

PETITIONER:
SHRI A.C. GANGADHAR

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 28/04/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:
THE 29TH DAY OF APRIL, 1998

Present:

Hon 'ble Mr. Justice G.T.Nanavati

Hon 'ble Mr. Justice S.P.Kurdukar

Mr . Naresh Kaushik and Ms. Lalita Kaushik, Advocates for the appellant.

Mr. Ashok Kumar Sharma and Mr.M. Veerappa, Advocates for the respondents.

J U D G M E N T

The following Judgment of the Court was delivered:
NANAVALI. J

The appellant was convicted by the trial court for the offence punishable under Section 326 IPC and sentenced to suffer imprisonment for one month and to pay a fine of Rs. 1000/-. Not satisfied with the conviction and sentence the appellant filed an appeal along with other convicted accused to the High Court. State had also filed appeal against the acquittal of all the accused and for enhancement of sentence of appellant. The High Court confirmed the conviction under Section 326 and enhanced the sentence from one month to one year. The appellant has, therefore, approached this Court challenging the order of sentence and also his conviction.

What has been proved against the appellant is that he caused an injury with an axe on the head of P.W. 5. The evidence of P.W. 5 has been believed by both the courts and it also stands corroborated by the medical evidence. We find on good reason not to accept the finding recorded by the courts below confirm the conviction of the appellant under Section 326 IPC. The nature of the injury indicates that blow must have been given by A.1 with great force on the forehead of P.W. 5 as it had caused a fracture. Therefore, the conviction to the appellant under Section 326 is quite proper. Considering the nature of injury caused to P.W. 5 we do not think that the sentence imposed upon the appellant can be said to be excessive.

The learned counsel for the appellant, however, submitted that even if it is believed that A.1 had caused grievous hurt he could not have been held guilty either under Section 326 or for any other offence as the said injury was caused by him in exercise of right of private

defence. Both the courts have come to the conclusion that the accused and his companions were the aggressors and that too because they protested against the accused cutting the tree. Therefore, there was no scope for giving any benefit of right of private defence to the appellant. We, therefore, 300 no reason to interfere with the order passed by the High Court. The appeals are, therefore, dismissed. The appellant was released on bail during the pendency of the appeals. His bail is cancelled. He is ordered to surrender to custody forthwith to serve out the remaining part of the sentence.

JUDIS