SUPREME COURT OF INDIA

Omanakuttan

Vs.

The State of Kerala

Crl.A.No.873 of 2019

(Abhay Manohar Sapre and Dinesh Maheshwari,JJ.,)

09.05.2019

JUDGMENT

Dinesh Maheshwari.J..

SK (Crl.) No. 6293/2018)

1. Leave granted.

2. In this appeal, the accused-appellant has called in question the judgment and order dated 05.06.2018 in Criminal Revision Petition No. 2859 of 2004 whereby, the High Court of Kerala at Ernakulam upheld the judgment and order dated 23.09.2004 passed by Additional District and Sessions Judge, Thodupuzha in Criminal Appeal No. 253 of 2002 affirming the judgment and order dated 04.12.2002 by the Judicial First Class Idukki in CC No. 126 of 1999 whereby, the accused-appellant was found guilty of the offence punishable under Section 326 of the Indian Penal Code ('IPC') and was sentenced to simple imprisonment for one year together with fine of Rs. 5,000/- and default stipulation.

3. The background aspects, so far relevant for the present purpose, could be noticed, in brief, as follows:

> 3.1. The prosecution case has been that the accused-appellant and the injured victim Sunil Kumar (PW-1) were neighbours. On 26.11.1997 at about 6 p.m., while the victim PW-1 was passing through Mannathara- Thopramkudy Panchayat Road, the appellant along with his wife (accused No. 2) poured acid on the victim from a ridge on the left side of the road. Allegedly, the appellant and the victim had previous enmity due to which, the appellant poured acid, causing serious injuries over the head, neck, shoulder and other parts of the body of the victim. The accused persons were charge- sheeted by the Sub Inspector of Police, Murikkassery Police Station in Crime No. 94 of 1997 for the offence under Section 326 read with Section 34 IPC. The case was tried by the Judicial First Class Magistrate in CC No. 126 of 1999, wherein ten witnesses were examined on behalf of the prosecution.

3.2. PW-1, the injured victim, in his testimony stated that the accused- appellant poured red-coloured liquid upon him from a yellow bucket while he was coming back from Thopramkudy; that the liquid was poured upon him from a height on the left side of the body due to which, his body began to burn, he tore off his shirt and dhoti and screamed; his mother (PW-2) came rushing to him crying; they ran towards a tea shop; and PW-4 and PW-5 took him to hospital where he remained as inpatient for 3 months. In response to the question if he was capable of doing his daily routine by himself during those 3 months, he replied in the negative. The testimony of PW-1 was corroborated by his mother PW-2, who was walking a few strides behind him at the time of the incident. Further, the witnesses PW-3, PW-4 and PW-5 also stated having seen the victim running towards the teashop.

3.3. The treating doctor of the victim, PW-8 stated that the victim was examined by him on 26.11.1997 at about 7.45 p.m. and that acid burns were present on the left side of the body of the victim, involving forehead, scalp and neck, back of chest, left buttock and front of left thigh; that the victim remained an inpatient and was discharged on 18.01.1998. He further stated that there was a chance of disfigurement of the injured area. In cross¬examination, the doctor stated that the victim could carry on his daily affairs while under treatment; that there was no disfigurement at the time of drawing the wound certificate (Ex. P/5) as the skin was healing and that scars would develop only later. In defence, the accused examined one witness DW-1 who suggested that on the date of incident, the appellant was working as carpenter in his house until 6 O'clock in the evening.

3.4. After scrutinizing the relevant evidence, the Judicial Magistrate First Class, by his judgment and order dated 04.12.2002, convicted the appellant for the offence under Section 326 IPC and sentenced him as mentioned hereinbefore. However, the accused No. 2, wife of the appellant, was acquitted for absence of evidence against her.

3.5. The appeal preferred by the accused-appellant before the Additional District and Sessions Judge was dismissed by judgment and order dated 23.09.2004 with the observations that the injuries inflicted by using corrosive substance were grievous in nature and it was reasonable to think that the victim was unable to follow his ordinary pursuits during the period of hospitalisation.

3.6. Further, the revision petition preferred by the accused-appellant was dismissed by the High Court of Kerala, Ernakulam after finding no ground to interfere in the concurrent findings of the subordinate Courts. Hence this appeal.

4. It may be pointed out that in the petition seeking leave to appeal, the prayer of the accused-appellant seeking exemption from surrendering was granted at the initial stage but, on 13.08.2018, after considering the matter for admission and while issuing notice, this Court recalled the order granting exemption from surrendering; and notice was also issued to examine the question as to whether any case for enhancement of the sentence was made out, having regard to the nature of offence alleged.

5. We have heard learned counsel for the parties on the merits of appeal as also on the question of sentence. The main plank of contentions of the learned counsel for the appellant has been that the victim PW-1 never stated in his evidence that he was in severe bodily pain for 20 days nor did he state that he had suffered disfigurement; and merely for his hospitalisation for more than 20 days, no inference could be drawn that he was in severe bodily pain or was unable to follow his ordinary pursuits. The learned counsel emphasised on the submissions that in the opinion of the doctor, the victim was able to follow his ordinary pursuits without any aid and hence, the ingredients of Section 320 IPC are not established. The learned counsel submitted that the appellant deserves to be acquitted and in any case, when the incident took place about 22 years back and the appellant is now 63 years of age, enhancement of punishment is not called for. Per contra, learned counsel for the respondent has duly opposed the submissions made on behalf of the appellant with reference to the findings recorded against him.

6. Having heard learned counsel for the parties and having perused the matter placed on record, we are satisfied that the appellant has rightly been convicted for the offence under Section 326 of IPC; and though the punishment awarded to him, being of simple imprisonment for a term of one year and fine of Rs. 5,000/- with default stipulation, is rather towards the side of inadequacy but, looking to overall circumstances of this case, we would refrain from enhancing the same.

7. So far as the basic fact, that the appellant poured acid on the body of the victim, is concerned, the same stands proved beyond any doubt by the evidence on record, including the testimony of the victim PW-1 as also his mother PW-2. The fact that the victim sustained extensive acid burns on the left side of his body also stands duly proved in his testimony read with the testimony of the doctor PW-8. The subordinate Courts as also the High Court have thoroughly examined the material on record and have returned concurrent findings against the appellant. After having perused the record, we find nothing of any infirmity or perversity in such findings.

8. The principal contention urged in this appeal is that the case would not fall under Section 320 IPC for the victim having not stated that he was in severe bodily pain for 20 days nor did he state that he has suffered disfigurement and, on the contrary, the doctor having stated that the victim was capable of carrying on with his daily pursuits during hospitalisation without any aid. The submissions remain bereft of substance and do not make out a case for interference, as noticed infra.

9. Section 320 IPC specifies the kinds of hurt that are designated as grievous hurt and reads as follows:

> “Section 320 Grievous hurt.- The following kinds of hurt only are designated as "grievous":-
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> First - Emasculation.
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> 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 member 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."

Section 326 IPC, providing punishment for causing grievous hurt by dangerous weapons or means, reads as under:

"Section 326 - Voluntarily causing grievous hurt by dangerous weapons or means.- 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 heated substance, or by means of any poison 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 shall also be liable to fine."

10. In the present case, the extensive injuries suffered by the victim, being of acid burns involving forehead, scalp, neck, back of chest, left buttock and front of left thigh are distinctly stated in the wound certificate Ex. P/5.

10.1.The victim sustained the aforesaid injuries due to the effect of the acid poured upon him by the appellant. The acid is undoubtedly a corrosive substance within the meaning of Section 326 IPC. The victim remained hospitalised for more than 50 days. It would be wholly unrealistic to postulate that even with such extensive acid burn injuries from head to thigh on the left portion of his body and long-drawn hospitalisation, the victim may not have been in severe bodily pain for a period of more than 20 days. The victim also stated in his examination-in-chief that he was unable to carry out his daily routines by himself during hospitalisation; and there had not been any suggestion in the cross-examination to challenge such an assertion of the victim. Above all, the Trial Court specifically noticed the fact that the victim had suffered permanent disfigurement on the head, when he was examined in the Court. In the given set of circumstances and the facts available on record, the statement of the doctor PW-8 to the effect that the patient could carry on his daily

affairs without any aid while being treated in the hospital, does not take away the substance of the matter that the case was clearly covered under clauses ‘Sixthly' and ‘Eighthly' of Section 320 IPC. In fact, even the doctor PW-8 stated that there was no immediate disfigurement during the time the skin was healing; and that the scars would develop only later.

11. It needs hardly any emphasis that the act of causing grievous hurt by use of acid, by its very nature, is a gruesome and horrendous one, which, apart from causing severe bodily pain, leaves the scars and untold permanent miseries for the victim. The legislature having taken note of the gravity of such an offence has, by way of Act No. 13 of 2013, inserted Sections 326A and 326B IPC, providing higher punishment with minimum imprisonment for the offences of voluntarily causing grievous hurt by use of acid and voluntarily throwing or attempting to throw acid. The present one being a matter relating to the offence committed in the year 1997, we need not elaborate on the provisions now inserted, but, looking to the gravity of offence, the punishment as awarded in this matter prima facie appears to be rather inadequate. It was for this reason that, while entertaining the matter, this Court had issued notice to examine the question if the punishment deserves to be enhanced.

12. However, having regard to the facts and circumstances of the case and more particularly the facts that the offence was committed in the year 1997 and the accused-appellant is now said to be 63 years of age, we would refrain from enhancing the punishment and would prefer leaving the matter at that only.

13. For what has been discussed hereinabove, this appeal fails and is, therefore, dismissed.