

V.R. Murthy Vs. State

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Court : Kolkata

Decided On : Aug-26-1994

Reported in : 1995CriLJ1819

Judge : Shyamal Kumar Sen and ;S.R. Misra, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360, 360(4), 361 and 374; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 320, 323, 324, 332 and 333; ;
[Probation of Offenders Act, 1958](#) - Sections 3, 4, 4(1)(2) and 12

Appeal No. : Criminal Appeal No. 3 of 1993

Appellant : V.R. Murthy

Respondent : State

Advocate for Def. : R.S. Swaroop, Adv.

Advocate for Pet/Ap. : V.K. Gupta, Adv.

Judgement :

Shyamal Kumar Sen, J.

1. This Appeal under Section 374 of the Code of Criminal Procedure is directed against the Judgment and Order of conviction and sentence dated the 26th October, 1993, passed by the Court of learned Sessions Judge, Andaman and

Nicobar Islands in Sessions Case No. 9 of 1992 under Section 333 of Indian Penal Code.

2. The material facts involved in this appeal inter alia are that the appellant gave a fist blow on the face one Shri Chinnappan, an employee of the Port Blair Municipal Board whose duty was to release water in the village Shadipur where the appellant used to reside at that time. It is the contention of the appellant that there was scarcity of water in the area and the appellant insisted that the said Chinnappan should not put off the switch. The prosecution case is that duty of the petitioner, Chinnappan is to release the water by opening the valve and thereafter close the same. The Appellant insisted that the water should not be stopped since there was scarcity of water. Since the said Chinnappan was duty bound to stop the release of water by closing the switch/valve, the said Chinnappan had to do so and accused appellant gave a fist/blow on the face of Chinnappan. It is further alleged that in the year 1991 there was acute scarcity of water and the supply was delayed by an hour so that he opened the concerned valve of the water pipe line at 7.15 a.m. and kept it open up to 8.15 a. in. and then closed the same. Immediately, the accused Chinnappan, whose name he did not know then, came there and asked him as to why he has closed the valve of the pipe line. He told him that it was then the time to open another valve, but the accused/appellant asked Chinnappan to open the earlier valve again for giving supply of water for further time more. It has been alleged that Chinnappan again told him that as per office orders he was to give water only for one hour for a particular area and if the accused wants supply of water for further time, he may go to the office and obtain orders to that effect. It is alleged that as soon as Chinnappan said so to the accused/appellant, the accused dealt elbow on the left side of his face, as a result whereof one of his teeth on the lower jaw got loosen and bled profusely. Chinnappan then washed his mouth with water and straightway came to Municipal Office and reported the matter to the Assistant Engineer Sundara Murthy, P. W. 2 but he could not give the name of the accused as he till then did not know his name.

3. The question before us is, if the offence comes under the provision of Section 333 of Indian Penal Code being grievous hurt inflicted upon a Public servant, or it is a question of simple hurt under Section 332, Indian Penal Code.

4. The Appellant pleaded not guilty. The Learned Sessions Judge, Andaman and Nicobar Islands found him guilty of the offence under Section 333 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for two years and also to pay a fine of Rs. 2,000/- in default further rigorous imprisonment for two months.

5. Being aggrieved by the said decision of the learned Sessions Judge, the instant appeal has been preferred.

6. It is the admitted position that the accused/ appellant gave the blow to the said Chinnappan and as a result where of the lateral incisor teeth on the lower jaw got loosened and he suffered injury. The question however is if the offence really comes within Section 333 of the Indian Penal Code.

7. Section 333 of Indian Penal Code is quoted below as under:

'Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

8. We have considered the evidence on record in this regard. It is admitted from the records that said Chinnappan was brought to GB Pant Hospital in the office Jeep by the Assistant Engineer Sundara Murthy at about 9 a.m. for treatment. There one Lady Doctor, C. Jameela Banu examined him and found one small laceration over the left side near to cheek and she referred Chinnappan to the Dental Surgeon Dr. A. K. Mukherjee who on the same day found the left lateral incisor tooth of Chinnappan broken. It is surprising that the said Lady Doctor C. Jameela Banu was not examined as a witness by prosecution. We have considered the evidence of Dr. A. K. Mukherjee as also the Injury report which have been marked as Exhibit-1. The said Dr. Mukherjee, Dental Surgeon being P. W. 1 stated in his evidence that he examined the patient, P. Chinnappan of

Shadipur and found the left lateral incisor tooth broken. The area was extremely tender and the broken tooth was dangling from the socket. The injury was grievous and fresh and might have been caused by blunt weapon like fist or blow. In the cross examination however, the Dental Surgeon, Dr. Mukherjee said that he was asked only to examine the patient. He further stated 'as I was not asked to treat him I did not treat him.' It is strange that if there was severe injury and the injured person was brought to the Hospital and the attending Doctor referred to a Specialist, he would instead of treating the patient, only examined him and left him there. The injury report which is marked as Exhibit-1 also appears to be a document of peculiar nature. The said injury document mentioned the particulars of injuries under the heading 'Particulars of Injuries of Symptoms in case of poisoning'. It appears that both the Dental Surgeon, Dr A. K. Mukherjee and the referred Lady Doctor C. Jameela Banu signed side by side although it appears from the record that it is the prosecution case that the view of Dr. C. Jameela Banu on the question of nature of injury of the said Chinnappan is that one small laceration over the left side near the cheek of Chinnappan was found. Thereafter she referred to the Dentist for further opinion. She has not put her signature at that place. It is clear from the prosecution case that the said lady Doctor, C. Jameela Banu examined the said Chinnappan first and made the said remark. In that event, the proper course is for the said Lady Doctor to make a separate injury report and thereafter recommend and to send him before the Specialist Doctor. But it appears from the injury report and record that only one injury report has been made which has been signed by both the doctors viz. Dr. A. K. Mukherjee and Dr. C. Jameela Banu side by side. Even if separate report had not been made by Dr. Jameela Banu, she could put her signature after her remark and since the prosecution case is that she referred the injured person to Dr. A. K. Mukherjee, Dental Surgeon, there is no scope for putting the signature side by side as was done in the instant case. This injury itself creates suspicion as to the nature of the injury. It is also not the case of the prosecution that Dr. C. Jameela Banu, the first attending doctor sent the injured person to the Dental Surgeon only for examination and not for treatment. The only natural consequence when a person is injured is to give him immediate medical aid by the Doctor and if the attending doctor is unable to diagnose the disease, he send the person to a Specialist Doctor for treatment

and not for the purpose of preparing the record as was done in this case.

9. The findings of Dr. A. K. Mukherjee, the Consultant Dental Surgeon also do not give detailed particulars about the injuries suffered or the gravity of the nature or seriousness of the injury and Dr. Mukherjee only gave a general opinion that this is a case of grievous hurt. It is not the prosecution case that the injured person was sent to the Consultant Surgeon for examination for obtaining the opinion on the nature of injury. In the above premises, we are unable to accept both the injury report as also the evidence of Dr. A. K. Mukherjee. It is surprising that Dr. C. Jameela Banu who first attended the injured person, was not examined by the prosecution. The injured person, B. Chinnappan gave evidence. He stated that he is a water lineman of Municipal Board, Port Blair. The material portion of his evidence is as follows:

'On 26-2-1991 I was on duty from 6 a.m. to 2 p.m. at Shadipur. My duty was near the police quarters area. Because of water scarcity the supply was delayed by an hour and I was asked to open the valves of the pipe line at 7.15 hrs. on that day. I kept the valve open for one hour from 7.15 a.m. to 8.15 a.m. and then closed the same. Immediately thereafter this man (identifies the accused on dock) whose name I later came to know as V. R. Murthy, came there and asked me as to why I have closed the valve of the pipe line. I also told him that it was then the time to open another valve, but he asked me to open that earlier valve again for giving supply of water for further time more. I again told him that as per our office order I was to give water only for one hour for a particular area and if he wants supply for any further time more he may go to our office and obtain order to that effect. As soon as I said so the accused dealt a blow on the left side of my face. As a result of such blow one of my teeth on the lower jaw got loosen and it bled profusely. Then I washed my mouth with water and straightway came to the Municipal Office and verbally reported the occurrence to Assistant Engineer Sundara Murthy. Before the A. E. I could not give the name of the accused as, till then, I did not know his name.

After I reported the occurrence to the Assistant Engineer, I do not know what the Assistant Engineer did but he sent me to the G. B. Pant Hospital in the office jeep

for treatment. Though 1 could not name the accused to the A. E. I told him that that man was a resident of the Police Line quarters, Shadipur. I did not know his house. I reached the hospital at 9. a.m. One lady doctor in the OPD examined me and sent me to a dental surgeon of the same hospital. That dental surgeon also examined me and gave me slip to go to OPD for taking medicine.'

10. It is significant that the Dental Surgeon who examined him gave a slip to go to OPD for taking medicine. It appears also from the deposition of P. W. 5, P. Chinnappan that he could not perform his further appointed duties of that day. From the hospital he came straight to Aberdeen P. S. He further stated as follows:

'From the hospital I came straight to Aberdeen P. S. reaching there at about 12.30 p.m. At the police station I reported the occurrence and my statement was recorded. Thereafter the police officer took me to the P. O. to show the house of the accused. 1 was taken there by the police officer on his motor cycle. I showed to the police officer that place where I was assaulted by the accused. That place was near to the second valve of the pipe line which I opened when the accused assaulted me. Thereafter, I took the police officer to the house of the accused but the accused was not available in the house.

At about 4 p.m. on the same day that police officer again took me to the house of the accused, but the accused was not available in the house. Then we searched for him in the College south point and when we were proceeding towards the bazar, I found the accused on the road and pointed him to the police officer. Then the police officer asked the accused to go to the P. S. Police officer proceeded towards the P. S. on the motor cycle slowly and myself and the accused followed him on foot. We reached the police station at 6 p.m. Then the police officer asked me to go home. I do not know what happened thereafter to the accused.'

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'I was assaulted when I was opening the second valve. People often go the Electricity office. But at the time when I was assaulted by the accused there was

none nearabout. After I was assaulted, I did not shout out. As I was bleeding from the mouth, I simply washed my mouth with water and started for my office. On receipt of the assault my head reeled. Previous to the time of occurrence I had no ill-feeling with the accused. Nor did he ever quarrel with me regarding supply of water. I was not admitted in the hospital. After I was assaulted I could not do any duty on the date of occurrence. But from the day next thereto I did my duty regularly.'

11. The evidence of P. W. 5, Chinnappan clearly shows that he was discharged from the hospital after taking medicine from OPD on the same day and thereafter it also appears from his evidence that he reached the hospital at 9 a.m. and after being discharged, went to Aberdeen Police Station at 12.30 p.m. It also appears that he was taken to the house of the accused by the Police Officer in his motor cycle and moved about for the whole day with the Police Officer in search of the accused and ultimately when the accused reached the Police Station at 6 p.m., he went back to home. Had there been any seriousness in the nature of injury it could not have been possible for a injured person to move in the manner P. W. 5 Chinnappan had done with the Police officer in his motor cycle for the whole day. It does not appear from his evidence that he suffered acute pain during the whole day. It is also the common knowledge that if the injury is of serious and grave nature, the Hospital authorities would not have discharged the injured person and allowed him to move like the P. W. 5.

12. All the aforesaid facts go to show that the injury was not grave and serious so as to come within the offence of grievous hurt. What is grievous hurt has been mentioned in Section 320 of the Indian Penal Code. Under the 'Seventh Category' of Section 320 'Fracture or dislocation of a bone or tooth' may come under the heading and designated as 'grievous' hurt. If there had been dislocation of tooth causing grievous hurt, it would not have been possible for the injured person to move about throughout the day as was done by P. W. 5 Chinnappan. It is also his evidence that he attended to his duties from the next morning itself. On the contrary it appears that he could not attend to his duties because he moved about with police up to 6. p.m. on the date of incident until he reached the Police Station. The facts and records suggest that the injury can only be a case of 'simple hurt'

and he cannot be convicted under Section 333 IPC since the injury suffered may not come within the definition of grievous hurt. It is also in the evidence of P. W. 5 Chinnappan that previous to the time of occurrence he had no ill-feeling with the accused. Nor did he ever quarrel with Chinnappan regarding supply of water. It thus appears that there was no personal animosity between him and the accused. It is also admitted position that there was severe water scarcity during that period. It may be that at the heat of the moment caused due to acute scarcity and non-availability of water, the accused could not resist his temper.

13. Taking into consideration the aforesaid facts and evidence, in our view, the conviction if any, does not come under Section 333 of the Indian Penal Code which provides punishment with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

14. Considering the facts and circumstances of the case, in our view, the learned Sessions Judge was not correct in holding the accused/appellant guilty under Section 333 of Indian Penal Code and sentencing him to rigorous imprisonment for two years as also to pay a fine of Rs. 2,000/- i.e. to RI for two months more, and in our view, the ends of justice will be best served if the accused is directed to pay a fine of Rs. 2,000/- and further, if he is directed to pay a sum of Rs. 1,000/- to the injured person, P. Chinnappan, and another Rs. 1,000/- to a Charitable organisation.

15. P. W. 5. P. Chinnappan was present in Court yesterday i.e. 25-8-94. At the time of hearing we observed that considering the facts and evidence on record, we may increase the amount payable by the accused V. R. Murthy and he will pay a fine of Rs. 2,000/- and further he will pay a sum of Rs. 1,000/- to the injured person, P. Chinnappan and also another Rs. 1,000/- to a Charitable organisation. It was submitted by the learned Advocate for the accused/appellant that a sum of Rs. 1,000/- has been paid to the injured person, P. Chinnappan and he accepted the same without disputing it. The learned Advocate also produced the receipt showing that the accused/appellant has paid a sum of Rs. 1,000/- to a Charitable organisation. It has been submitted by the learned Advocate for the accused/appellant that the accused is an unemployed young graduate and it will

be very difficult for him to get a Government or any other job in the event the sentence of fine stands. The question of livelihood of the accused/appellant being an educated youth should also be considered by the Court and it has been submitted by the learned Advocate for the appellant that he may be released on probation on good conduct and from payment of fine in terms of the probation of Offenders Act, 1958.

16. We have considered the facts and circumstances of the case and evidence on record as also the relevant provision of the Probation of Offenders Act.

17. Section 4(1)(2) and Section 12 of the said Act are set out herein below:

'4. Power of Court to release certain offenders on probation of good conduct-

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then not withstanding anything contained in any other law for the time being in force, the Court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the Court shall not direct such release of offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercise jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.(2) Before making any order under sub-section (1) the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

12. Removal of disqualification attaching to conviction- Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with

under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:'

18. Construing the aforesaid provisions of Section 4(1)(2) of the Probation Of Offenders Act, it appears to us that the Court may, in appropriate cases, release the offender having regard to the circumstances of the case including the nature of the offence and character of offender if it appears in the interest of justice, on probation of good conduct upon compliance with necessary formalities including furnishing of bond on the basis of the report of the Probation Officer.

19. It also appears that under Section 12 of the said Act, a prisoner found guilty of offence and dealt with under Section 4 of the said Act, shall not suffer disqualification attaching to a conviction of an offence under such law.

20. Section 360 of Code of Criminal Procedure, 1973 also provides that Court has power to order release on probation of good conduct or after admonition.

21. Sub-section 4 of Section 360 of the Code of Criminal Procedure, specifically provides that the High Court has such power to release on probation of good conduct.

22. Section 361 of the Code of Criminal Procedure provides that where in any case the Court could have dealt with an accused person under the provision of the probation of Offenders Act, 1958 but has not done so, it shall record in its judgment the special reasons for not having done so.

23. In this connection we may take note of the Judgment and decision in the case of Dilbag Singh v. State of Punjab reported in, AIR 1979 SC 680 : (1979 Cri LJ 636).

24. In this case, the accused was 32 years old. His behavioural attitude was stated to be obedient and law-respecting in nature. His character was fairly good, was upright, alert and interested in rural games. He was wrestler of the locality. He was a petty farmer who left school in his teens, had ten acres of land belonging to the joint family of himself and five brothers and the mother, Being a cultivator and living in the joint family there were no adverse remark against him in the locality.

On the other hand, he had great respect for the former Sarpanch of the village. His family circumstances evoked commiseration because his father was dead having been murdered in 1960. His mother was alive and had to be maintained by himself and his two brothers were truck drivers and the third a jawan. He had his own nuclear family to maintain with a young wife and four children. A pitiable factor was that his elder daughter was paralytic from birth. His social position showed that he belonged to a lower middle class family, lived by agriculture, loved his mother and brothers and had earned the good will of his neighbours who thought that the occurrence in question was induced by an irritating land issue and temporary intoxication. A sense of remorse had overcome him according to the Probation Officer who said that he was a first offender and not a recidivist. Role of the accused in the occurrence was lesser and related to causing simple injury to deceased. He was sentenced to rigorous imprisonment for one year and fine of Rs. 200. He was held vicariously guilty under Sections 324/34 IPC and awarded two years' rigorous imprisonment and a fine of Rs. 1,000. In addition he was convicted under Section 323 IPC for causing hurt to the daughter of the deceased and on this count punished with RI for one year together with a fine of Rs. 200.

25. It was held by V.R. Krishna Iyer, D. A. Desai and A. P. Sen, JJ. that in the above circumstances the accused should be released under Section 360. He would enter into a bond before the trial Court together with surety in the amount of Rs. 1,000/- within two weeks of his release to keep peace, be a good behaviour, to abjure alcohol and not to commit offence for a period of three years.

26. Paragraph 11 of the said Judgment as reported at page-683 in AIR 1979 SC is set out herein below:

'Long years ago, Franklin D. Roosevelt, in a forward- looking speech on John Day, said :-'If the criminal's past history gives good reason to believe that he is not of the naturally criminal type, that he is capable of real reform and Of becoming a useful citizen, there is no doubt that probation, viewed from the selfish stand point of protection to society alone, is the most efficient method that we have. And yet it is the least understood, the least developed, the least appreciated of all our efforts to rid society of the criminal.'

27. Considering the past antecedents relating to the integrity and character of the accused/appellant it appears to us that there is no allegation casting any doubt as to the integrity and character of the accused/ appellant/petitioner and his involvement in any case of criminal nature and particularly in view of the fact that the accused/appellant has made payment of Rs. 1,000/- to the injured person, P. Chinnappan and also contributed a sum of Rs. 1,000/- for a noble cause, with a Charitable organisation, we are of the view that the accused/appellant V. R. Murthy be released on probation on good conduct for a period of one year and the fine of Rs. 2,000/- imposed by the Trial Court will be kept in abeyance on condition that he shall enter into a bond with two sureties to the satisfaction of the Trial Judge. The Trial Court shall, after one year, take into consideration the report if any, of the Probation Officer concerned in relation to the case, and after considering the said report if there is no adverse remark, the Trial Court will release the accused/appellant from payment of the sentence of fine of Rs. 2,000/- as imposed by the Trial Court on the basis of the report of the Probation Officer and the appellant will not suffer any disqualification in connection with the sentence imposing fine upon him and the same will not stand in the way of his making any application, and of getting employment in future, if he is otherwise entitled for the same.

28. Accordingly the appeal succeeds in part and the judgment and order of the conviction and sentence passed by the Ld. Sessions Judge, Port Blair dated October 26,1993 stands modified to the extent indicated above.

29. Let Xerox copy of this order be given to the Ld. Counsel appearing for the parties upon compliance of usual formalities.

S.R. Misra, J.

30. I agree.