

(2007) 04 AHC CK 0040
In the Allahabad High Court
Case No : Criminal M.A. No. 4892 of 2001

Mukesh Kumar Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 320, 323, 326

Citation : (2007) 3 ACR 2551

Hon'ble Judges : Barkat Ali Zaidi, J

Bench : Single Bench

Advocate : A. P. Tewari and S.S. Tripathi, for the Appellant; Sudhir Kumar Singh, Siddharth Shukla, R.K. Maurya and A.G.A., for the Respondent

Judgement

Barkat Ali Zaidi, J.—In a Criminal Case 2792 of 1997 pending before Additional Chief Judicial Magistrate, Court No. 18, Gorakhpur, the trial Magistrate who had initially framed the charge u/s 323, I.P.C. besides the other Sections of the I.P.C, subsequently amended the charge from one u/s 323, I.P.C. to Section 326, I.P.C. against the O.P.s accused, which was challenged in a revision by the O.Ps. accused.

2. The Sessions Judge (In Criminal Revision No. 74 of 2001) held that no charge u/s 326, I.P.C. could be framed, and against that order, the complainant has come to this Court, u/s 482, Cr. P.C.

3. I have heard Sri A. P. Tewari, advocate for the applicant and Sri R. K. Maurya, Additional Government Advocate for the State.

4. Section 320, I.P.C. specifies only 8 types of hurt as grievous, which are as follows:

Firstly--Emasculation.

Secondly--Permanent privation of sight of either eye.

Thirdly--Permanent privation of hearing of either ear.

Fourthly--Privation of any member of 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.

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.

5. In the case in hand, the accused are alleged to have caused the following injuries on the person of the complainant, on 7.2.1992, who was examined on his injuries on 14.2.1992 at District Hospital, Gorakhpur on 14.2.1992.

(1) Stitched wound with two stitches in the length of 1 cm. on the medial canthus of left upper eye lid. Partially healed. Kept under observation.

(2) Stitched wound with 2 stitches in 1 cm. in length of left lower eye lid partially healed. Kept under observation.

Examination of left eye ball in reference to injury Nos. 1 and 2.

--Eye lids are...

--Conjunctiva congested.

--Cornea Clear.

--A/C (Anterior Chamber) normal.

--Lens transparent.

--Iris (Black Portion of Eye) normal.

--Pupil briskly reacting to light.

(3) Multiple contusions in an area of 3 cm. x 2 cm. on the left of face. Just below left lower eye lid. Colour fading blue.

(4) Traumatic swelling 6 cm. x 2 cm. on the back of middle of left upper arm.

(5) Traumatic swelling 3 cm. x 2 cm. on the front of right shoulder.

Injury Nos. 1 and 2 kept under observation. No opinion can be given. Injury Nos. 3, 4 and 5 are simple in nature, caused by blunt object." Weapon of injury Nos. 1 and 2 could not be ascertained.

6. Subsequently, one Dr. Ashish Jaiswal of Gorakhpur examined the left eye of the complainant and in the report prepared by him noted the vision and fundus as normal and for the complaint of the complainant that he had watering from

left eye referred the complainant to All India Institute of Medical Sciences, New Delhi. The left eye of the complainant was examined at All India Institute of Medical Sciences, New Delhi on 9.4.1992, where he was advised surgery, pursuant to which, he was operated on 10.8.1992 for, canalicular block repair, and was discharged on 13.8.1992 with the advice that he should have stent implantation.

7. From the nature of injuries No. 3, 4 and 5, it will thus appear that all of them are simple injuries existing on non-vital parts of the body. So far injury Nos. 1 and 2 are concerned. Dr. Jaiswal in his report clearly noted that the vision and the fundus of the left eye as normal. He referred the complainant to All India Institute of Medical Sciences, New Delhi, only for watering eye, which was operated upon and repaired there.

8. It will, therefore, follow that the applicant had no privation of the sight of his left eye, which could be designated as a grievous hurt.

9. The Sessions Judge was, therefore, justified in refusing to charge the accused u/s 326, I.P.C. and the application, therefore, fails and is accordingly rejected.