

# SUPREME COURT OF INDIA

Prabhu

Vs.

State of Madhya Pradesh

CrI.A.No.1956 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

03.12.2008

## JUDGMENT

**Dr. Arijit Pasayat, J.**

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court, Jabalpur Bench, holding the appellant guilty of offence punishable under Section 326 read with Section 34 of the *Indian Penal Code, 1860* (in short the 'IPC'). The appellant was sentenced to undergo rigorous imprisonment for 10 years. By the impugned judgment three appeals were disposed of being Criminal Appeal No.185 of 1995, 184 of 1995 and 261 of 1993. The appeal filed by accused Nanhe Lal was dismissed while the appeal filed by the appellant was partly allowed altering his conviction for offence punishable under Section 302 read with Section 34 IPC to one under Section 326 read with Section 34 IPC. Similar was the position in respect of co-accused Jagdish.

3. Prosecution version in a nutshell is as follows:

“A few months before the incident dated 28.12.1987, Dropadibai, daughter of Gayaprasad was molested by accused Prabhu about which he was facing prosecution in the court. Accused Prabhu Dayal was in this context trying to pressurize deceased Shankar, brother of Dropdibai, to amicably settle the matter, but finding that he did not budge, the accused persons who were related started bearing a grudge against Shankar. On 28.12.1987 at about 9.00 in the morning, Shankar had gone out in the village. At 11 O' clock Gayaprasad (PW-5) had gone to call his ploughman followed by Rishiraj (PW-9). No sooner that they reached Soryana Mohalla, they heard the call of Shanker that he be saved. Both Gayaprasad and Rishi Raj rushed to the place and they noticed that the three accused were beating Gayaprasad. Accused Nanhelal was armed with Katarna (a sharp instrument for cutting) while the other two were armed with lathis. It is alleged that all of them administered several blows with their respective weapons and caused severe injuries and thereafter ran away towards the

jungle. The report of the incident Ext.P-12 was lodged by Gayaprasad (PW-5). Fourteen external injuries were found on the body of the deceased. As per the opinion of the Autopsy Surgeon, the death of the deceased was caused due to extensive hemorrhage on account of shock due to injury No.8 mainly and injury Nos. 13 and 14 causing hemorrhage. They were incised wounds. Since accused persons abjured guilt, trial was held. Each of the accused persons was convicted as noted above. Appeals were filed before the High Court. So far as the appellant is concerned, it was submitted that he could not be convicted in terms of Section 302 read with Section 34 IPC as only accused Nanhe, according to the prosecution, caused incised wounds. The appellant was holding only a stick. The High Court relied on the evidence of two eye-witnesses PWs 5 and 9 and held that the appellant cannot be held guilty of offence punishable under Section 302 read with Section 34 IPC. It was held that the prosecution has not proved that each of the participating culprits had the same intention and each one shared the intention of the other. The High Court noticed that the accused Prabhu and Jagdish had caused lacerated wounds and, therefore, the knowledge which can be inferred from the said acts is that they intended to cause grievous hurt. Accordingly, the conviction as noted above was altered.”

4. Learned counsel for the appellant submitted that the appellant cannot be convicted in terms of Section 326 read with Section 34 IPC. It was submitted that none of the injuries were grievous hurts and the sentence in any way is very harsh.
5. Learned counsel for the respondent-State on the other hand supported the judgment.
6. Section 325 deals with punishment for voluntarily causing grievous hurt.
7. Section 326 deals with offence of voluntarily causing hurt by dangerous weapons or means.
8. 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 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.
9. Sections 325 and 326, like the two Sections immediately preceding, provide the ordinary punishment and punishment under certain aggravating circumstances of the offences mentioned there under. The two latter Sections apply to the case of causing "grievous hurt" and the immediately preceding two Sections to the case of 'hurt'.
10. "Grievous hurt" has been defined in Section 320 IPC, which read as follows:

"320 Grievous Hurt - The following kinds of hurt only are designated as "grievous"-  
First - Emasculation. Secondly - Permanent privation of the sight of either eye.  
Thirdly - Permanent privation of the hearing of either ear. Fourthly - Privation of any  
member or joint. Fifthly - Destruction or permanent impairing of the powers of any  
members or joint. Sixthly - Permanent disfiguration of the head or face. Seventhly -  
Fracture or dislocation of a bone or tooth. Eighthly - 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."

11. 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.

12. 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.

13. 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*<sup>1</sup> 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. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 expressions "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.

14. The above position was highlighted in *Mathai v. State of Kerala*<sup>2</sup>.

15. Considering the principles set out above, certainly the appellant was guilty of offence punishable under Section 326 read with Section 34 IPC. However, in the peculiar facts of the case, the sentence of 5 years rigorous imprisonment would meet the ends of justice.

16. The appeal is allowed to the aforesaid extent.

<sup>1</sup>(2000(7) SCC 249)

<sup>2</sup>(2005 (2) JT 365)