

A

C. R. KARIYAPPA

v.

STATE OF KARNATAKA

(Criminal Appeal No. 781 of 2009)

B

SEPTEMBER 05, 2018

[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Penal Code, 1860 – ss. 325 and 326 – Voluntarily causing grievous hurt – On facts, appellant-school teacher assaulted a second class student with wooden stick resulting in loss of eye sight on the left eye – Acquittal by the trial court on the ground of contradictions in the evidence of eye witnesses, student being tutored before examination and delay in lodging of FIR – However, the High Court convicted the appellant u/s. 326 – On appeal, held: Evidence of the injured student cannot be discarded on the ground that he was tutored about the occurrence before the examination – He was apprised about the court’s proceedings as he was not conversant with the same – There were no contradictions in the evidence of the eye-witnesses as they were supported by the evidence of the father of another student – Evidence of eye witnesses was consistent throughout – However, there being no evidence that the stick wielded by the appellant was a dangerous weapon, conviction of the appellant u/s. 326 is not warranted – Thus, the conviction modified to one u/s. 325 and sentence of imprisonment reduced to one year – Evidence.

F

Partly allowing the appeal, the Court

HELD: 1.1 The evidence of PW-2 injured-child witness in his cross examination stated that the admitted suggestions put to him by the defence counsel that he was tutored, the same cannot be the reason for discarding the evidence of PW-2. When PW-2 was examined in the Court some time after the occurrence, being a child witness(PW-2) who is not conversant with the court’s proceedings, has to be necessarily apprised about the court’s proceedings and that he has to speak about the occurrence. It cannot be said that he was tutored about the occurrence itself to depose against the appellant. [Para 9][153-B-C]

H

1.2 The contradiction pointed out between the evidence of PW-3 and PW-4, who were examined as eye witnesses, do not affect the version of PW-3 and PW-4 and their credibility, more so, when their evidence is supported by PW-5 who is father of another student studying in the same school who has also stated about the assault by the appellant on PW-2 with the stick and that PW-2 sat down holding his eye with hands. [Para 10][153-D-E]

1.3 The High Court rightly held that evidence of P.Ws 3 to 5 has been consistent through out. Their evidence is also supported by the medical evidence of medical officers and doctors. Upon appreciation of evidence, the High Court rightly reversed the order of acquittal and convicted the appellant. [Para 11][153-F]

1.4 Though the stick wielded by the appellant has been marked as MO1, there is no material to show that the stick that was wielded by the appellant was a dangerous weapon. In the absence of such evidence, the conviction of the appellant under Section 326 may not be warranted; but the offence would fall under Section 325 IPC, “*voluntarily causing grievous hurt*”. The conviction of the appellant under Section 326 IPC is modified to conviction under Section 325 IPC. Coming to the quantum of sentence, the occurrence was of the year 1996. Keeping in view the passage of time and in the facts and circumstances of the instant case, the sentence of imprisonment is reduced to one year with additional fine of Rs.50,000/- . [Paras 12, 13][153-G-H; 154-A-B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 781 of 2009.

From the Judgment and Order dated 29.05.2008 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 814 of 2001.

Basava Prabhu S. Patil, Sr. Adv., Anirudh Sangneria, Chinmay Desh Pande, Geet Ahuja, Ms. Rachitha Herimath, Advs. for the Appellant.

Joseph Aristotle S., Mrs. Priya Aristotle, Shiva P., Ms. Aruna Hannah Dutta, Ms. Anitha Shenoy, Advs. for the Respondent.

H

A The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. This appeal arises out of the judgment of the High Court in and by which the High Court has reversed the order of acquittal and convicted the appellant under Section 326 IPC and sentenced him to undergo imprisonment for a period of two years.

B 2. It is an unfortunate case where the appellant working as a teacher in Rani Chennamma School, Hospet had assaulted PW-2, a second standard student, with wooden stick for not wearing uniform shoes resulting in injury to the left eye of the said student. The injured PW-2 was taken to the hospital at Hospet and, thereafter, taken to the
C M.M. Joshi Hospital at Hubli where PW-2 had undergone surgery twice. In spite of the treatment, there was loss of eye-sight on the left eye of PW-2. On the complaint lodged by PW-1 who is father of PW-2, law was set in motion.

D 3. Upon consideration of the evidence adduced by the prosecution, the Trial Court acquitted the appellant holding that there are contradictions in the evidence of eye witnesses viz. PW-3 and PW-4. The Trial Court also observed that the injured child (PW-2) was tutored before he was examined in the witness box and therefore, the evidence of child witness (PW-2) can not form the basis for conviction. The Trial Court also held that eye witnesses viz. PW-3 and PW-4 are related to PW-1 and that
E there was delay of 25 days in lodging the FIR and on those findings, the trial Court acquitted the accused-appellant.

4. The High Court set aside the order of acquittal and convicted the appellant as stated in para 1.

F 5. We have heard Mr. Basava Prabhu S.Patil, learned senior counsel appearing for the appellant and Mr. Joseph Aristotle S., learned counsel appearing for the respondent-State.

G 6. Learned senior counsel appearing for the appellant has taken us through the judgment of the Trial Court and submitted that the Trial Court has rightly taken note that PW-2 injured child witness was tutored and that evidence of PW-3 and PW-4 is fraught with contradiction and the trial Court has rightly acquitted the accused and while so the High Court erred in reversing the order of acquittal.

H 7. Learned senior counsel further submitted that the inordinate delay of 25 days in lodging the FIR was rightly considered as fatal to the

prosecution case. Learned senior counsel urged that when the conclusion arrived at by the trial court was a plausible view, based upon the evidence, the High Court was not right in reversing the order of acquittal. A

8. Learned counsel appearing for the State supported the impugned judgment of the High Court and submitted that based upon the evidence, the High Court has rightly convicted the appellant-accused. B

9. The evidence of PW-2 injured-child witness in his cross examination stated that the admitted suggestions put to him by the defence counsel that he was tutored, in our considered view, the same cannot be the reason for discarding the evidence of PW-2. When PW-2 was examined in the Court some time after the occurrence, being a child witness(PW-2) who is not conversant with the court's proceedings, has to be necessarily apprised about the court's proceedings and that he has to speak about the occurrence. It cannot be said that he was tutored about the occurrence itself to depose against the appellant. C

10. So far as contradiction pointed out between the evidence of PW-3 and PW-4 who were examined as eye witnesses, as observed by the High Court those contradictions do not affect the version of PW-3 and PW-4 and their credibility, more so, when their evidence is supported by PW-5 who is father of another student studying in the same school who has also stated about the assault by the appellant on PW-2 with the stick and that PW-2 sat down holding his eye with hands. D E

11. The High Court has rightly held that evidence of P.Ws 3 to 5 has been consistent through out. Their evidence is also supported by the medical evidence of PW-13 Doctor Guruprasad, the medical officer, in the hospital at Hospet; PW-14 (H. Neelakantha Swamy) – lecturer in Bellary Medical College and PW-16 (Dr.S.R. Kotekar) medical officer in the Government Hospital at Hospet. Upon appreciation of evidence, the High Court has rightly reversed the order of acquittal and convicted the appellant. F

12. The only question falling for consideration is the correctness of the conviction under Section 326 and the nature of the offence. Though the stick wielded by the appellant has been marked as MO1, there is no material to show that the stick that was wielded by the appellant was a dangerous weapon. G

13. In the absence of such evidence, in our view, the conviction of the appellant under Section 326 may not be warranted; but the offence H

- A would fall under Section 325 IPC, “*voluntarily causing grievous hurt*”. Coming to the quantum of sentence, the occurrence was of the year 1996. Keeping in view the passage of time and in the facts and circumstances of the present case, the sentence of imprisonment is reduced to one year with additional fine of Rs.50,000/- (Rupees fifty thousand).
- B
14. The conviction of the appellant under Section 326 IPC is modified to conviction under Section 325 IPC. The sentence of imprisonment is reduced to one year. Additionally fine of Rs.50,000/- (Rupees fifty thousand) is imposed. In default, the appellant shall further undergo imprisonment of three months. The period of sentence of imprisonment, if any, the appellant has already undergone shall be set off.
- C
15. The fine amount of Rs.50,000/- (Rupees fifty thousand) shall be paid as compensation to the injured PW-2.
- D
16. The appeal is partly allowed.
17. The appellant shall surrender within a period of four weeks from today failing which the appellant shall be taken to custody to serve out the remaining sentence.