

(1981) 11 OHC CK 0006
In the Orissa High Court
Case No : Criminal Revision No. 101 of 1980

Dalapati Majhi

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 16-11-1981

Acts Referred:

Penal Code, 1860 (IPC) — Section 321, 322, 325

Citation : (1982) 53 CLT 106

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Advocate : B.H. Mohanty, S.C. Mohanty, S.C. Mishra and J.K. Bastia, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—Being aggrieved by his conviction u/s 325 of the Indian Penal Code and the sentence of one month rigorous imprisonment imposed for such conviction, the Petitioner has filed this revision.

2. Gita Mukhi was occupying a room belonging to Gorakha Naik. On May 31, 1977 at 2 p.m. in the after-noon the informant (Gita Mukhi), Gorakh Naik, Nityananda Majhi (father of the Petitioner) and one Hara Majhi were sitting on the varendah of the house of Gorakha Naik. At that time Gita Mukhi arrived at the place shouting and said that in course of the quarrel the Petitioner dragged him as a result of which he fell down on the varendah of Gorakha Naik and sustained a fracture of the leg. On the aforesaid allegations, the Petitioner was placed on trial for commission of an offence u/s 325 of the Indian Penal Code. The defence of the Petitioner was that Gita Mukhi was drunk at the relevant time and he sustained the injury by accidental fall from the varendah. There was no intention to cause hurt. The Courts below found him guilty of causing grievous hurt u/s 325 of the Indian Penal Code.

3. The appellate Court found:

...The evidence of P.Ws. 1, 2 and 3 clearly establishes that the Appellant had forcibly dragged and pushed P.W. 1 from the pinda of P.W. 2 as a result of which the informant fell down on stones below and sustained injuries on his leg....

4. Mr. S.C. Mohanty, learned Counsel for the Petitioner, strenuously contended that on the evidence adduced on behalf of the prosecution, the Petitioner could not be held to be guilty of offence u/s 325, Indian Penal Code. The Petitioner was trying to subside the quarrel and his sole intention was to restore a peaceful situation and with that end in view, he dragged the Petitioner from the place. The fall was accidental and not intended.

5. The two independent eye-witnesses are Gorakha Naik (P.W. 2) and Hara Majhi (P.W. 3). They support the defence version. P.W. 3 categorically stated that the Petitioner was not at the place. He arrived at the place hearing the aggressive tone of Gita Mukhi and requested the latter not to create any disturbance and endeavoured to take Gita Mukhi away from the place by holding his hands. Gita Mukhi, however, fell down from the varendah and could not get up. He has further stated that it appeared as if Gita Mukhi was drunk and the Petitioner dragged Gita Mukhi with a view to removing him from the place and he had no intention to assault and with all good intentions, the Petitioner was dissuading him not to create disturbances. The evidence of P.W. 2 is to the same effect more or less.

6. "Voluntarily causing hurt" has been defined III Section 321 of the Indian Penal Code, which is as follows:

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

"Voluntarily causing grievous hurt" has been defined in Section 322, which is as follows:

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation - A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

In a case where the charge is for voluntarily causing grievous hurt, it has to be considered and decided not only whether grievous hurt has not been caused, but if it has been caused whether the accused intended or knew himself to be likely to cause grievous hurt. If he intended or knew himself to be likely to cause simple hurt only, he cannot be convicted u/s 325, Indian Penal Code. The requirement of this Explanation will be satisfied if the offender had the

knowledge that by his act he was likely to cause grievous hurt. Such a knowledge can be inferred from the part of the body chosen for inflicting violence and the severity of that violence as shown by the injuries on the code of the victim. The means by which the injury was caused is not the true criterion. Section 321 and the explanation to Section 322 make it clear that either the ingredient of intention or that of knowledge, must be essentially present in order to constitute the offence of hurt.

The Law Commissioners observed:

One should not to trouble himself with seeking for direct proof of what the offender thought was likely to happen, but is to infer it from the nature of his act, taking him to have intended grievous hurt, or at least to have contemplated grievous hurt as likely to occur, when he did what everybody knows is likely to cause grievous hurt, and the more certainly drawing this conclusion where there is evidence of previous enmity against the party who has suffered. If the act was such that nothing more than simple hurt could reasonably be thought; likely to ensue from it, then although grievous hurt may unexpectedly have ensued....

the offender can only be convicted for simple hurt because grievous hurt was not in his contemplation. (See Ratanlal, Law of Crimes, Twenty second edition, 855).

7. In the facts and circumstances of the case especially having regard to the evidence of P.Ws. 2 and 3, it can be inferred that the Petitioner did not intend to cause hurt or grievous hurt or did any act with the knowledge that he was likely thereby to cause hurt or grievous hurt, but grievous hurt ensued unexpectedly.

8. In the result, I set aside the judgments of the Courts below, allow this revision and acquit the Petitioner.