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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16<sup>th</sup> DAY OF JUNE, 2003

PRESENT

THE HON'BLE MR. JUSTICE M.F.SALDANHA

AND

THE HON'BLE MR. JUSTICE M.S.RAJENDRA PRASAD

CRIMINAL APPEAL NO. 207 OF 2003

BETWEEN :

The State by Sub-  
Inspector of Police,  
Mulky.

...APPELLANT

(By Sri H.S.Chandramouli, SPP)

AND :

Dinesh Shastry,  
S/o Ramakrishna Shastry,  
Age 31 years,  
R/o near Ragikumeru School  
Bappalige Village,  
Puttur Taluk.

...Respondent

\* \* \*

This appeal is praying to grant leave to file an appeal against the judgment dt. 9-10-2002 passed by the Sessions Judge, D.K., Mangalore, in SC No. 137/2001, acquitting the respondents for the offences punishable u/s 307 IPC, etc.

This appeal coming on for ADMISSION this day, SALDANHA.J., delivered the following;



JUDGMENT

We have heard the learned Addl. SPP on merits, as also, so far as IA-I is concerned. His principal submission is that the weapon used was a deadly weapon, secondly, that the injury was on the head, namely, vital part of the body and thirdly, that the nature of the injury was such, <sup>that</sup> it could have caused death. The learned <sup>h</sup>counsel also drew our attention to the fact that there is enough evidence on record to indicate that the accused was <sup>armed</sup> ~~going~~ with the deadly weapon. The statements made by him and all other accompanying circumstances would clearly indicate that his intention was to finish off the victim and that consequently, even though the death has not taken place, Section 307 IPC will clearly apply.

2. We have very carefully re-examined the facts and the law. We are on the assumption that the allegations against the accused, as held by the learned trial Judge, make~~s~~ out a case for conviction and we have only reviewed the question

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whether Section 326 IPC has been correctly applied or not. Assuming that the evidence makes out the offence, in our considered view, the Court will have to ultimately go by two factors, one is the nature of the injury and the second is what exactly happened. The distinction between Section 326 and Section 307 IPC is very narrow. This is not <sup>a</sup> ~~the~~ case where the injuries reveal that it can come under Section 307 IPC, because the additional ingredient that in a case of attempt to murder the facts and circumstances must indicate the intention and purposes of the accused, who intended to murder the victim and that, it is only because of some fortuitous circumstances that the victim survive. Where, the injury that has occurred is of a <sup>relatively minor</sup> ~~lesser~~ nature, even though theoretically it can be life threatening, and where the indications are clear ~~or~~ that the liability can only be launched for causing grievous hurt, the trial Court would still be justified in convicting the accused under Section 326 IPC. In this case, we should

take note of the fact that the learned trial Judge was justified in coming to the conclusion after assessing the facts and circumstances and relying on the medical evidence, in recording a conviction under Section 326 IPC. The grievance of the State, under these circumstances, is not only merely academic, but, in our considered view, not a ground on which ~~the~~ interference is called for. Under these circumstances, we refrain from admitting this appeal by the State, which stands dismissed on merits. In the facts and circumstances of the case IA-I is allowed and delay is condoned.

3. The learned SPP made a strong plea that this appeal be listed for hearing along with whatever appeal the accused might have preferred against a relatively heavy sentence that has been awarded. We do not see any reason why the record should be burdened by admitting this appeal, when we have applied our minds to the limited scope of this appeal and held that no interference is called for on the grounds <sup>for enhancement u.s.307 IPC.</sup> urged. It is, however,



necessary for us to clarify that the question as to whether the conviction is justified or not, ie., whether the evidence makes out a case for conviction or not, is entirely a separate issue which the Court before which the appeal ~~is to~~ <sup>has</sup> been filed by the accused will go into that question and will record a finding thereon. We ~~say~~ <sup>say</sup> nothing with regard to the correctness or otherwise of the conviction and consequently the question with regard to adequacy of sentence, whether the sentence is liable to be modified, reduced or increased, are all within the jurisdiction of the court before which the accused files an appeal and that court will decide the said question.

4. With these directions <sup>the</sup> appeal as also IA-I stands disposed of.

Sd/-  
Judge

Sd/-  
Judge

VK