan and rightly acquitted him of all the charges. However, on appreciating the evidence of PW1 and PW5, being corroborated by the medical experts as well as two eye witnesses, the learned Judge has rightly arrived at the conclusion that the act committed by the accused, was on account of the incident which had taken place on earlier evening and though offence under Section 307 of IPC is not made out, as to establish the offence, bodily injuries must be of such nature which has the potential of causing death and it is necessary that the act shall be done with the intention or knowledge that the death will be caused coupled with some overt act in execution thereof. However, recording that the act committed by the accused no.1 Darson was not with such intention or knowledge or done in such circumstances, that if

death could have been caused by that act, the offence of murder would have emerged.

By referring to the injuries sustained along with evidence of Dr Manish Patel, that the thumb was detached and it was attached by the micro vascular surgery that was carried out by him, the Session Judge has rightly concluded that there was no intention on the part of the Darson of causing death and therefore no offence under Section 307 of IPC has been made out. However, considering that the prosecution has proved the offence under Sections 323 and 326 of IPC as Darson had voluntarily caused grievous injury on the right thumb of PW5 Irfon with a dangerous weapon like the sword and simple injuries on his brother Anthony as well as PW3 Sara D'Costa a lady in the neighbourhood, the offence under Section 326 of IPC of voluntarily causing grievous hurt with dangerous weapon was held to be proved in addition to Section 323 as the assault resulted into simple hurt being caused to PW1 and PW3.

18. Commensurating with the act of the accused no.1, the present appellant, punishment has been imposed on him and therefore on appreciating the evidence and also hearing the submissions advanced by Mr De Sa as well as Mr Bhobe, in my considered opinion, no interference is warranted in the appeal.

While dismissing the appeal and upholding the judgment dated 31.10.2015 passed by the Additional Sessions Judge South Goa Margao, in Sessions Case No. 22/2014, the judgment being pronounced Mr De Sa, learned counsel appearing for the appellant request for grant of time for the appellant to surrender.

**19.** In the wake of the request so made on instructions of the appellant, I deem it appropriate to direct that upon the appeal being dismissed the appellant shall surrender before the learned Additional Sessions Judge, South Goa, Margao on 18.8.2025 by presenting himself at 11.00 am. If he fails to do so, necessary steps shall be taken for his arrest.

**BHARATI DANGRE, J.**