

Avinash Shetty

v.

State of Karnataka & Another

K.G. BALAKRISHNAN AND AR. LAKSHMANAN, JJ.,

(Supreme Court Of India)

Criminal Appeal No. 1007 Of 2004 | 13-09-2004

1. Leave granted.

2. The appellant was convicted by the IInd Additional CJM, Mangalore for the offence punishable under S.326 IPC. The allegation was that on 25-5-1993 at about 11.45 p.m. he assaulted PW 1 Dr. Ishwaran by using sword. The appellant was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5000, in default, to undergo SI for three months. The conviction and sentence was challenged by the appellant before the Sessions Judge, Dakshina Kannada, Mangalore and the Sessions Court confirmed the conviction and sentence. Aggrieved by the same, the appellant filed revision before the High Court and the same was dismissed. The conviction and sentence of the appellant under S.326 IPC is challenged before us.

3. We heard learned counsel for the appellant and counsel for the respondents.

4. The counsel for the appellant submitted that the injuries sustained by PW 1 were not grievous in nature and the conviction of the appellant for the offence under S.326 IPC is not sustainable in law. Our attention was drawn to the wound certificate prepared by PW 2. There were four injuries on the body of the injured, PW 1. Admittedly Injuries 2 to 4 were simple in nature, the dispute was with regard to Injury 1. Description of Injury 1 is as follows:

An incised wound measuring 3" x 1" over the left hand and the nerve of the middle finger, index finger and the fourth finger was cut.

5. The doctor in his cross examination stated that he had not noticed any fracture of the bone. He also stated that Injury 1 was grievous in nature.

6. By going through the description of the wound certificate, it is not correct to say that the injury was a grievous one, as there was no fracture to the bone either of the middle finger or of the index finger of the left hand. There is also no case that the victim would have suffered severe body pain during the space of twenty days or would have been unable to follow his ordinary pursuits for that period. There is also no case that there was permanent privation of sight of either eye, permanent privation of hearing of either ear or privation of any member or joint or destruction or permanent impairing of the power of any member or joint. On a plain description of the wound, it would not be grievous hurt coming under S.320 IPC. The opinion of the doctor that Injury 1 was grievous in nature was erroneous and it is only to be ignored.

7. Therefore the offence committed by the appellant would only come under S.324 IPC. An application for compounding the offence under S.320 CrPC is filed. The counsel for the complainant, PW 1 stated that he has no objection to compounding the offence.

8. In view of the submissions made by the counsel on either side, the offence committed under S.324 IPC is permitted to be compounded. The conviction and sentence entered against the appellant is set aside.

9. The appeal is disposed of accordingly.