

HIGH COURT OF MADHYA PRADESHBENCH AT GWALIORJUSTICE SUJOY PAUL.**Criminal Revision No. 698/2015**

Kamla Bai

Vs.

Naresh &amp; others

-----  
Shri R.P.Rathi, Advocate for the petitioner.  
Mrs. Sangita Pachauri, Public Prosecutor for the  
respondent/State.  
-----

**ORDER**  
**(26/08/2015)**

Revisionist/complainant is aggrieved by order dated 1.5.2015, whereby the court below has exonerated the accused from the charge under Section 326/34 of Indian Penal Code (IPC).

2. Shri R.P.Rathi, learned counsel for the revisionist, contends that the revisionist's daughter Lata and father-in-law Shankar were keeping watch on her agricultural field, which was cultivated by tractor. The accused attacked them with kicks and fists by hitting the scrotum of Shankar (father-in-law), resulting in injury and severe pain. The FIR was registered for the offences under Sections 323, 504, 506-B and 34 IPC. The police, in turn, submitted the charge sheet. The Sessions Court, Shivpuri added the offence under Section 326 IPC. The offence under section 326 was subsequently deleted by order dated 1.5.2015, which is called in question in the present petition.

3. The singular contention of Shri Rathi is that even if it is a blow by kick and fist or by any other body part, which resulted into grievous hurt, Section 326 IPC is attracted. By taking this Court to Section 326 IPC, it is contended that the word "*instrument*" is wide enough to

include kick, fist or blow by any other body part. The court must see the gravity of injury. He relied on *AIR 1926 LAHORE 313 (H. Mansel Pleydell of Simla vs. Emperor)*, to contend that if somebody knowingly kicks a delicate and vulnerable part of human body, such blow may cause death. He also relied on *AIR 1970 PATNA 322 (Chaurasi Manjhi and another vs. State of Bihar)* to contend that in the said case, the appellant Jagdish Manjhi rode on the chest of PW1 and bit his lower lip with teeth, causing bleeding injury. The High Court considered the meaning of the word "instrument" and "tooth" as per Webster's Third New International Dictionary and opined that for simple injury caused by tooth bite, the offender will be guilty under section 324 of Penal Code.

4. The prayer is opposed by Smt. Pachauri, learned Public Prosecutor.

5. I have heard learned counsel for the parties and perused the record.

6. It is apposite to reproduce Section 326 IPC. It reads as under:-

*"326. Voluntarily causing grievous hurt by dangerous weapons or means.-- Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

7. The main question is whether the expression "any instrument" used in section 326 includes kick, fist or blow by any other body part ?

8. The Apex Court considered the expression "any instrument" in relation to section 324 IPC in *(2005) 10 SCC 581*

(*Anwarul Haq vs. State of UP*). The Apex Court opined that the section prescribes a severe punishment where an offender voluntarily causes hurt by dangerous weapon or other means stated in the section. The expression “any instrument which, used as a weapon of offence, is likely to cause death” when read in the light of marginal note to Section 324 means dangerous weapon which if used by the offender is likely to cause death. This para shows that expression “*any instrument*” is used in relation to a weapon of offence. The authors of IPC observed as under:-

*“Bodily hurt may be inflicted by means the use of which generally indicates great malignity. A blow with the fist may cause as much pain, and produce as lasting an injury, as laceration with a knife, or branding with a hot iron. But it will scarcely be disputed that, in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred is a far worse and more dangerous member of a society than who has only used his fist. It appears to us that many hurts which would not, according to our classification, be designated as grievous ought yet, on account of the mode in which are inflicted, to be punished more severely than many grievous hurts.”*

This above observation of the authors was also considered by Supreme Court in *Anwarul Haq (supra)*.

9. In (2005) 3 SCC 260 (*Mathai vs. State of Kerala*), the Apex Court opined that 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 generalisation can be made. In view of the judgments of Supreme Court in *Anwarul Haq* and *Mathai (supra)*, it is clear that the heading of Section 326 IPC is important. The heading talks about causing grievous hurt by dangerous weapons or means. In view of the text and context, in which the words “*any instrument*” are employed in Sec. 326, in my opinion, it cannot be treated as body part. The

language used in the said section is “voluntarily causes grievous hurt” *by means of any instrument for shooting, stabbing or cutting or any instrument which is used as a weapon of offence*. The grievous hurt is the result of blow given by an instrument. The nature and gravity of injury alone is not sufficient to attract Sec. 326 unless it is shown that such grievous hurt is by means of any instrument or weapon mentioned in the section. Precisely, for this reason, the Apex Court in *Anwarul Haq and Mathai (supra)* has taken assistance from Sec.324 and marginal note and heading. Thus, the judgments cited by Shri Rathi in the case of *H. Mansel Pleydell (supra)* cannot be relied upon because it deals with impact of a blow. Apart from this, the said judgment is related to Sec. 304 IPC. The judgment of *Chaurasi Manjhi (supra)* cannot be relied upon in view of direct Supreme Court judgments on this point quoted above. Considering the aforesaid, I am unable to accept the contention of Shri Rathi.

10. In 1961 MPLJ SN 77(*Parahu v. State*), this Court opined that the instrument by virtue of its very nature should be such that one could reasonably predicate that by its use as a weapon of offence, death would be probable. It was something inherent in the instrument which rendered death probable.

11. In view of aforesaid, it is clear that as per language employed in section 326 IPC, the body part cannot be treated as an instrument. An instrument has to be an outside mean/weapon and cannot be a body part.

12. It is trite law that a penal provision must be construed strictly. Thus, as per the express language employed, I am unable to hold that the expression “*any instrument*” includes kick, fist or any other body part.

13. Thus, no fault can be found in the order of the court below, whereby the accused were exonerated from the

offence under section 326 IPC because, admittedly, in the incident no weapon/ instrument was used.

14. Revision fails and is hereby dismissed. No cost.

(yog)

**(Sujoy Paul)**  
**Judge**