

**K.V. Hussain Vs. State**

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**Court :** Kolkata

**Decided On :** Jul-25-2006

**Reported in :** 2007(1)CHN597

**Judge :** Ashim Kumar Roy, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 307, 319, 320, 323 and 325;  
;Code of Criminal Procedure (CrPC) - Section 313

**Appeal No. :** C.R.R. No. 002 of 2006

**Appellant :** K.V. Hussain

**Respondent :** State

**Advocate for Def. :** S.K. Mandal, Adv.

**Advocate for Pet/Ap. :** N.N. Nag, Adv.

**Judgement :**

**Ashim Kumar Roy, J.**

1. This is a criminal revision against a judgment and order of conviction under Section 325 of the Indian Penal Code and sentence of rigorous imprisonment for one year and, in default, rigorous imprisonment for six months as passed by the learned Chief Judicial Magistrate, Port Blair, subsequently affirmed by the learned

Sessions Judge, Andaman & Nicobar Islands, Port Blair in Criminal Appeal No. 18 of 2003.

2. It is now well-settled that in exercise of its revisional jurisdiction, the High Court has the power to call for and examine the records of any proceeding for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words the jurisdiction is one of supervisory jurisdiction exercised by the High Court to correct the miscarriage of justice. However, such revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second appellate jurisdiction. It is, therefore, not be appropriate for this Court to reappreciate the evidence and to come to its own conclusion when such evidence has already been appreciated by the learned Chief Judicial Magistrate as well as by the learned Sessions Judge in appeal, unless any glaring defects is brought to its notice which would otherwise tantamount to gross miscarriage of justice.

3. The brief facts of this case are as follows:

On October 01,1993 at about 10.30 a.m. while the complainant P. Yusuf on his way to attend prayer at Police Masjid reached near the Bus Terminus of Aberdeen Bazar, and found both Maideen and Bal Krishnan were gossiping there. The complainant also joined in gossiping with them. All of a sudden the accused K.V. Hussain, an employee of State Transport Services, came to the spot with an iron rod in his hand and assaulted P. Yusuf with the said iron rod on the back of his head and as the complainant turned back the accused petitioner gave another blow on the left side of his face. The complainant then fell down on the ground when the accused dealt another blow on his back. However, he was somehow saved at the intervention of Bal Krishnan and Maideen. The complainant was immediately removed to the hospital where he made a statement before the police and the same was treated as FIR.

4. The FIR being recorded the police registered a case under Section 307 of the Indian Penal Code, commenced investigation and arrested the petitioner. After his detention in custody for considerable period the petitioner was released on bail.

5. However, on completion of investigation the police submitted chargesheet under Section 325 of the Indian Penal Code.
6. Subsequently the accused was placed on trial to answer a charge under Section 325 of the Indian Penal Code.
7. Heard the learned Advocate appearing on behalf of the petitioner as well as the learned Advocate appearing on behalf of the State, perused the judgments of both the Courts below as well as the depositions of the witnesses and other materials on record.
8. In course of trial prosecution examined as many as nine witnesses. Out of them, the complainant examined himself as P.W.1 and also examined P.W.4 - Sulaman and P.W-5 - Ibrahim as the eye-witnesses to the occurrence. The P.W.6, Dr. Laxmi Narshima is the Medical Officer who treated the injured P.W.1 at the hospital.
9. Both the Trial Court as well as the Appellate Court considered in detail the evidence of P.W.1 - P. Yusuf, P.W.4 - Sulaman and P.W.5 - Ibrahim, being the injured as well as the eye-witnesses to the occurrence and very rightly accepted their evidence. I do not find any justification, in exercise of the revisional jurisdiction, to interfere with such concurrent findings of the Courts below.
10. However, in the instant case, from perusal of the evidence of P.W.6-the doctor, I find that all the injuries suffered by the victim were simple in nature and according to the doctor such injuries were possibly caused by a blunt weapon. It was the further evidence of the doctor that the patient was admitted in hospital on October 1,1993 and discharged on October 22, 1993 i.e. the injured remain admitted at the hospital for 22 days.
11. The Section 319 of the Indian Penal Code defines 'hurt', whereas, section 320 of the Indian Penal Code defines 'grievous hurt' which is aggravated form of hurt.
12. It would be very appropriate to note that according to Chambers 21st Century Dictionary 'hurt', as a noun, means an injury or wound. (Chambers 21st Century Dictionary page 658).

13. According to Section 319 of the Indian Penal Code, whoever causes bodily pain disease or infirmity to any person is said to cause hurt and Section 320 of the Indian Penal Code designate only seven kinds of specific hurt as grievous hurt which are as follows:

First.-Emasculation.

Secondly.-Permanent privation of the sight of either eye.

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

Fourthly.-Privation of any member or joint.

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

Sixthly.-Permanent disfiguration of the head or face.

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

14. Thus, simple injuries, ordinary wounds, cut injuries, abrasions, bruises, contusion, haematoma have been excluded from the definition of grievous hurt.

15. However, clause eighthly to Section 320 of the Indian Penal Code makes any hurt, even though such hurt may be simple in nature and is not one of such kinds of hurt designated as grievous hurt in any of the clause thereunder i.e. from clause first to clause eighthly as grievous hurt, only when such hurt endangers life or causes sufferer to be during the space of 20 days in severe bodily pain or unable to follow his ordinary pursuits.

16. In the instant case from the evidence on record following facts very clearly emerges:

(a) All the injuries suffered by the victim were simple in nature.

(b) The victim was in hospital for about 21 days from October 1st, 1993 to October 22nd, 1993.

17. It is admitted position that none of the injuries sustained by the victim falls within the categories of hurt which are designated as grievous hurt in clause first to seventhly under Section 320 of the Indian Penal Code. Besides the evidence that the victim was in hospital for 21 days having suffered only simple injuries prosecution led no evidence to show that the injuries inflicted on the victim was of such nature which endangered his life or caused him to be during the space of 20 days in severe bodily pain or unable to follow his ordinary pursuits. Merely because an injured remained in the hospital for 20 days or more the law does not permit a Court to presume that because of such confinement in hospital the clause eighthly to Section 320 of the Indian Penal Code is attracted without any evidence on record to that effect.

18. However, in the instant case the Trial Court found the petitioner guilty under Section 325 of the Indian Penal Code for causing grievous hurt to the complainant only because the injured underwent treatment at hospital for a period of more than 20 days and on the assumption that such confinement in hospital has satisfied the basic ingredients of clause eighthly to Section 320 of the Indian Penal Code and the Appellate Court affirmed the order of conviction accepting such finding.

19. Besides above, on careful perusal of the examination of the accused under Section 313 of the Code of Criminal Procedure, I find that during his examination thereunder no question was put to the accused person about this particular facts that the injured was in a hospital from October 1, 1993 to October 22, 1993 or for 21 days due to the injuries suffered by him on being assaulted by the accused petitioner. In fact, such omission has denied the accused an opportunity to explain such circumstances and thus such circumstances ought to have been excluded from consideration to record his guilt.

20. In view of the discussions above, the conviction of the petitioner under Section 325 of the Indian Penal Code cannot be sustained.

21. However, on careful perusal on record, I have no hesitation to hold the accused guilty for causing simple hurt to the P.W.1 - P. Yusuf. In that view of the matter, I alter the order of conviction of the petitioner to one under Section 323 of the Indian Penal Code from under Section 325 of the Indian Penal Code.

22. The learned Advocate of the petitioner submitted before this Court that the petitioner has already lost his job because of his conviction in the instant case which has not been disputed by the learned Advocate appearing on behalf of the opposite party. It appears from the record that the petitioner has already suffered imprisonment during the trial for nearly two months and this relates to an occurrence took place nearly more than ten years back. Now, taking into consideration the above facts along with the nature of injury caused, I am of the view that the accused petitioner for his conviction under Section 323 of the Indian Penal Code be sentenced to period already undergone.

23. I direct that the petitioner shall be discharged from bail bond if he is not wanted in connection with any other case.

24. The instant criminal revision is thus disposed of.

25. The department is directed to immediately send down the LCR along with a copy of the judgment and order for immediate action.

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