

Narayan Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-03-1992

Reported in : 1992WLN(UC)10

Judge : R.S. Verma, J.

Appeal No. : S.B. Criminal Revision Petition No. 251 of 1983

Appellant : Narayan

Respondent : The State of Rajasthan

Judgement :

R.S. Verma, J.

1. The petitioner was tried along with certain other accused persons for offences Under Section 148, 326, I.P.C. by the learned Munsif & Judicial Magistrate, Kapasan. It was alleged that with the help of other co-accused the petitioner cut the nose of his wife Kankudi on 14.3.75 and caused grievous hurt to her. The learned Magistrate convicted various accused persons for offences Under Section 148 and 326 along with Sections 114 and 149, I.P.C. He also convicted and sentenced the present petitioner for offence Under Section 326, I.P.C. In appeal, the learned Sessions Judge, Pratapgarh camp Chittorgarh acquitted all the co-accused persons of all the charges levelled against them. Revision petitioner was acquitted of offence Under Section 148, I.P.C. but his conviction for offence Under

Section 326, I.P.C. was maintained. The sentence passed upon him was also maintained. Aggrieved, he has come to this Court by way of revision petition.

2. The learned Counsel for the petitioner urged that in the present case, charge Under Section 326, I.P.C. has not been brought home to the accused. It has not been established by the prosecution that a grievous hurt had been caused to Kankudi. He submits that only offence Under Section 324, I.P.C. has been made out. The matter pertains to an incident which took place on 14.3.75. He submits that, accused revision-petitioner is not a previous convicted. He is also not a habitual offender. It was his first offence and, therefore, he may be enlarged on probation of good conduct after altering his conviction from 324 to 326, I.P.C.

3. The learned public prosecutor opposes the revision petition. He submits that the revision petitioner was rightly convicted for offence Under Section 326, I.P.C. and, therefore, there is no occasion to alter the conviction to one Under Section 324, I.P.C. He submits that in cases of nose cutting serious view must be taken and, therefore, no interference should be made with the sentence passed upon the revision-petitioner.

4. I have heard the learned Counsel for the petitioner and have perused the record and have given a earnest consideration to the rival contentions.

5. Smt. Kankudi has categorically stated that her husband i.e. the present revision-petitioner cut her nose by a razor. She has not stated the extent to which the cut was inflicted. Dr. V.K. Khilnani examined the injured on 14.3.75 himself and he found one incised wound $1/3' \times 1/4' \times 1/4'$ at the tip of nose and both alae of nose and base of nose are removed. He does not state that injury was grievous or resulted into any permanent disfiguration of the face of the injured. Dr. Kamalnayan made radiological examination of the injured and he found on the x-ray of nasal bone that soft tissue shadow of the tip of the nose is missing and nasal shadow was deformed. He also does not state that there was any fracture of the nasal bone or there was any permanent dis-figuration of the face of the injured.

6. Grievous hurt has been defined Under Section 320, of the Indian Penal Code, as follows:

Grievous hurt. - The following kinds of hurt only are designated as 'grievous':

First. - Emasculation.

Secondly. - Permanent privation of the sight of eye.

Thirdly. - Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

Fifthly. - Destruction of permanent impairing of the powers of any member of joint.

Sixthly. - Permanent disfiguration of the head or face.

Seventhly. - Fracture or dislocation of a bone or tooth.

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.

The injury caused to Smt. Kankudi does not fall in any of the categories enumerated above. As such it is difficult to say that the petitioner committed an offence Under Section 326, I.P.C. The result is that he could have been convicted only for offence Under Section 324, I.P.C.

7. This is true that cases of nose cutting deserve to be seriously condemned but this Court cannot lose sight, of the fact that incident took place in March, 1975. We are running in the year 1992. The endorsement on the warrant issued by the learned appellate judge shows that the petitioner remained in custody for the period 15.3.75 to 6.5.75. Thereafter, he further remained in custody from 8.7.83 to 12.8.83. Looking to all these facts and keeping in view the fact that the petitioner is not a previous convict and is not a habitual offender, ends of justice would be met if he is released on probation of good conduct.

8. No other point was urged before me.

9. In view of the aforesaid discussion, this revision petition is partly accepted. The conviction of the petitioner for offence Under Section 326 I.P.C. is altered to one

Under Section 324, I.P.C. In lieu of being sentenced immediately for the aforesaid offence, the petitioner shall be released on probation of good conduct, provided he furnishes a personal bond in a sum of Rs. 2000/- and a surety bond in a like sum to the satisfaction of the learned Munsif & Judicial Magistrate, Kapasan, binding the revision petitioner to keep the peace and to be of good behaviour for a period of two years and to appear and receive sentence whenever called upon to do so. However, the petitioner shall also pay an amount of Rs. 700/- to Smt. Kankudi as compensation and shall pay a sum of Rs. 300/- as cost of the prosecution. The petitioner shall furnish the bonds as directed within a period of four months from today and shall also pay the aforesaid amount within a period of four months from today.

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