

In Re : Mokkasamy

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Court : Chennai

Decided On : Mar-12-1964

Reported in : 1965CriLJ48

Judge : Kunhamed Kutti, J.

Appellant : In Re : Mokkasamy

Judgement :

ORDER

Kunhamed Kutti, J.

1. This revision case wherein the petitioner was convicted and sentenced to rigorous imprisonment for nine months by the Sub-Divisional Magistrate, Usilampatti, and confirmed in appeal by the learned Sessions Judge of Madurai was admitted by my learned brother Anantanarayanan, J., on the question of law whether the cutting of a bone to a slight extent would be a grievous hurt within the meaning of Section 326 Indian Penal Code. The facts of the case show that the injured P.W. 1 when examined by P.W. 5. the doctor, had an incised gaping wound bleeding 3' ' bone deep and cutting W of bone on the medial side of left eye brow. This is the injury with which we are now concerned and the question for consideration is whether, in law, this amounts to a grievous injury Grievous injury has been defined in Section 320 Indian Penal Code as 'fracture or dislocation of a bone or tooth' Fracture of a bone therefore is a grievous injury within the meaning

of the aforesaid section.

2. Sri Venkatanarasimham, the learned Counsel for the petitioner, drew my attention to a ruling of the High Court of Rangoon reported in *Po Yi Maung v Ma E Tin* AIR 1937 Rang 253, which is to the following effect:

The primary meaning of the word 'fracture' is 'breaking' though it is not necessary in case of fracture of the skull bone that it be divided into two separate parts because it may consist merely of a crack but if it is a crack it must be a crack which extends from the outer surface of the skull to the inner surface.

The view taken in this case appears to be that unless the crack extends the inner surface which means the entire depth of the bone it may not amount to a fracture. The learned Counsel also drew my attention to *Mutukdhari Singh v. Emperor* : AIR1942 Pat376 wherein the learned Judges of the Patna High Court held:

Where the evidence is merely that a bone has been cut and there is nothing whatever to indicate the extent of the cut, whether deep or a mere scratch upon the surface, it is impossible to infer from that evidence alone that grievous hurt has been caused within the meaning of the definition in Section 320 Indian Penal Code.

These cases have not been followed in full in the later decision in *Kalya v. State (S)* AIR 1955 Raj 36 The view expressed in this case is:

Ordinarily, fracture means 'breaking' of a bone. Fissured fracture is one in which there is no displacement of the fragments, and this condition may be caused by direct or indirect violence, usually resulting from a fall or a blow from a blunt object. These fissures may extend far and wide from the point struck may implicate one or both tables, and not infrequently run down into the base. A scratch or a cut which does not go across the bone cannot be said to be a fracture of a bone within the meaning of Section 320. Both outer and the inner tables of the skull bone may be considered to be bones by themselves and fracture of outer or the inner table by itself can be taken to be a fracture of a bone within the meaning of Section 320 A crack which does not involve both the tables of the skull bone may amount to a

fracture of a bone. A fissured fracture of the outer table of the skull bone would, therefore, bring the case within the definition of a grievous hurt.

3. In a later case *Parma v. State* AIR 1958 Raj 39 the same Court dealt with the question after considering the Rangoon and Patna decisions. The learned Judge observed:

It may be that when the dimensions of a cut of a bone are not known, it may be difficult to say whether it is a grievous hurt. But in this case a vital part of the shoulder has been cut through $1/6'$ $1/3'$ and I have no doubt that this is a grievous hurt within the meaning of Section 320 Indian Penal Code.

It seems to me that the point urged by the learn-ed counsel for the petitioner that unless the crack extends to the inner side, the hurt cannot be said to be grievous within the meaning of Section 320 Indian Penal Code does not appear to be, justified by the later decision on the point. As explained by the learned Public Prosecutor, there can be a cut though the division or split resulting from the cut need not be complete. If a cut resulted only in a scratch and did not go deep to any length into the bone, it cannot be deemed a fracture; otherwise, it should be deemed to be one.

4. In the present case, the bone has been cut to a depth of . I have no doubt in my mind that it amounts to a fracture. The conviction under Section 326 Indian Penal Code is therefore correct and the same is confirmed.

5. As regards the sentence I am inclined to take a lenient view having regard to the nature and extent of the grievous hurt in the case. I therefore reduce the sentence of imprisonment from nine months to six months and subject to this modification, this petition is dismissed.