

**SUPREME COURT OF INDIA**

Ganga Prasad

Vs.

State of U.P

Crl.A.No.224 of 1978

(G.L. Oza and M.M.Dutt, JJ.)

23.01.1987

**ORDER**

**G.L. Oza, J.**

1. This appeal has come to this Court on special leave granted by this Court against conviction of the appellant under Section 326 IPC who is sentenced to undergo imprisonment for four years. The leave was granted on the question of sentence and on the question of offence.

2. The injuries suffered by the complainant which have been reproduced in the judgment of the High Court show that there were three lacerated wounds and one contusion. One of the injuries that is injury No. 1 on X-ray examination was found to be grievous as there was a fracture. It appears that the prosecution allegation was that a spade (phawra) was used as an instrument for an offence and taking a spade as a sharp-edged weapon the conviction of the appellant was maintained under Section 326 IPC.

3. It could not be doubted that the injuries in the nature of iterated wound or contusion could not be caused by an impact of a sharp-edged weapon on the human body. Such injuries are only possible by the use of a hard and blunt object. May be that the was the instrument of an offence but it might have been used r- m which the hard and blunt part of it came in contact

1; of the injured person. In view of the nature of injuries on the complainant the conviction of the appellant under Section 326 IPC could not be sustained. At best he could be convicted of an offence under Section 325 IPC. Along with the special appeal an application for compounding has also been filed in the matter has been compounded by the complainant. An offence under Section 325 is compoundable with the permission of the court.

4. The incident was of 1971 and the parties are neighbours living in the same house. In view of these circumstances in our opinion it But that would not make any difference for the purposes of this case. On May 19, 1986 the Under Secretary to the Government of India conceded the demand of the detenu for legible copies of documents and directed the

(1987) 2 SCC 232

Directorate of Enforcement to supply a duplicate set of documents to the petitioner. A copy of this letter was also sent to the detenu and was acknowledged by him on May 21, 1986. There is a controversy as regards the date on which the legible copies of documents were actually given to the detenu. According to the detenu they were served on him on July 1, 1986, whereas according to the counter-affidavit of Shri S.K. Chowdhry, Under Secretary in the Ministry of Finance, the documents were supplied on June 21, 1986. It does not make any difference whether the documents were supplied on June 21, 1986 or on July 1, 1986 since we find that even before legible copies of documents were supplied to the detenu, the detention order was confirmed on June 14, 1986. The detenu was thus clearly denied the opportunity of making a representation and there was therefore a clear contravention of the right guaranteed by Article 22 of the Constitution. The detenu is entitled to be set at liberty. We are told that the detenu is now on parole. He need not surrender.

5. In SLP (Crl.) 2306/86 special leave is granted and the appeal is allowed in terms of the above order in the writ petition.