

CASE NO.:
Appeal (crl.) 89 of 2005

PETITIONER:
Mathai

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 12/01/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (Crl) No. 2285/2004)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Kerala High Court upholding view of the trial Court that the appellant (hereinafter referred to as the 'accused') was guilty of offence punishable under Section 326 of the Indian Penal Code (in short the 'IPC') and has been rightly convicted under such provision with corresponding sentence of two years rigorous imprisonment. Learned Judicial First Class Magistrate, Kolencherry convicted the accused and sentenced him which was confirmed by learned Third Additional Sessions Judge, Ernakulam. The revision application filed by the accused under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short the 'Code') was dismissed by the impugned order.

The prosecution case is that on 27.10.1992 at about 5.30 p.m. while Krishnan Kutty (PW-1) was walking along the public road near Pulinchode Cruz Junction, the accused hit him on his head and face with a stone causing injuries. PW-1 was taken to the Medical Mission Hospital, Kolencherry for treatment. On the basis of Ext. P1 statement given by PW-1, Kumaran (PW-7) the Head Constable of Puthencruz Police Station registered Crime No. 220/1992 under Ext. P3 FIR. Radhakrishnan (PW-8), the then Asst. Sub Inspector of Police, Puthencruz took up the investigation in the case. On completion of the investigation, V. Radhakrishnan Nair (PW-10) the then Sub Inspector of Police, Puthencruz laid the charge before the Court.

The accused denied the charge. Thereupon the prosecution examined ten witnesses to further its case. It was not seriously disputed during trial that PW-1 sustained injuries on the date of occurrence as alleged by the prosecution. Immediately after the occurrence, PW-1 was taken to the Medical Mission Hospital, Kolencherry where he was examined by Dr. Reji Paul (PW-9) who issued Ext. P7 Wound Certificate. Ext. P3 is the Discharge Certificate issued by Dr. R.V. Devdas (PW-5). Thus, the medical evidence in the case shows that PW-1 had sustained the injuries as stated by him.

The courts below placed reliance on the evidence of the injured who was examined as PW-1 and found that his evidence was corroborated by the evidence of Narayan (PW-2), who claimed to be an eye-witness. Accordingly, conviction was made and sentence imposed which has been upheld by the High Court.

In support of the appeal, learned counsel for the appellant submitted that the evidence of PWs. 1 and 2 should not have been relied upon by the courts below and the injuries as noticed by the Doctor (PW-5) do not constitute a grievous injury. In addition, weapon allegedly used cannot be termed as a dangerous weapon to attract Section 326 IPC. In any event, it was submitted that the appellant has suffered imprisonment for a major portion of the sentence awarded and as more than a decade has already elapsed, the sentence needs to be suitably modified.

In response, learned counsel for the respondent submitted that PW-1 was the victim and there was no reason as to why he would falsely implicate the accused. According to him, the courts below have rightly placed reliance on his evidence which was corroborated by the evidence of PW-2. The doctor's evidence clearly shows that a grievous hurt was caused and considering the fact that a big stone was used, Section 326 IPC has been rightly applied.

We find that PW-1 is the victim of the assault allegedly made by the accused. His evidence is clear and cogent. As he was a victim, in the absence of any material to show as to why he would falsely implicate the accused, his evidence has been rightly relied upon. PW-2's evidence has also corroborated his evidence.

The residual question is whether the factual position indicates that any grievous hurt was caused and whether the weapon used was a dangerous weapon. The doctor who examined the injured noticed following injuries.

1. Lacerated wound over the left posterior partial region of the head.
 2. Fracture of the left upper second incisor tooth involving the pulp and the root.
- Alleged cause of the injury is 'assault'. Opinion could be as alleged. He identified his signature in Ext. P3 discharge certificate.

Section 325 deals with punishment for voluntarily causing grievous hurt.

Section 326 deals with offence of voluntarily causing hurt by dangerous weapons or means.

Section 326 provides that whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and also with a liability to pay a fine.

Sections 325 and 326, like the two Sections immediately preceding, provide the ordinary punishment and punishment under certain aggravating circumstances of the offences mentioned thereunder. The two latter Sections apply to the case of causing "grievous hurt" and the immediately preceding two Sections to the case of 'hurt'.

"Grievous hurt" has been defined in Section 320 IPC, which read as follows:

"320 Grievous Hurt \026 The following kinds of hurt only

are designated as "grievous"-

First \026 Emasculation.

Secondly - Permanent privation of the sight of either eye.

Thirdly \026 Permanent privation of the hearing of either ear.

Fourthly \026 Privation of any member or joint.

Fifthly \026 Destruction or permanent impairing of the powers of any members or joint.

Sixthly \026 Permanent disfiguration of the head or face.

Seventhly \026 Fracture or dislocation of a bone or tooth.

Eighthly \026 Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.

The expression "any instrument which used as a weapon of offence is likely to cause death" has to be gauged taking note of the heading of the Section. What would constitute a 'dangerous weapon' would depend upon the facts of each case and no generalization can be made.

The heading of the Section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are : (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. As was noted by this Court in *State of U.P. v. Indrajeet Alias Sukhatha* (2000(7) SCC 249) there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. As noted above the evidence of Doctor (PW 5) clearly shows that the hurt or the injury that was caused was covered under the expression 'grievous hurt' as defined under Section 320 IPC. The inevitable conclusion is that a grievous hurt was caused. It is not that in every case a stone would constitute a dangerous weapon. It would depend upon the facts of the case. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable.

In the instant case considering the size of the stone which was used, as revealed by material on record, it cannot be said that a dangerous weapon was used. Therefore, the conviction is altered to Section 325 IPC. No hard and fast rule can be applied for assessing a proper sentence and a long passage of time cannot always be a determinative factor so far as sentence is concerned. It is not in dispute that a major portion of the sentence awarded has been suffered by the appellant. On the peculiar facts of the case we restrict it to the period already undergone.

The appellant who is stated to be in custody shall be released forthwith, unless he is required to be in custody in connection with any of the case. The appeal is accordingly disposed of.

JUDIS