

CASE NO.:
Appeal (crl.) 1025 of 2002

PETITIONER:
Sattan Sahani

RESPONDENT:
State of Bihar & Ors.

DATE OF JUDGMENT: 01/10/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:

J U D G M E N T

RAJENDRA BABU : J. :

Leave granted.

On being convicted under Section 307 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for a period of five years, the appellant preferred an appeal. The High Court held that the conviction of the appellant should be under Section 326 IPC and not 307 IPC and the sentence was modified to 3 years rigorous imprisonment. In reaching this conclusion, the High Court, after analysing the evidence, held as under :-

"that appellant Sattan Sahani along with other co-accused formed an unlawful assembly, entered into the house of the informant and assaulted the injured witnesses including P.W. 1, Malhu Shahani. Though Malhu was given 'Bhala' blow in his abdomen by appellant No. 3, Sattan Sahani causing penetrating wound, but it appears that he had no intention to kill him because he had given only one blow. As such, offence attracts conviction under Section 326 of the Code for voluntarily causing grievous hurt by dangerous weapon to P.W. 1, Malhu Shahani."

The medical evidence in the case is as per the version put forth by Dr. Jaldhar Prasad Jha, P. W. 10. He stated that on 1.3.1983 at 4 a.m. he examined Malhu Shahni and found one penetrating wound " x 1/10" (depth not probed) on the upper part of the abdomen on midline. He also found one incised wound " x 2/10" into skin deep on the outer side of left eye of Malhu. He also found swelling 4" x 3" on left thigh and a swelling 2" x 1" on left upper arm of Malhu. He opined that the penetrating wound was caused by sharp pointed weapon and incised wound was caused by sharp cutting weapon and the swelling was caused by hard and blunt substance and the age of the injuries was within 12 hours.

It is now contended before us that the appellant had inflicted only one blow in the spur of the moment to Malhu Shahani in the middle of the abdomen; that the injury caused was only " x 1/10" (depth not probed) on the middle of the abdomen and thus did not affect any vital organ of the injured person nor did it impair the functioning of the injured person in any manner.

For conviction under Section 326 the requirements of Section 320 IPC must be satisfied. Considering the fact that though only one blow was caused by the appellant, from the weapon used namely 'Bhala', it must be inferred that it was likely to cause the death of the injured person and, therefore, the offence is made out under Section 326 IPC and he was rightly convicted under that provision.

However, in regard to sentence, we are inclined to take a lenient view in

the matter. It is brought to our notice that there was compromise between the parties and on the basis of compromise petition the trial court directed the other accused who were found guilty of the charges under Sections 147 and 148 to be released on executing a bond to keep peace and be of good behaviour for a period of one year by invoking Section 360 Cr.P.C. The appellant has already undergone about six months of imprisonment so far. The incident took place about two decades back. In these circumstances, we impose the sentence of imprisonment for the period already undergone and to pay a fine of Rs. 2,000/-. In default of payment of fine, the appellant shall undergo imprisonment for a further period of three months. On payment of fine, he shall be released forthwith.

The appeal is allowed in part to the extent indicated above.

JUDIS