

**Rameshwar Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-30-1989

**Reported in :** 1990WLN(UC)59

**Judge :** M.B. Sharma, J.

**Appeal No. :** S.B. Cr. Revision Petition No. 247 of 1985

**Appellant :** Rameshwar

**Respondent :** State of Rajasthan

**Judgement :**

**M.B. Sharma, J.**

1. The conviction of the accused-petitioner Under Section 326 IPC as well as sentence of six months simple imprisonment add a fine of Rs. 200/-or in default of fine further simple imprisonment for two months, as awarded by the learned Judicial Magistrate under his judgment dated March 28, 1980, has been upheld by The learned Addl. Sessions Judge, Dausa Camp Jaipur, under his judgment dated August 21, 1985. Aggrieved against the aforesaid order the accused petitioner has preferred this revision petition.

2. The accused-petitioner has been held to have voluntarily cut ear-labune of Moola, complainant in this case. The occurrence is said to have taken place on

July 7, 1977 in the evening at 4 p m. So far as the question whether the accused is the author of the injury, i.e. cutting the ear-labune is concerned, I find no merit in the contention of the learned Counsel for the petitioner. Both the courts below have come to the conclusion that it was the accused who was responsible for having cut the ear-labune of the complainant with his teeth. It has come in the statement of Dr. Ramesh Chandra PW 2 that when the injured Moola was brought to him and he noted that his ear-labune was cut. A piece of ear-labune was also brought to him and it matched with the ear of Moola. He also stated that injury of this kind will lend to the complainant's disfiguration of the face. It is contended by the learned Counsel for the petitioner that the doctor has stated that the injured did not come to him again and he could not see whether there was permanent disfiguration or not. But a perusal of the statement of the doctor will show that he has stated that the injury of this nature is permanent disfiguration.

3. The learned Counsel do not dispute and cannot dispute that ear is a part of face and if it is cut it will be a permanent disfiguration. This finding of the court below that there was permanent disfiguration does not call for interference. But the question is as to whether the injury by tooth-bite can be said to be an injury falling Under Section 324 IPC. A perusal of Section 324 IPC will show that who-ever voluntarily caused 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 which it is deleterious to human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine or with both. Thus, a bare reading of the aforesaid Section 324 IPC will show that before an offence Under Section 324 IPC or 326 IPC is made out, the accused must have been shown to have caused hurt by means of any instrument for cutting or any instrument which used as a weapon of offence is likely to cause death. Thus, if teeth can be said to be an instrument of cutting, it can be said that anyone who with the help of teeth voluntarily caused hurt or grievous hurt, as the case may be, then depending upon the nature of hurt to be caused, will be responsible either Under Section 324 or Section 426 IPC, as the case may be. It appears that there is diversion of opinions of the courts whether

tooth-bite injury can be said to have been caused by sharp-edged weapon or not? The Gujarat High Court in the case reported in (1972) 13 Gujarat LR 848 has taken a view that human teeth are not such an instruments or is contemplated by the section and hurt caused by teeth-bite will not fall Under Section 324, but Section 323 IPC, but the Allahabad High Court in the case reported in 1974 Cr. L. J. 867, has taken a view that tooth is an instrument of cutting. In the case of Chaurasi Manjhi and Anr v: State of Bihar AIR 1970 Pat. 322 it has been held that human teeth are instrument for cutting. Therefore, if any hurt is caused by means of human teeth, the case will fall Under Section 324 or Section 326 of the Indian Penal Code depending on the type of injury. It is common knowledge that human teeth are used for cutting also. Therefore, the human tooth in my opinion is an instrument as contemplated by Section 324 IPC and if any grievous hurt is caused as in the present case, the case will fall Under Section 326 IPC. Thus where the Gujarat High Court has held that the human teeth are not instrument for cutting, but on together hand the Allahabad and Patna High Courts have held that human teeth are instruments for cutting. In my opinion also, the human teeth are instrument for cutting as contemplated Under Section 324 IPC, The occurrence is said to have taken place in the year 1972 and the accused petitioner has already undergone some sentence. The case is non-bailable. The accused should have been in custody even during the investigation of the case. In my opinion the sentence of imprisonment already undergone and fine shall meet the ends of justice.

4. Consequently, I partly allow this revision petition. While maintaining the conviction of the accused-petitioner Under Section 326 IPC, I sentence him to the imprisonment for a period already undergone and a fine of Rs. 200/- or in default of fine to further suffer 15 days simple imprisonment. Two months time is allowed to the petitioner to deposit the fine, if it has not already been deposited. If the fine is not deposited as ordered above, the trial court will see that the accused petitioner is apprehended and he serves out the sentence awarded by this court in lieu of payment of fine.