

In Re: Nataraja Goundan

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Court : Chennai

Decided On : Aug-08-1938

Reported in : AIR1939Mad507; (1939)IMLJ886

Appellant : In Re: Nataraja Goundan

Judgement :

Lakshmana Rao, J.

1. The appellant has been convicted under Section 326 of the Indian Penal Code of voluntarily causing grievous hurt with a deadly weapon to P.W. 2 Kuppa Chuckli and sentenced to rigorous imprisonment for four years by the learned Additional Sessions Judge of Coimbatore.

2. It is undoubted and was not disputed that P.W. 2 was assaulted with sticks in and near the garden of the appellant after lamp-lighting time on the 20th of September, 1937 and there is no good reason to doubt the statement of P.W. 2 that the appellant was one of his assailants. That P.W. 2 was found carrying away some ragi stalks from the garden of the appellant is no justification for the assault and one of the injuries, namely, the simple fracture of the radius of the right arm was grievous. But this might have been due to the beating by the other assailants and even otherwise the appellant cannot be convicted under Section 326 of the Indian Penal Code unless the weapon used by him was deadly and the hurt intended or known to be likely to be caused was grievous. The stick used by him is

not before the Court nor is there any evidence as to its size or nature. The injury constituting grievous hurt was a simple fracture of the radius and it cannot be said for certain that hurt intended or known to be likely to be caused was grievous. The conviction under Section 326 of the Indian Penal Code is therefore unsustainable and the appellant can be convicted only under Section 323 of the Indian Penal Code.

3. The conviction of the appellant is therefore altered to one under Section 323 of the Indian Penal Code and he is sentenced to rigorous imprisonment for 3 months. Otherwise the appeal is dismissed.

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