

(2017) 01 MP CK 0147

MADHYA PRADESH HIGH COURT

Case No: 2895 of 2016

Mahesh Kumar

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Jan. 11, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 397, Section 401, Section 228(1)(a) - Calling for records to exercise powers of revision - High Courts powers of revision - Frami

Hon'ble Judges: Rajendra Mahajan

Bench: Single Bench

Advocate: Ajay Jain, Y D Yadav

Judgement

1. The applicant-complainant has filed this criminal revision under Section 397 r.w. 401 of the Cr.P.C. against the order dated 16.09.2016 passed by the First Additional Sessions Judge Varaseoni, District Balaghat under Section 228(1)(a) Cr.P.C. in Sessions Trial No.2400134/2016.

2. The short facts of the case are that in the night of 04.02.2016, applicant-complainant Anusuiya aged about 48 years was sleeping with her grand daughter in her house situated in village Kankigaya. At about 11:00 p.m. she heard noise of people and sound of stone-pelting coming from outside of her house. As a result, she woke up and came out of her house. She saw that respondent Nos.1 to 5/accused persons namely, Govind Ram @ Tappu, Damodar, Ravindra @ Sonu, Alam Singh and Devkibai were standing in front of her house. Seeing her, they shouted a torrent of abuse at her and told her that she had illegally constructed a house. They further told her threateningly that she had no right to live therein. She requested them not to abuse her. Thereafter, they physically assaulted her with lathis and shoes. Later on, respondents-accused persons namely, Ravindra @ Sonu and Alam

Singh took her to Mahavir Chowk of the village by virtually dragging her. There, they also committed marpeet with her. Sheelabai, Rayabai, Ravi and other villagers came to her rescue. In the course of which, they also assaulted Sheelabai with lathis. As a result, she sustained a fracture in the forearm of her left hand and other parts of body. The applicant-complainant sustained injuries on her hands, legs and head. As a result she fell unconscious. She was removed to the hospital for treatment in an ambulance. Upon the report of the applicant-complainant, the police of Police Station Lalbarra, District Balaghat registered a case against the respondents-accused persons at Crime No.642/2016 under Sections 294, 323, 326, 355, 506 and 34 of the IPC. Upon completion of the investigation, the police charge sheeted the respondents-accused persons under Sections 294, 323, 355, 506, 147, 325 and 326 IPC in the court of Judicial Magistrate Varaseoni. The learned JMFC committed the case to the court of Session as the offence punishable under Section 326 IPC is triable by the court of Session in the State of M.P. Thereafter, Sessions Case No.2400134/2016 is registered and the same is made over to the First Additional Sessions Judge, Varaseoni for trial.

3. On 16.09.2016, the learned ASJ heard arguments over the framing of charge. On the self-same day, he passed the impugned order in the order-sheet of the case. Vide the impugned order, he has held that there is *prima facie* evidence on record for framing of charges against the respondents-accused persons under Sections 294, 323 (for causing simple injuries to applicant-complainant Anusuiya) 506, 355, 147 and 325 (for causing a grievous hurt to injured Sheelabai) IPC but the offence under Section 326 IPC is not made out against the respondents-accused persons as argued by the learned prosecutor on the grounds that as per injury report and X-ray report of injured Sheelabai, she sustained a fracture in the ulna bone of her left hand with a hard and blunt object. Upon the aforesaid findings, the learned ASJ has further held that the offences under Sections 294, 323, 506, 355, 147 and 325 IPC are not exclusively triable by the Court of Session and that the JMFC has also power to try the case under the aforesaid offences. Thus, he transferred the case under the provisions of Section 228(1)(a) Cr.P.C. to the court of JMFC Varaseoni directing him to frame the charges against the respondents-accused persons under the aforesaid Sections and try the case in accordance with the provision of the said Section.

4. Being aggrieved by the impugned order, the applicant-complainant has filed this revision.

5. Learned counsel for the applicant-complainant submits that on the basis of the medical evidence, it is obvious that injured Sheelabai sustained a grievous hurt besides other simple injuries in the incident. He submits that as per the FIR and the case diary statements of the eyewitnesses, the respondents-accused persons inflicted the said grievous hurt upon her with lathi(s). He submits that the following expression appearing in the body of Section 326 IPC: any instrument which, used as

a weapon of offence, is likely to cause death (for short "the expression") has a long sweep in which a lathi, as an instrument, is covered because a lathi is capable of causing death of a person. Therefore, the learned ASJ ought to have framed the charge against the respondents-accused persons under Section 326 with the aid of Section 149 IPC taking into consideration their numbers in place of Section 325 r.w. 149 IPC in addition to other charges. He submits that on the basis of wrong reasonings, the learned ASJ has held that *prima facie* the respondents-accused persons have committed an offence under Section 325 IPC. Hence, the impugned order passed by the learned ASJ under Section 228(1) (a) Cr.P.C. is erroneous, therefore, it is liable to be set aside by this court in exercise of its revisional jurisdiction.

6. Learned Panel Lawyer submits that as per the evidence on record, injured Sheelabai suffered a simple fracture in the ulna bone of her left hand with lathi(s). He submits that a lathi is not a dangerous weapon and that the ulna bone is not a vital part of a human body. Therefore, the learned ASJ has rightly held that the respondents-accused persons have *prima facie* committed an offence under Section 325 IPC in respect of causing a grievous hurt to injured Sheelabai. Thus, this court is not required to interfere with the impugned order. Upon these submissions, he prays for dismissal of this revision being misconceived.

7. I have considered the rival submissions made at the Bar and perused the case diary, the impugned order and material available on record.

8. It is useful to state first that the Supreme Court in the case of *Prabhu Vs. State of M.P.* (A.I.R. 2009 S.C. 745) has cast light on the expression of Section 326 IPC in paras 12 and 13 of the decision thus:- Para 12

"The expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged taking note of the heading of the Section. What would constitute a "dangerous weapon" would depend upon the facts of each case and no generalization can be made."

Para 13

"The heading of the Section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are : (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. As was noted by this Court in *State of U.P. v. Indrajeet alias Sukhatha* (2000 (7) SCC 249) there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a

particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable."

9. Now I advert to the case in hand. Following are the undisputed facts of the case before this court, First - injured Sheelabai sustained a simple fracture in the ulna bone of her left hand, which is a grievous hurt as per the clause 7th of Section 320 I.P.C., Second - as per ocular evidence, at the time of incident some of the respondents-accused persons were equipped with lathis and they or one of them caused the said grievous hurt to injured Sheelabai.

10. In the light of the aforesated uncontroverted facts, the points for consideration before me are thus:-

(1) When does a lathi as a weapon of offence fall in the expression?

(2) Whether the respondents-accused persons have committed an offence under Section 326 or 325 IPC?

11. The words lathi and lath are synonymy. The common characteristic of a lathi are that it is made of solid wood, hard, blunt, more or less round, fairly long in length and rather big in diameter. A lathi is capable of causing death of a person depends upon several factors some of which are whether its any end of the two is fitted with a hard and sharp or hard and pointed metallic object or covered around with thick sheet of any hard metal up to a few inches and the most important factor over and above them is whether its blow(s) is inflicted on the vital part(s) of the human body, which may likely to cause death of a victim. If the aforesated factors exist then a lathi would come under the sweep of the expression.

12. Now, in the light of aforesated factors it will be adjudged whether the lathis possessed by the respondent-accused persons at the time of incident come under the said expression. From the perusal of seizure memos of lathis drawn in the instant-case, it is manifest that the police seized from the possession of respondents-accused persons namely, Damodar, Ravindra @ Sonu and Alam Singh bamboo sticks. A general notice may be taken that a bamboo stick is hollow from

inside. It is not mentioned in any seizure memo of the bamboo stick that it is fitted with a hard and sharp or hard and pointed object or any end or both the ends is/are covered with thick metal sheet. Thus, it is held that police had seized from the possession of the aforestated respondents-accused persons ordinary bamboo sticks. Since injured Sheelabai has sustained a fracture in her ulna bone of left hand and since as per medical evidence the said fracture is caused by a hard and blunt object and since the left hand is not vital part of human body and since there is no likely cause even remotely that the fracture sustained by injured Sheelabai would result in her death, it is held in the aforesaid facts and evidence that the bamboo sticks used by the respondents-accused persons in causing the fracture to injured Sheelabai do not come within the purview of the expression of Section 326 IPC. Thus, the learned ASJ has rightly held in the impugned order that the respondents-accused persons have *prima facie* committed an offence punishable under Section 325 IPC by causing a grievous hurt to injured Sheelabai with a hard and blunt object, and he has rightly remitted the case to the JMFC Court under the provisions of Section 228(1)(a) Cr.P.C.

13. For the aforestated reasons and discussion, I find this revision is totally devoid of substance and merits. Therefore, I affirm the impugned order and dismiss this revision petition.

14. Accordingly, this revision petition is finally disposed of. Certified copy as per rules.