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GEORGE PON PAUL

v.

KANAGALET & ORS.

Criminal Appeal Nos. 72-73 of 2003

APRIL 29, 2009

B

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

C

Penal Code, 1860 – ss. 326 and 452 – Conviction under – Imposition of custodial sentence of confinement till rising of court and fine with default stipulation – High Court enhancing the sentence to rigorous imprisonment for two years with fine – On appeal held: Accused has deposited the fine amount and victim has been paid the amount as directed – Also there has been lapse of long time – Hence, period of sentence restricted to the period already undergone.

D

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal Nos. 72-73 of 2003

E

From the Judgement and Order dated 24.01.2002 of the Hon'ble High Court of Judicature at Madras in Criminal R.C. Nos. 935 of 1999, No. 1786 of 1999 and 1048 of 2001.

C. Paramasivam. P. Ramesh, Rakesh K. Sharma, for the Appellant.

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The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

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Challenge in this appeal is to the order passed by a learned Single Judge of the Madras High Court allowing the revision petition filed by the present respondent nos. 1 and 2 while dismissing the revision petition filed by the present appellant. The High Court was of the view that for the offence punishable under Section 326 of the Indian Penal Code, 1860 (in short 'IPC') only the fine was imposed and therefore

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sentenced the appellant to undergo rigorous imprisonment for two years in addition to the fine imposed.

Prosecution version as unfolded during trial was that on 7.1.1993 at about 2.45 P.M. three accused persons trespassed into the house of respondent No. 1 (PW1) and attacked her husband respondent No. 2 (PW2). While the said attack was restrained by PW1., they attacked her also with Vettu Kathi and other weapons and caused injuries to both of them. All the three accused were tried for commission of offence punishable under Sections 452, 326, 324 and 325IPC. The trial court directed acquittal of the accused Nos. 2 and 3 while convicting the present appellant for the offences punishable under Section 326 and 452 IPC. The present appellant challenging the said conviction filed an appeal before the Appellate Court which confirmed the conviction, and sentence imposed i.e. confinement till rising of court and fine with default stipulation. Aggrieved by the same, the present appellant filed Criminal Revision No. 1048 of 2001 before the Madras High Court. Immediately after the conviction was recorded both the victims Pws 1 and 2 filed a criminal revision petition No. 935/1999 before the High Court challenging the acquittal in respect of the charges as against A2 and A3 and to enhance the sentence imposed upon A1 for both the offence as the sentence imposed was not adequate.

Both the revision petitions were taken up and disposed of by a common judgment. The High Court found that the acquittal of A2 and A3 does not suffer from any infirmity. It noted that in view of the specific provisions relating to imposition of custodial sentence, the trial court could not have imposed only fine. The High Court found no merit in the revision petition filed by the appellant questioning his conviction but held that in view of provisions of Section 326, custodial sentence has to be there. Accordingly, while maintaining the conviction the sentence was enhanced. Sections 326 and 452 reads as follows :

326. Voluntarily causing grievous hurt by dangerous weapons or means -

A Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 152 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

452. House-trespass after preparation for hurt, assault or wrongful restraint -

D Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

E The only question that remains is whether the custodial sentence as was imposed by the trial court was adequate or not i.e. confinement till rising of the court.

F It appears from record that the fine amount has been deposited and the amount which was directed to be paid to PW2 has already been paid. Considering this fact and the long passage of time, it would appropriate to restrict the period of sentence to the period already undergone. The appeals stand disposed of.

N.J.

Appeals disposed of.