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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated the 4th day of June 2003

: P R E S E N T :

THE HON'BLE MR JUSTICE : M F.SALDANHA

A N D

THE HON'BLE MR JUSTICE : M S RAJENDRA PRASAD

CRIMINAL APPEAL No. 324 / 1998

BETWEEN :

The State

..Appellant

(By Sri G Bhavanisingh, Addl S P P)

A N D :

Anthony Vaz,
Aged 62 years, S/o Lawrence Vaz,
R/a Kele House, Neermarga,
Mangalore, Dakshina Kannada.

Respondent

(By Sri K.M Nataraj, Advocate)

Criminal Appeal filed u/s 377 of the Cr P C praying to enhance the sentence imposed on the respondent by the Sessions Judge, Dakshina Kannada, Mangalore, in Cr.A No 75/1996 convicting the respondent for the offences under Sections 324 and 326 I P C. and sentencing him to pay a fine of Rs 500/- on the charge u/s 324 I.P C. and to pay a fine of Rs 1,000/- on the charge u/s 326 I P C with the default sentence of S I for 15



days for the first charge and S.I. for 30 days for the second charge

This appeal coming on for hearing this day, Saldanha, J, delivered the following :

J U D G M E N T

We have heard the learned Addl S.P.P. in support of the appeal His principal contention is that injury No 3, which was inflicted on the girl Latitia Menezes, indicates that there was a chip fracture of the right ulna His submission is that, since there was a fracture injury, Section 326 was invoked and the second submission canvassed is that this was a case where a sword had been used in the assault against a young woman and that, therefore, the trial court was wrong in having shown leniency in the matter of sentence Lastly, the learned S.P.P submitted that such undue leniency/sympathy would create a wrong precedent

2 Dealing with the third submission first, what we need to point out is that undoubtedly, the trial courts are required to impose sentences



that are fair and reasonable and in consonance with the gravity of the offences. Undue lenience is contra indicated, but at the same time, ^{the} doctrine of sentencing prescribes that harshness and vindictiveness must also be avoided at all costs. Recent trends, which are more reformatory, have impelled the courts to temper the sentences with a level of compassion because the courts take full cognizance of several factors viz, the length of the trial and the trauma, which the accused has to undergo. These are some of the factors, which need to be borne in mind while ascertaining as to whether the sentence was adequate or not.

3 There is one other principle which is predominant in cases of this class viz., that it is now well settled law that the trial judge is the best authority to assess the special facts and circumstances of a case, because it is that officer, who has conducted the trial, has had an opportunity of assessing lot of features that are not represented in the appeal paper book and more



importantly, of hearing the parties on the question of sentence. Where judicial discretion has been exercised, an appeal court would be slow in interfering with that order unless it is demonstrated that the decision is rankly perverse or that it has resulted in a gross miscarriage of justice.

4 In the present case, the injuries were not of much consequence and even the invocation of Section 326 I P C , in our considered view, was highly technical because of the reference to a chip fracture. The learned trial Magistrate has assessed the status of the parties, the special features of the case, and has awarded ^a sentence, what in our considered view, was a fair punishment. Theoretically, Section 326 does prescribe for heavy sentences and fines, ^hbut, we have already indicated that the application of that Section itself is technical because this is a border-line case. It is really under these circumstances and more so because 11 years have



now elapsed since the incident that we are not inclined to reopen the case

5. There is one other reason why we refrain from making any drastic modification to the order which is because the accused had appealed against the decision and the appellate court has confirmed the imposition of fine aggregating to Rs 1,500/- and has prescribed default sentences, setting aside the sentence of S I. under both the charges, which were imposed by the trial court. The order appealed against, therefore, no longer survives in the true sense of the term by virtue of the appellate order and that is the additional reason why we decline to interfere with the same. We, however, direct the trial court to issue notice to the injured P.W 2 Latitia Menezes, who appears to be working as a teacher and if her presence can be secured, we direct that the whole of the fine amount of Rs 1,500/- be paid over to her as compensation for the injuries that she had suffered. The record indicates that the fine



amount had already been recovered Hence, this
direction

The appeal stands disposed of with the above
direction

Sd/-
Judge

Sd/-
Judge

ckc/-