

(
SLP(Crl.)No. 2108 OF 2004
ITEM No.53

Court No. 7

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 2108/2004

(From the judgement and order dated 20/10/2003 in CRLRC 813/02
of The HIGH COURT OF KARNATAKA AT BANGALORE)

AVINASH SHETTY

Petitioner (s)

VERSUS

STATE OF KARNATAKA & ANR.

Respondent (s)

(With Appln(s). for stay and permission to compound the offence and bail)
(With Office Report)

Date : 13/09/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Petitioner (s) Mr. A.V. Rangam, Adv.
Mr. T.V. Ratnam, Adv.
Mr. A. Rangadhan, Adv., Mr. Buddy A. Rangadhan, Adv.

For Respondent (s) Dr. Sushil Balwada, Adv.
Mr. Devendra Singh, Adv.
Mr. Sanjay R. Hegde, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

Heard learned counsel for the parties.

The appeal is disposed of in terms of the signed
order.

(R.K. DHAWAN) (RAMESH CHAND)
COURT MASTER COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1007 OF 2004

Avinash Shetty ...Appellant.

Versus

State of Karnataka & Anr. ... Respondents.

O R D E R

Leave granted.

The appellant was convicted by the II Addl. C.J.M., Mangalore for the offence punishable under Section 326 of the I.P.C. 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.5,000/-, in default, to undergo S.I. 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 u/s 326 IPC is challenged before us.

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

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The counsel for the appellant submitted that the injuries sustained by PW-1 was not grievous in nature and the conviction of the appellant for the offence u/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 injury nos.2 to 4 were simple in nature, the dispute was with regard to injury no.1. Description of injury no.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.

Dr. in his cross examination stated that he had not noticed any fracture of the bone. He also stated that injury no.1 was grievous in nature.

By going through the description of the wound certificate, it is not correct to say that injury was 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 victim would have suffered severe bodily 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 the 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 the plain description of the wound, it would not be grievous hurt coming under Section 320 of the IPC.

The opinion of the doctor that the injury no.1 was grievous in nature was erroneous and it is only to be ignored.

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Therefore the offence committed by the appellant would only come under Section 324 IPC. An application for compounding the offence u/s 320 Cr.P.C. is filed. The counsel for the complainant PW-1 stated that he has no objection to compounding the offence.

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

The appeal is disposed of accordingly.

.....J
(K.G. BALAKRISHNAN)

.....J
(DR. AR LAKSHMANAN)

NEW DELHI ;
SEPTEMBER 13, 2004.