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v.

THE STATE OF UTTAR PRADESH AND ANOTHER

(Criminal Appeal No. 1143 of 2018)

SEPTEMBER 07, 2018

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[KURIAN JOSEPH AND SANJAY KISHAN KAUL, JJ.]

Penal Code, 1860 – ss.326A and 326B – Offence under, whether attracted, if the injury in an acid attack is simple – Plea of appellant for discharge u/s.326A on the ground that the injury caused was simple as per the medical report hence, he cannot be charged u/s.326A, rejected – Propriety of – Held: It is not the percentage or gravity of injury, which makes the difference – Be it simple or grievous, if the injury falls under the specified eight types u/s.326A on account of use of acid, the offence u/s.326A is attracted – Merely because the title to s.326A speaks about grievous hurt by use of acid, it is not a requirement under the Section that the injuries caused should be invariably grievous – s.326B would be attracted in case the requirements specified are met on an attempted acid attack – Appeal dismissed – The Criminal Law (Amendment) Act, 2013.

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Penal Code, 1860 – ss.326A and 326B – Difference between – Discussed.

Interpretation of Statutes – Title of the provision and its contents – Conflict between – Held: Title to the provision need not invariably indicate the contents of the provision – In the event of a conflict between the plain expressions in the provision and the indicated title, the title cannot control the contents of the provision – Title is only a broad and general indication of the nature of the subject dealt under the provision.

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Dismissing the appeal, the Court

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HELD: 1.1 Section 326A, IPC carries title of “voluntarily causing grievous hurt by use of acid” whereas Section 326B, IPC does not carry any such indication in the title regarding the nature of injury as grievous. But, both the Sections provide for

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A eight types of injuries - (i) permanent damage, (ii) partial
damage, (iii) deformity, (iv) burns, (v) maiming,
B (vi) disfigurement, (vii) disability or (viii) grievous hurt. The first
seven of the injuries referred to in the Sections are classified
based on the normal aftereffect of acid attack whereas the eighth
one is on the gravity of the effect. Under Sections 326A and 326B,
C grievous hurt is only one among the eight injuries. In view of the
explanation under Section 326B, the resultant damage or
deformity under 326A or 326B is not required to be irreversible.
D The other seven injuries may be either simple or grievous. The
nature of injury being simple or grievous, is irrelevant for
distinguishing between Section 323, Section 326 and Section 326A
of IPC or between Section 326A and Section 326B of IPC. If the
injury referred to under Section 326A or 326B is one among the
specified eight injuries, whether the seven of them be simple or
grievous, the special provisions are attracted. [Paras 6, 7]
[890-E-H; 891-A]

1.2 The basic difference between Sections 326A and 326B
of IPC is the presence of actual injury under Section 326A. The
resultant injury has made the offence more serious with a
mandatory minimum punishment of ten years which may extend
to imprisonment for life and, in either case, with a fine. The fine
E is mandatory and the quantum should be just and reasonable in
the sense that it should be, in any case, sufficient to meet the
medical expenses for the treatment of the victim. Therefore, the
second proviso under Section 326A requires that the fine
imposed should be paid to the litigant. Under Section 326B, the
F mere act of throwing or attempt to throw or attempt to
administer or attempt to use any other means with the intention
of causing any of the injuries referred to in the Section, is to be
visited with a mandatory minimum imprisonment of five years,
which may extend to seven years and fine. Thus, merely
G because the title to Section 326A of IPC speaks about grievous
hurt by use of acid, it is not a requirement under the Section that
the injuries caused should be invariably grievous. Even if the
seven injuries are simple, Section 326A, and under Section 326B
the mere act of throwing or attempt, as indicated in the Section,
would attract the offence. [Paras 8, 9] [891-B-D]

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1.3 The title to the provision need not invariably indicate the contents of the provision. If the provision is otherwise clear and unambiguous, the title pales into irrelevance. On the contrary, if the contents of the provision are otherwise ambiguous, an aid can be sought from the title so as to define the provision. In the event of a conflict between the plain expressions in the provision and the indicated title, the title cannot control the contents of the provision. Title is only a broad and general indication of the nature of the subject dealt under the provision. [Para 10] [891-E-F]

1.4 It is not the percentage or gravity of injury, which makes the difference. Be it simple or grievous, if the injury falls under the specified types under Section 326A on account of use of acid, the offence under Section 326A is attracted. Section 326B would be attracted in case the requirements specified are met on an attempted acid attack. [Para 16] [894-A-B]

1.5 The observations and findings in the present Judgment are only for the purpose of reaching the conclusion as to whether charge under Section 326A of IPC has been correctly framed and whether the trial court committed an error in rejecting the application for discharge under Section 326A of IPC. All other aspects would remain to be considered during the trial which shall be conducted uninfluenced by any of the observations on the merits of the matter. [Para 17] [894-C-D]

Laddu Ram v. State of Rajasthan [Criminal Miscellaneous Petition No. 681 of 2017 decided on 06.02.2017 by Rajasthan High Court] ; *M. Siluvai Murugan @ Murugan v. State* 2018 SCC OnLine Mad 2332 – overruled.

Raichurmatham Prabhakar and Another v. Rawatmal Dugar (2004) 4 SCC 766 : [2004] 3 SCR 1130 ; *Union of India (UOI) and Another v. National Federation of the Blind and Others* (2013) 10 SCC 772 : [2013] 9 SCR 1023 – relied on.

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Case Law Reference

[2004] 3 SCR 1130 relied on Para 11

[2013] 9 SCR 1023 relied on Para 11

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1143 of 2018

From the Order dated 19.07.2018 of the High Court of Judicature
at Allahabad in Criminal Revision No. 2231 of 2018

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L. B. Rai, Askari Husain, Saurav Singhla, Kartik Rai, Shankar
Divate, Advs. for the Appellant.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

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2. In an acid attack, if the injury is simple, whether an offence
under Section 326A of the Indian Penal Code (hereinafter referred to as
'IPC') is attracted, is the main question for consideration in this case.
And if the injury is only simple, whether charge can be framed under
Section 326B is the incidental issue.

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3. Section 326A was introduced by The Criminal Law
(Amendment) Act, 2013 pursuant to the recommendations contained in
the Report of the Committee on Amendments to Criminal Law,
popularly known as J.S. Verma Committee Report. The pre-amended
provision covering such injuries is Section 326. To quote:

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**“326. Voluntarily causing grievous hurt by dangerous
weapons or means.—**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 1[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.”

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4. “Grievous hurt” is defined under Section 320 of IPC and “hurt” under Section 319 of IPC. To quote: A

“**319. Hurt.**—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.”

“**320. Grievous hurt.**—The following kinds of hurt only are designated as “grievous”:- B

First — Emasculation.

Secondly — Permanent privation of the sight of either eye.

Thirdly — Permanent privation of the hearing of either ear, C

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. D

Eighthly — Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.” E

5. Injuries caused or attempted to be caused by use of acid, have been, under the amendment, categorized differently as separate or special offences under Sections 326A and 326B of IPC:

“**326A. Voluntarily causing grievous hurt by use of acid, etc.**-Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine; F G

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim;

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A Provided further that any fine imposed under this section shall be paid to the victim.”

“326B. Voluntarily throwing or attempting to throw acid.-
B Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

C *Explanation 1.*—For the purposes of section 326A and this section, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

D *Explanation 2.*— For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.”

E 6. Section 326A carries title of “voluntarily causing grievous hurt by use of acid” whereas Section 326B does not carry any such indication in the title regarding the nature of injury as grievous. But on closer analysis, it can be seen that both the Sections provide for eight types of injuries - (i) permanent damage, (ii) partial damage, (iii) deformity, (iv) burns, (v) maiming, (vi) disfigurement, (vii) disability or (viii) grievous hurt.

F 7. The first seven of the injuries referred to in the Sections are classified based on the normal aftereffect of acid attack whereas the eighth one is on the gravity of the effect. Under Sections 326A and 326B, grievous hurt is only one among the eight injuries. In view of the explanation under Section 326B, the resultant damage or deformity under 326A or 326B is not required to be irreversible. The other seven injuries may be either simple or grievous. The nature of injury being simple or grievous, is irrelevant for distinguishing between Section 323 and Section 326A of IPC or between Section 326A and Section 326B of IPC. If the injury referred to under Section 326A or 326B is one among

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the specified eight injuries, whether the seven of them be simple or grievous, the special provisions are attracted. A

8. The basic difference between Sections 326A and 326B of IPC is the presence of actual injury under Section 326A. The resultant injury has made the offence more serious with a mandatory minimum punishment of ten years which may extend to imprisonment for life and, in either case, with a fine. The fine is mandatory and the quantum should be just and reasonable in the sense that it should be, in any case, sufficient to meet the medical expenses for the treatment of the victim. Therefore, the second proviso under Section 326A requires that the fine imposed should be paid to the litigant. Under Section 326B, the mere act of throwing or attempt to throw or attempt to administer or attempt to use any other means with the intention of causing any of the injuries referred to in the Section, is to be visited with a mandatory minimum imprisonment of five years, which may extend to seven years and fine. B C

9. Thus, merely because the title to Section 326A of IPC speaks about grievous hurt by use of acid, it is not a requirement under the Section that the injuries caused should be invariably grievous. Even if the seven injuries are simple, Section 326A, and under Section 326B the mere act of throwing or attempt, as indicated in the Section, would attract the offence. D

10. The title to the provision need not invariably indicate the contents of the provision. If the provision is otherwise clear and unambiguous, the title pales into irrelevance. On the contrary, if the contents of the provision are otherwise ambiguous, an aid can be sought from the title so as to define the provision. In the event of a conflict between the plain expressions in the provision and the indicated title, the title cannot control the contents of the provision. Title is only a broad and general indication of the nature of the subject dealt under the provision. E F

11. We are benefitted with two precedents in this regard - (i) **Raichurmatham Prabhakar and another v. Rawatmal Dugar**¹ and (ii) **Union of India (UOI) and another v. National Federation of the Blind and others**². G

12. In **Raichurmatham Prabhakar** (supra), it was held by the Court at paragraph-14 of the judgment as follows:

¹(2004) 4 SCC 766

²(2013) 10 SCC 772

A “14. The view is now settled that the headings or titles
pre-fixed to sections or group of sections can be referred to in
construing an Act of the legislature. But conflicting opinions have
been expressed on the question as to what weight should be
attached to the headings or titles. According to one view, the
B headings might be treated as preambles to the provisions
following them so as to be regarded as giving the key to opening
the mind of the draftsman of the clauses arranged thereunder.
According to the other view, resort to heading can only be taken
when the enacting words are ambiguous. They cannot control the
meaning of plain words but they may explain ambiguities.
C (See: Principles of Statutory Interpretation by Justice G.P. Singh,
9th Edn., 2004, pp.152,155). In our opinion, it is permissible to
assign the heading or title of a section a limited role to play in the
construction of statutes. They may be taken as very broad and
general indicators of the nature of the subject-matter dealt with
thereunder. The heading or title may also be taken as a
D condensed name assigned to indicate collectively the
characteristics of the subject-matter dealt with by the enactment
underneath; though the name would always be brief having its
own limitations. In case of conflict between the plain language of
the provision and the meaning of the heading or title, the heading
or title would not control the meaning which is clearly and plainly
E discernible from the language of the provision thereunder.”

13. In **National Federation of the Blind** (supra):

F “44. It is settled law that while interpreting any provision of
a statute the plain meaning has to be given effect and if language
therein is simple and unambiguous, there is no need to traverse
beyond the same. Likewise, if the language of the relevant
section gives a simple meaning and message, it should be
interpreted in such a way and there is no need to give any weightage
to headings of those paragraphs. This aspect has been clarified in
G Prakash Nath Khanna and Anr. v. Commissioner of Income Tax
and Anr. (2004) 9 SCC 686. Paragraph 13 of the said judgment is
relevant which reads as under:

H “13. It is a well-settled principle in law that the court cannot read
anything into a statutory provision which is plain and

unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. “Statutes should be construed, not as theorems of Euclid”, Judge Learned Hand said, “but words must be construed with some imagination of the purposes which lie behind them”. (See *Lenigh Valley Coal Co. v. Yensavage*.) The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama and Padma Sundara Rao v. State of T.N.*”

14. In the present case, the appellant sought discharge under Section 326A of IPC on the ground that the injury caused was simple as per the medical report. The trial court rejected the application and the same has been upheld by the High Court. Learned Counsel for the appellant has submitted that even if the entire prosecution story is accepted to be true and correct, no grievous hurt has been caused to the victim since the injuries are reported to be simple, and hence, he cannot be charged under Section 326A. Reliance is sought to be placed on two decisions, one of the High Court of Rajasthan in **Laddu Ram v. State of Rajasthan** decided on 06.02.2017 in Criminal Miscellaneous Petition No. 681 of 2017 and the other of the High Court of Madras in **M. Siluvai Murugan @ Murugan v. State** decided on 30.07.2018 in Criminal Appeal No. 861 of 2016 (2018 SCC OnLine Mad 2332).

15. In **Laddu Ram** (supra), the High Court of Rajasthan has taken the view that the injury caused being simple in nature, Section 326A of IPC is not attracted but only Section 326B of IPC would apply. Similarly, the High Court of Madras in **M. Siluvai Murugan @ Murugan** (supra) held that if the injury caused by use of acid is simple in nature, there cannot be any conviction under Section 326A of IPC. In **M. Siluvai Murugan @ Murugan** (supra), though the High Court has analysed the legal position correctly, it has unfortunately committed a patent error in taking note of the nature of injury as simple and altering the conviction to Section 326B of IPC on the ground that the injury as per medical report was simple being chemical injury at twelve per cent.

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A 16. As we have already discussed above, it is not the percentage or gravity of injury, which makes the difference. Be it simple or grievous, if the injury falls under the specified types under Section 326A on account of use of acid, the offence under Section 326A is attracted. Section 326B would be attracted in case the requirements specified are met on an attempted acid attack. Therefore, both the High Court of Rajasthan in **Laddu Ram** (supra) and High Court of Madras in **M. Siluvai Murugan @ Murugan** (supra) do not lay down the correct position of law and they are overruled.

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D 17. The appeal is hence dismissed. However, we make it clear that the observations and findings in this Judgment are only for the purpose of reaching the conclusion as to whether charge under Section 326A of IPC has been correctly framed and whether the trial court committed an error in rejecting the application for discharge under Section 326A of IPC. All other aspects would remain to be considered during the trial which shall be conducted uninfluenced by any of the observations on the merits of the matter.