

CASE NO.:
Appeal (crl.) 766 of 2007

PETITIONER:
MANJAPPA

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 18/05/2007

BENCH:
C.K. THAKKER & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 766 OF 2007
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL) NO. 6142 OF 2006

C.K. THAKKER, J.

1. Leave granted.
2. This appeal is directed against judgment and order passed by the High Court of Karnataka at Bangalore on July 20, 2006 in Criminal Revision Petition No. 1188 of 2003.
3. Short facts giving rise to the present appeal are that on or about July 19, 1997 at about 3.15 p.m., appellant-accused had voluntarily caused simple hurt to complainant-Manju Ramayya Shetty in front of Olaga Mantapa of Murdeshwar. The appellant also said to have assaulted the complainant with a stone resulting in grievous injuries to the complainant. Moreover, the appellant-accused intentionally insulted the complainant by abusing him in filthy language thereby giving him provocation knowing full well that such provocation would make the complainant to break public peace or to commit other offences. A complaint was filed on July 20, 1997 and after usual investigation, charge was framed against the accused on November 13, 1998 by the Judicial Magistrate, First Class, Bhatkal for offences punishable under Sections 323, 325 and 504, Indian Penal Code (IPC) in Criminal Case No. 2488 of 1997. The accused pleaded 'not guilty' to the charge.
4. The prosecution in support of the case, examined eight witnesses including injured complainant Manju Ramayya Shetty. The trial Court, after appreciating the prosecution evidence, by its judgment, dated March 08, 1999 held that it was proved by the prosecution that the accused caused simple as well as grievous hurt to the complainant, and thereby, he had committed offences punishable under Sections 323 and 325, IPC. Regarding the third charge, however, that the accused committed an offence punishable under Section 504, IPC, according to the Court, the prosecution was not able to establish it and the accused was ordered to be acquitted. So far as sentence is concerned, the trial Court awarded Simple Imprisonment for three months and a fine of Rs. 500/- (Rupees five hundred only), in default to undergo Simple Imprisonment for fifteen days for the offence punishable under Section 323, IPC. He was also ordered Simple Imprisonment for one year and

fine of Rs. 3000/- (Rupees three thousand only), in default to undergo Simple Imprisonment for three months for the offence punishable under Section 325, IPC. The Court also ordered that out of the fine amount so received, the injured-complainant will be paid compensation of Rs. 2000/- (Rupees two thousand only) under Section 357(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

5. Being aggrieved by the order of conviction and sentence passed by the trial Court, the appellant preferred an appeal in the Court of Sessions Judge, Fast Track Court, Karwar being Criminal Appeal No. 19 of 1999. The learned Sessions Judge, after considering the evidence and hearing the arguments, acquitted the appellant for the offence punishable under Section 323, IPC and set aside the order of conviction and sentence. He, however, confirmed the order of conviction of the accused for the offence punishable under Section 325, IPC. The Appellate Court, however, was of the view that it was a fit case to reduce sentence of Simple Imprisonment from one year to six months. The appellate Court also directed the accused to pay compensation of Rs. 3000/- (Rupees three thousand only) to the complainant who had sustained grievous injuries, independently of what the trial Court awarded. The sentence of fine and compensation passed by the trial Court was confirmed.

6. The appellant challenged even that order passed by the Appellate Court by filing Revision Petition in the High Court. The High Court confirmed the order of conviction. The High Court also partly allowed the Revision by reducing sentence and ordering the appellant to undergo Simple Imprisonment for 1= months and to pay fine of Rs. 1000/- (Rupees one thousand only) in addition to what was ordered by the Courts below. The appellant has approached this Court against the said order passed by the High Court.

7. On November 23, 2006, the matter was placed before a Chamber Judge since exemption from surrendering was sought. The prayer was accepted by the learned Chamber Judge in view of the fact that the sentence imposed was 1= months' Simple Imprisonment and it was averred that the accused was in custody for fifteen days. Thereafter notice was issued and the appellant was ordered to be released on bail.

8. We have heard the learned counsel for the parties.

9. The learned counsel for the appellant submitted that though all the courts had recorded a concurrent finding that the appellant has committed an offence punishable under Section 325, IPC and had caused grievous injury to the complainant, they failed to consider the provisions of Section 360 of the Code which provides for grant of probation to an offender in certain cases. The said section enables the Court to release a person who has been convicted of certain offences by releasing him on probation of good conduct and behaviour. Section 361 requires the Court to record special reasons where it does not grant benefit of Section 360 of the Code.

10. The said Section reads thus;
361. Special reasons to be recorded in certain cases.\027Where in any case the Court could have dealt with,--

(a) an accused person under Section 360 or under

the provisions of the Probation of Offenders

Act, 1958 (20 of 1958), or

(b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

11. The counsel referred to a decision of this Court in *Om Prakash & Ors. v. State of Haryana*, (2001) 10 SCC 477 and submitted that all the orders deserve to be quashed and set aside by granting benefit of probation to the appellant who, though more than 21 years of age, the offence in question was his first offence.

12. The learned counsel for the State, on the other hand, supported the order of the courts below. He submitted that all the three courts have concurrently found that the appellant had caused serious injury to the complainant and had ordered conviction and imposed sentence, which calls for no interference. He also submitted that the complainant had suffered seven injuries and had lost two teeth. It was submitted that when the High Court reduced sentence from six months to 1= months, no further reduction in the sentence may be made by this Court in exercise of discretionary power under Article 136 of the Constitution.

13. Having heard learned counsel for the parties, in our opinion, the submission of the learned counsel for the appellant that the case is covered by *Om Prakash* is not well-founded. In *Om Prakash*, the case of the prosecution was that the entire incident was an outcome of an accident wherein the wife of the complainant was hit by a tractor driven by one of the accused. It was, therefore, clear that in *Om Prakash*, one of the important elements of a crime 'mens rea' was absent. In the case on hand, the appellant-accused caused grievous injury to the complainant intentionally and hence *Om Prakash* has no application.

14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the facts and circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and *Om Prakash* does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed.

15. Keeping in view all the facts and circumstances, in our opinion, ends of justice would be met, if we order that the substantive sentence which the appellant has already undergone is held sufficient. We are also of the view that it would be appropriate if over and above the amount which the appellant herein has paid towards fine and also towards compensation to the injured victim, the appellant is ordered to pay an additional amount of Rs. 10,000/- (Rupees ten thousand only), to the complainant by way of compensation.

16. For the foregoing reasons, the appeal is partly allowed by holding that the sentence already undergone by the appellant is held sufficient and adequate in the facts and circumstances of the case. It is, however,

ordered that the appellant will pay an additional amount of Rs. 10,000/- (Rupees ten thousand only) to the injured complainant within a period of one month from today over and above the amount of fine and compensation ordered to be paid by the courts below.

17. Ordered accordingly.

JUDIS