

(1973) 12 AHC CK 0017
In the Allahabad High Court

Jagannath and Others

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

Date of Decision : 12-12-1973

Acts Referred:

Penal Code, 1860 (IPC) — Section 320, 324, 326, 34, 342

Citation : (1974) CriLJ 1239

Hon'ble Judges : K.B. Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.B. Srivastava, J.—The appellants jagannath, Ram Swarup, Tokhey and Ghurra have been convicted u/s 326, read with Section 34, of the Indian Penal Code, and each of them has been sentenced to undergo rigorous imprisonment for a period of three years. They have also been convicted u/s 342, of the Indian Penal Code, and the sentence awarded for that is rigorous imprisonment for a term of six months each. The two sentences, however, have been made concurrent. This appeal is directed against these convictions and sentences.

2. The learned. Counsel for the petitioner argued that the case made out was one u/s 324, of the Indian Penal Code, and not u/s 326, and therefore, the convictions of the appellants u/s 326 should be set aside and instead they should be convicted u/s 324 and the sentence should also be reduced. In order to appreciate this argument I would like to recite the injuries first. These are as follows:

1. Incised wound 2 cm. X 1/2 cm. X scalp on back part of head 2 cm. below occipita.

2. Incised wound 5 X 1 cm. X skin left side neck-end of injury 1 X 1/2 cm. below a dam"s apple.

3. I. W. 2 X 2/10 X skin (cm.) on neck 3 cm. below central part of chin.

4. Incised wound 21/2 cm. X 1 cm, X skin on left side chest upper part 16 cm. above left nipple downwards.
 5. Incised wound 4 cm. X 1/2 cm. X skin on left side neck 4 cm. above injury No. 4.
 6. Incised wound 7 cm. X 2/10 cm. X skin on outer and upper part of left arm.
 7. Incised wound 7 cm. X 3 cm. X 2 cm. on upper part of left side back.
 8. Incised wound 7 cm. X 1 cm. on left side neck, 8 cm. below injury No. 7.
 9. Incised wound 61/2 cm. X 21/2 cm. X 1/2 cm. left side back.
 10. Incised wound 6 cm. X 2 cm. X 1 cm. on left side back 5 1/2 cm. below injury No. 9.
 11. Incised wound 5 cm. X 1 1/2 cm. X 1 cm. on medial end, on left shoulder 7 cm. below injury No. 9.
 12. Incised wound 6 cm. X 1 cm. X skin just close and outer to injury 11.
 13. Incised wound 3 cm. X 4 cm. x skin on outer and middle of left are 9 cm. below injury No. 11.
 14. Incised wound 6 cm. x 2 cm. X skin on back and upper part of left forearm.
 15. Incised wound 10 cm. X 4 cm. X skin on outer and back of the left forearm.
 16. Incised wound 5 1/2 cm. X 1 1/2 cm. X skin on outer and upper part of right forearm.
 17. Incised wound 1 cm. X 1/4 cm. X skin on right side abdomen.
 18. Incised wound 2 cm. X 1 cm. X 3/4 cm. on the left side buttock.
 19. Incised wound 14 cm. X 5 cm. X 2 cm. on left thigh outer and middle part.
 20. Incised wound 13 cm. X 4 1/2 cm. X 2 cm. left thigh 3 cm. below injury No. 19.
 21. Incised wound 4 cm. X 1/2 cm. X skin on the left thigh 21/2 cm. below injury No. 20.
 22. Incised wound 1 cm. X 1/10 cm. X skin on front and upper part of right index finger.
 23. Incised wound 2 cm. X 2/10 cm. X skin on front and middle part of right middle finger.
 24. Incised wound 1 1/2 cm. X 1/10 cm. X skin on front and upper part of right ring finger.
 25. Incised wound 2 cm. X 2/10 cm. X skin on front and upper part of left finger.
- A perusal of the injuries will show that these existed on the head, neck, chest,

back, shoulder, abdomen, buttock, thigh and fingers. All these injuries were incised wound caused by knives. Grievous hurt is defined by Section 320, of the Indian Penal Code. Clause Eighthly states that 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, will be designated as grievous. An analysis of this Clause will show that a hurt will be grievous if, (i) it endangers life or, (ii) it causes the sufferer to be during the space of twenty days in severe bodily pain or (iii) if the sufferer during the said space of twenty days is unable to follow his ordinary pursuits. These three are alternatives to each other, that is to say, a hurt will be grievous if it falls within one or more of these three. Dr. Mangat Ram stated that the injuries were not dangerous to life. He, however, further stated that he wanted to send the patient to another hospital for X-ray as X-ray facility was not available in the Bilgram Hospital but the patient was not in a position to be sent outside the hospital. The bed-head ticket showed that the patient was admitted inside the hospital on October 9 and was discharged therefrom on November 20, that is to say, he had remained inside the hospital for more than a month. The learned Counsel argued that the mere fact that the patient remained inside the hospital for more than twenty days will not make the injuries received grievous. This argument is certainly correct. The law requires that the injured person should during the space of twenty days be in severe bodily pain or unable to follow his ordinary pursuits, that is to say, the inability to follow the ordinary pursuits or the bodily pain should, be for a duration of twenty days at least. He has, however, argued that these things can be established only by medical evidence and not by other evidence. Here, I am unable to see eye to eye with him. A man may receive injury and may still not get himself admitted in the hospital or put himself under the treatment of a medical practitioner. The law does not say that he must get himself admitted inside the hospital. The law only says that the prosecution must prove that for a space of twenty days at least he was in severe bodily pain or he was unable to follow his ordinary pursuits. The medical evidence may be more reliable but is not legally necessary. The injured stated that he was on his bed inside the hospital for about a month and that he was unable to move or even to sit. There is no reason why this testimony should not be accepted, looking to the nature of the injuries and the parts of the body on which these were inflicted. After all, he had received 25 incised wounds on various parts of the body and medical evidence or no medical evidence, one can imagine that he must have been in severe bodily pain. When he has deposed that he was unable even to sit or move out of the bed, it necessarily implies that he was unable to follow his ordinary pursuits also.

3. The conviction u/s 326 was, therefore, correctly recorded and the sentence does not require any reduction. The appeal is dismissed. The conviction of and the sentence awarded to the appellants are confirmed. They are on bail and shall surrender to the same.