

Jamil Hasan Vs. the State

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Court : Allahabad

Decided On : Feb-21-1974

Reported in : 1974CriLJ867

Judge : K.B. Srivastava, J.

Appellant : Jamil Hasan

Respondent : The State

Judgement :

ORDER

K.B. Srivastava, J.

1. It is not disputed that the petitioner Jamil Hasan bit off the tip of his wife Anisa Bagum's nose by his teeth at about 5 P. M. on October 25, 1970. He was, therefore, convicted under Section 326 of the Indian Penal Code by the Munsif-Magistrate, Hardoi and sentenced to undergo rigorous imprisonment for a period of two years. His appeal was dismissed by the Sessions Judge with this modification that the sentence was reduced to rigorous imprisonment for a period of one year.

2. The learned Counsel for the petitioner has raised two points in this revision the first, regarding the correctness of the conviction under Section 326, and the second, regarding the enormity of the sentence.

3. His contention is that tooth or teeth cannot be considered by any means to be an 'instrument' for 'cutting' and therefore, a bite by teeth is out of the purview of this section. There is no dispute that the hurt caused was grievous inasmuch as it had' brought about permanent disfiguration of face, within the meaning of Clause Sixthly of Section 320 of the Indian Penal Code, The question, therefore, is whether tooth is 'instrument', within the meaning of Section 326 which says that whoever voluntarily causes grievous hurt by means of any instrument for cutting, shall be punished etc. Tooth is one of the hard bodies in the mouth, attached to the skeleton, but not forming part of it developed from the dermis or true skin, their function primarily the mastication of the food. Teeth consist of dentine, forming the body of the tooth, and cement, forming its outer crust, the third tissue, the enamel, when present, being situated between the dentine and cement. The teeth of mammals are incisors, canines, premolars and molar, (See Chambers Dictionary), The description in A New English Dictionary On Historical Principles. Vol. X, Part I. Tl-U. 1926 Edition, is as follows:

In plural the hard processes within the mouth, attached (usually in sockets) in a row to each jaw in most vertebrates except birds (but also in some extinct birds), having Points. edges, or grinding surfaces, and serving primarily for biting, tearing or trituration of solid food and secondarily as weapons of attack or defence, and for other purposes in singular each of these individually.' The word 'instrument' has not been defined in the Indian Penal Code. Webster' New International Dictionary. 1926 Edition, speaks of instrument as that by means of which any work is performed or result is effected; one that is made a means or is caused to serve a purpose, a medium means or agent. The Shorter Oxford English Dictionary. Vol. 11933 Edition, defines it as a thing with or through which something is done or effected a means, a tool, implement, weapon. a part of the body having special function. In the ordinary primary sense, an instrument has been defined as meaning that by means of which something is done one who, or that which, is made a means or caused to serve a purpose; the agent or means of anything; and more specifically, the means, or the implement or tool, by which work is done. Now. undoubtedly, the Primary function of human teeth is to bite food, to cut it by the incisors, canine, the premolar and the molar, and to reduce it into pieces and to render it into pulp masticate and then let the system swallow it for easy

digestion. The purpose is thus biting or cutting. Man uses it as a means or agent for that purpose, that is to say as an instrument for biting, cutting, gnawing or grinding. But there can be no denying the fact that human teeth can be and are used as a weapon of attack or defence. It is a matter of common experience that urchins usually resort to teeth biting as a weapon of attack and defence. Women in distress, when over-powered and rendered helpless also indulge in the same manner of attack or defence.

It cannot be said that instrument can only mean some mechanical device, wholly apart from the human anatomy; it may be that, and may not be so. Human hands can be used as an instrument for causing hurt and even grievous hurt and I see no reason why human teeth should be deprived of that quality. It is a matter of common experience that the human teeth are used for cutting sugarcane, or breaking bones in non-vegetarian meals, or in breaking hard shells of fruits. These things could be performed by a mechanical device also but the human teeth come as a handy substitute. My attention was invited to a stray part of the 'Law of Crimes' by Ratan Lal in his annotations under Section 326, He has taken that from *Malappa Gurappa* 1942 Criminal Revision Application No. 477 of 1941, decided by

Beaumont. C. J. and Sen, J. on January 27. 1942 (Unreported Bombay). The quotation is that where a mistress refused to accompany her paramour who got enraged and bit off the tip of her nose and dislocated one of her teeth, a sentence of two months rigorous imprisonment was enhanced to one of fourteen months. It cannot be positively inferred, in the absence of the fuller report whether the conviction for grievous hurt was based on the dislocation of one of her teeth or the biting off the tip of her nose and whether the dislocation of one of her teeth was due to the biting or some other cause. No help therefore. can be derived on the basis of this in the 'Law of Crimes', However, a direct authority is furnished by *Chaurasi Manihi v. State of Bihar* : AIR1970 Pat322 wherein Untwalia. J. held that tooth is an instrument for cutting and serves as weapon of offence and defence and. consequently, an injury caused by teeth bite would be an offence under Section 324 or 326 depending upon whether the injury is simple or grievous, I am in respectful agreement with this view.

4. Biting or cutting of nose of wives by husbands is quite a frequent occurrence and therefore the sentence does not require any reduction. The revision is therefore, dismissed and the conviction of and the sentence awarded to the petitioner are confirmed.

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