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**Jiban Das Vs. State of Assam**

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**SooperKanoon Citation** : sooperkanoon.com/131049

**Court** : Guwahati

**Decided On :** Apr-21-2004

**Judge** : P.G. Agarwal, J.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 320

**Appeal No.** : Criminal Revision No. 166 of 1996

**Appellant** : Jiban Das

**Respondent** : State of Assam

**Advocate for Def.** : P.C. Gayan, Adv.

**Advocate for Pet/Ap.** : J.M. Choudhury, Adv.

**Judgement** :

**P.G. Agarwal, J.**

1. Heard J.M. Choudhury, learned Senior Advocate appearing for the petitioner and the learned Public Prosecutor, for the respondent.

2. The petitioner accused Jiban Das was tried for commission of offence Under Section 326 IPC in GR Case No. 1368/93 on the allegation of causing grievous hurt to one Putou Das. On conclusion of the trial, the learned Chief Judicial Magistrate, Sonitpur, Tezpur vide judgment dated 12.5.1994 convicted the

accused appellant Under Section 326 IPC and sentenced him to imprisonment for four years. Feeling aggrieved, the accused appellant preferred appeal being Criminal Appeal No. 8 (S-2)/94 and the learned Sessions Judge affirmed the order of conviction but reduced the period of imprisonment to one year only. Hence the present revision.

3. The prosecution case in brief, is that the accused and the victim Putou Das are residents of village Goroimari Kaibarta Chuburi under Tezpur Police Station and on 26.10.1993, an altercation took place between them and thereafter, it is alleged that the accused went to his house brought out a dao and tried to assault one Dilip Das who took to his heels. The accused thereafter, entered into the house of one Putou Das and stabbed him with a mit dao causing injuries. The injured was removed to Goroimari hospital and thereafter to Tezpur Civil hospital. He was under treatment at Tezpur Civil hospital from 26.10.1993 to 20.11.1993.

4. During trial, prosecution examined as many as seven witnesses including injured Putou Das, PW 4 who has categorically stated that while he was taking his meal inside the house, the accused dealt a dao blow on his stomach as a result of which the organs came out and he was removed to hospital. PW 2 Dilip Das is the son of PW 4 with whom the altercation had taken place and the accused tried to assault him at the first instance but when he fled the scene the accused assaulted PW 4. Sonai Das PW 3 is another independent witness and thus from the evidence on record we find that prosecution has been able to establish and the injury in question was caused by the petitioner/accused person. There is concurrent finding of fact to that effect and in view of the overwhelming evidence on record, we hold that the above findings need no interference.

5. Now coming to the injuries, Dr. L. Bhuyan, PW 6 examined the injured at the Tezpur Civil hospital and found the following injuries :-

'(1) One stab wound over abdomen on left loin of size 5 cm x 2 cm. Omentum exposed through the wound. No vital structure injured. According to Doctor, the injury was fresh caused by sharp weapon and grievous in nature.'

6. Grievous hurt has been defined Under Section 320 of the Indian Penal Code. Admittedly, the injury as stated above, is not covered by the first seven kinds of hurt, which are designated as grievous hurt under the above Section of law. There are eight kinds of hurt which have been designated as grievous hurt and the Eighth kind reads as follows :-

'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.'

7. The prosecution has tried to show that the accused person was in the hospital as indoor patient from 26.10.1993 to 20.11.1993 i.e. for more than 20 days and as such the injury was grievous. There is evidence of the victim that he was in hospital for about 1 and 1/2 month and the evidence of the doctor stating that the injured was in hospital for about 25 days.

8. The learned counsel for the appellant has submitted that the oral evidence on that count is not suffice and the prosecution has failed to produce the hospital records or any other hospital documents including the discharge certificate to that effect.

9. The question that emerges is whether mere stay in the hospital for 20 days or more is sufficient to attract the provisions of clause 8 of Section 320. In view of the specific provisions as quoted above, we hold that the prosecution also must establish that the victim, as a result of the injuries sustained by him suffered severe bodily pain during the space of 20 days or that he was unable to follow his ordinary pursuits. In the case of Dr. A.G. Bhagwat v. UT Chandigarh 1989 Crl. L.J. 214, a Division Bench of the Apex Court has held that where the medical witness has not stated that the injured after remaining under him suffered severe bodily pain or was unable to follow his ordinary pursuits for a period of 20 days or more, clause eight does not apply.

10. In view of the clear language of the provisions of law, we hold that mere stay or remaining in the hospital for treatment for 20 days or more in itself is not sufficient to term the hurt as grievous hurt under clause eight.

11. In the present case we find that no vital structure was injured but in the opinion of the doctor as the omentum was exposed, did it endanger the life of the injured. Omentum is a fold of platonum and mere exposure of the same without any related bleeding or injury to other organs does not endanger the life and hence we are unable to subscribe to the opinion of the doctor that mere exposure of the omentum endangered the life of the injured.

12. In view of the above, we hold that the injury sustained by the injured Putou Das does not amount to grievous hurt Under Section 320 of the Penal Code. Accordingly, the conviction is altered to one Under Section 324 IPC. The incident had taken place in the year 1993 and long 12 years have elapsed and considering all aspects of the matter, we sentence the accused person to undergo imprisonment for six months. The petitioner accused is directed to surrender forthwith before the Chief Judicial Magistrate, Sonitpur, Tezpur to serve out the sentence. The period undergone shall be set of Under Section 428 Cr.P.C.

13. Send down the records to the Chief Judicial Magistrate, Sonitpur, Tezpur for doing the needful.

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