

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1356/2010

JADDA VENKATESHWARLU

APPELLANT (S)

VERSUS

STATE OF A.P.

RESPONDENT (S)

O R D E R

This appeal is preferred against the judgment and order of conviction and sentence for the offence punishable under Section 498A and 307 of the Indian Penal Code (for short 'the Code') directing the appellant to undergo punishment for a period of 7 years, 4 months rigorous imprisonment and pay a fine of Rs. 5,000/- for the offence punishable under Section 307 of the Code, in default to suffer 3 months simple imprisonment and further conviction and sentence of 2 years rigorous imprisonment and to pay a fine of Rs.2000/- for the offence under Section 498A of the Code, in default to suffer 2 months simple imprisonment.

The charge levelled against the appellant is in relation to the incident occurred on 24.10.1998 at about

9.30 a.m. when PW-1, the wife, was standing in front of her parents' house, the accused had taken stout stick and beat her on her both hands and legs indiscriminately with an intention to kill her. Due to the said beating, she sustained fractures of both legs and she fell down. She was shifted to the Government Hospital, Vinukonda and in the hospital, PW-7, Asstt. Sub-Inspector of Police, Savalyapuram Police Station, had recorded the statemetrn of PW-1, on the basis of which a case in Crime No. 82 of 1998 has been registered under Section 498A and 326 of the Code.

As per the evidence of PW-6, the doctor, who issued the wound certificate (Exh.P-5) relating to PW-1, the wife, following injuries were found on the body of PW-1:

"1. A contusion of size 2" x 1" present on dorsum of right forearm leading to fracture of both radius and ulna.

2. A lacerated injury of size 1 1/2" x 1/2" present between left index and middle finger in the interdigital web, fresh bleeding present.

3. A perferated injury surrounded by contusion of size 1" x 1" present above the medial malleous of left leg. Fresh bleeding present.

4. A contusion of size 2" x 1" present on right leg on lower 1/3 with fracture of lower end of fibula."

Both the trial court as well as the appellate court were of the view on appreciation of the evidence on record that the offence under Section 307 and 498A of the Code are proved and, therefore, convicted and sentenced the appellant for the aforesaid period. The correctness of the said concurrent finding recorded by the courts below is under challenge before us in this appeal by the appellant by grant of leave.

Learned counsel appearing for the appellant submitted that having regard to the nature of injuries mentioned in the wound certificate (Exh.P-5) given by the doctor (PW-6), the case does not fall within the ambit of Section 307 of the Code. At best it can be an offence punishable under Section 325/326 of the Code. Per contra, learned counsel appearing for the State has vehemently sought to justify the impugned judgment and order stating that having regard to the nature of injuries sustained by the victim wife (PW-1), the case clearly falls under Section 307 of the Code. The learned counsel further submitted that the concurrent finding of fact was recorded by the courts below on the basis of proper appreciation of the evidence on record particularly the injuries sustained by the victim wife (PW-1) and the courts below rightly came to the

conclusion and held that the appellant had the intention to kill the victim and the injuries caused on the body of the victim are greivous in nature. Therefore, the appellant had the intention to attempt to cause death of the victim wife. Thus, the learned counsel for the State very vehemently submitted that the impugned judgment and order of conviction and sentence does not call for interference. In support of the case the learned counsel placed reliance on a decision of this Court rendered in the case of Ratan Singh v. State of M.P. & Anr., (2009) 12 SCC 585.

After hearing learned counsel for the parties we have given our careful consideration to find out as to whether the judgment and order of conviction and sentence under Section 307 of the Code is allowed to be sustained. On perusal of the evidence of PW-1 to PW-4, wound certificate (Exh.P-5) and PW-6, the doctor, we are of the considered view that the injuries caused to the victim wife (PW-1) by the appellant are greivous in nature. Therefore, the concurrent finding recorded by the first appellate court on reappriciation of evidence on record affirming the judgment and order of conviction and sentence under Section 307 of the Code is not sustainalbe in law for the reason that the nature of injuries suffered by the wife of the appellant, as

mentioned in Exh.P-5 are greivous in nature, and therefore, the case falls under the ambit of Section 326, which is triable by the learned Magistrate under the Schedule to the Criminal Procedure Code. In this view of the matter, this Court is of the view that the conviction under Section 307 is liable to be set aside and having regard to the nature of injuries as per Exh.P-5, suffered by the victim, the appellant is liable to be convicted and sentenced for the offence under Section 326 of the Code. Therefore, the sentence awarded by both the courts below is hereby set aside and modified holding that the appellant is directed to undergo a sentence for three years with fine levied by the courts below. It is submitted at the Bar by the learned counsel for the appellant that the amount of fine has already been deposited with the trial court. The statement made in this regard is taken on record. The sentence in respect of the charges under Section 326 and 498A of the Code shall run concurrently. The appellant was granted bail vide this Court's order dated 19.10.2009. His bail bonds stand cancelled. He shall surrender before the trial court to undergo the remaining period of imprisonment, as imposed in this order.

In the aforesaid terms, the appeal is partly
allowed.

.....J.
(V. GOPALA GOWDA)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI,
SEPTEMBER 18, 2014

ITEM NO.106

COURT NO.14

SECTION II

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

Criminal Appeal No(s). 1356/2010

JADDA VENKATESHWARLU

Appellant(s)

VERSUS

STATE OF A.P.

Respondent(s)

(with appln. (s) for stay and permission to file additional documents and office report)

Date : 18/09/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s)

Mr. G. Ramakrishna Prasad, Adv.
Mr. Suyodhan B., Adv.

For Respondent(s)

Ms. Prerna Singh, Adv.
Mr. Guntur Prabhakar, Adv.

Mr. D. Mahesh Babu, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is partly allowed in terms of the signed order.

(VINOD KUMAR)
COURT MASTER(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)