
(2002) 06 KAR CK 0003
In the Karnataka High Court
Case No : Criminal A. No. 1815 of 2001

State of Karnataka

APPELLANT

Vs

M. Babu and Another

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 94, 95

Citation : (2002) CriLJ 3604 : (2002) 3 KCCR 1922

Hon'ble Judges : N.K. Patil, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : G. Bhavani Singh, Addl. S.P.P, for the Appellant;

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—When this appeal first came up for admission on 11 -3-2002 we heard the learned Additional S.P.P. who had advanced his submission that the act of the accused has resulted In an injury to the complainant that a sharp object was used and that even if the conviction is not u/s 307, IPC that the conviction for some lesser offence is very necessary. His submission was that in those of the cases an offence of some seriousness is alleged and merely because the trial Court finds that the offence of that gravity has not been made out, that it would not be correct for the trial Court to record an order of acquittal because that would constitute a miscarriage of justice. The learned Additional S.P.P. only submitted that the trial Courts are required in such instances to pass correct orders even if at the trial it is disclosed that the injury was a minor one and that without considering the important aspect of the law where a lesser offence is made out, recording an order of acquittal was totally unjustified.

2. After hearing the learned counsel, we issued notice to the respondents-accused but more importantly, we called for the record of the case as we desired to re-scrutinize the record. Unfortunately, the notice went through the office of the Commissioner of Police, there was some delay in its reaching the Police Station and the same has come back with an endorsement that the date of

hearing had elapsed and the notice is no longer valid.

3. Since the record had been received, we have scrutinised the same and what we find is that the injury caused is so minor that it is in the nature of a scratch and that it may not be possible even to apply Section 323, IPC as we would be required to stretch law. It is true that the complainant has alleged that because of the non-repayment of some loan there was an argument with the accused and that a beer bottle was used to pressurise him. that it was held against his head and chest in the course of which the injury occurred. On the evidence, before the Court, there is no question of invoking Section 307, IPC as the material could never make out an offence of attempt to murder.

4. We have heard the learned Additional S.P.P. on merits on the question as to whether a lesser offence has been established and his submission is that the infliction of the injury would invoke Section 323, IPC. Normally we would have upheld this submission except for the fact that in a some-what similar situation the Supreme Court had occasion to interpret Section 95, IPC in the case of Veeda Menezes Vs. Yusuf Khan and Another, and on that occasion while considering the provisions of Section 94, IPC and the doctrine of triviality, in this and several other cases, the Supreme Court and the various High Courts have very clearly laid down that no action is warranted from the Court if the harm caused is so very trivial that no person of sound common sense would regard it as an offence. It is that principle that holds good in the present case and that being so, we see no useful purpose in going through the procedure of awaiting the service of the notice for purposes of disposal of the appeal as the Court is effectively passing an order in favour of the accused and no prejudice is caused to them.

5. For the reasons aforesaid, the appeal fails on merits and stands dismissed.