



CRL RC(MD)No.210 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.08.2025

PRONOUNCED ON : 31.10.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.210 of 2024

Rasiq Mohammed Khan @ Rasiq

... Revision Petitioner /
Appellant / Accused No.1

Vs.

The State through
the Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
(Crime No.312 of 2017)

...Respondent / Complainant

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, to call for the records and set aside the judgment passed by the learned Principal Sessions Judge, Ramanathapuram, in Criminal Appeal : 41/2023 dated 30.10.2023, and confirmed the order passed in S.C.No.35/2019 on the file of the learned Chief Judicial Magistrate Court, Ramanathapuram, dated 15.06.2023.

For Petitioner : Mr.T.K.Gopalan

For Respondent : Mr.M.Sakthi Kumar,
Government Advocate (Crl. Side)



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ORDER

Assailing the judgment in Criminal Appeal No.41 of 2023 dated 30.10.2023, delivered by the learned Principal Sessions Judge, Ramanathapuram, confirming the conviction and sentence passed by the learned Chief Judicial Magistrate, Ramanathapuram, in S.C. No.35 of 2019 dated 15.06.2023, for the offence under Section 326 IPC and sentencing A1 to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default to undergo simple imprisonment for two months, this Criminal Revision Case has been filed by the first accused.

2. The petitioner in this Criminal Revision Case is the first accused before the learned Trial Court as well as before the learned Principal Sessions Judge, Ramanathapuram.

3. *Facts & Prosecution Case:*

3.1. On 24.04.2017 at about 7.00 a.m., when PW6/Abdul Kareem was proceeding towards his place of work through the road from his house, the revision petitioner A1 – Rasiq Mohammed Khan @ Rasiq, along with his elder brother Akrosekhan (A2) and his mother Mahaboob Jahan (A3), allegedly waylaid the said Abdul Kareem and scolded him using filthy language. At that time, A1 assaulted PW6 with an iron pipe on the left side of his head and



caused injury.

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3.2. It is further the prosecution case that A2 and A3 abused PW6 in filthy language on account of a pre-existing pathway dispute and attacked him with bare hands and legs. On these allegations, the prosecution filed a final report against:

A1 under Sections 341, 294(b), 324, and 307 IPC;

A2 under Sections 341, 294(b), 323, and 506(ii) IPC; and

A3 under Sections 341, 294(b), and 323 IPC.

Further charges were framed by the learned Trial Court against:

A1 under Sections 341, 294(b), and 307 IPC;

A2 under Sections 341, 294(b), 323, and 506(ii) IPC; and

A3 under Sections 341, 294(b), and 323 IPC.

4. *Trial, Evidence & Conviction by the learned Chief Judicial Magistrate:*

4.1. The learned Chief Judicial Magistrate, Ramanathapuram, acquitted A2 and A3 but convicted A1 for the offence under Section 326 IPC and sentenced him to two years rigorous imprisonment and fine of Rs.1,000/-



(Rupees One Thousand only), in default two months simple imprisonment.

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4.2. To substantiate the prosecution case, 11 witnesses (PW1–PW11) were examined; Exhibits P1–P9 and MOs 1–3 were marked. PW1 Mohammed Rishasha (eyewitness) deposed about the pre-existing pathway enmity; he stated that at 7.00 a.m., while opening his cement shop at Kuyavankudi, he saw A1 run towards PW6 and hit him with an iron rod on the head, due to which PW6 fell; a crowd gathered; A2 and A3 allegedly instigated A1; PW1 and PW2 Hasan took PW6 in an auto to Government Hospital, Ramanathapuram, and informed PW7 (wife) Hadi Jatul Kupura and PW8 (brother-in-law) Ahmed Maidin. PW8 later lodged the complaint. PW2 Hasan turned hostile; he admitted knowing PW1 but denied knowledge of the accused/incident and stated he signed a paper at police request. PW3 Akbar Ali and PW4 Jainuladeen were mahazar witnesses for observation and seizure of bloodstained earth and sample earth.

4.3. PW5 Dr. Kalirajan (Vikram Hospital, Madurai) examined PW6 referred from GH Ramanathapuram; he found (i) a 9 cm sutured wound over the left frontal-temporal region and (ii) an abrasion over the right forehead; CT scan was said to reveal bleeding and fractures; he certified injury No.1 as grievous and injury No.2 as simple; wound certificate Ex.P5 was marked. PW6 Abdul Kareem (injured) corroborated assault by A1 with an iron rod on the left



side of his head; he said A2 and A3 assaulted him with hands and legs; he was shifted to GH Ramanathapuram and then to Vikram Hospital, Madurai. PW7 (wife) claimed to have rushed to the spot on hearing commotion and to have seen the attack. PW8 (brother-in-law) spoke to receiving information and lodging complaint Ex.P6. PW9 (SSI) registered FIR in Crime No.31 of 2017 (Ex.P7). PW10 (Sub-Inspector) investigated, prepared observation mahazar Ex.P8, recovered bloodstained earth, arrested A1 and A2 recorded confession, and recovered MO1 -weapon(iron pipe). PW11 (Inspector) completed the investigation and filed the final report.

4.4. When examined under Section 313 Cr.P.C., 1973, the accused denied incriminating circumstances; no defence evidence was adduced.

4.5. The learned Trial Court relied upon PW6 (injured), PW1 (eyewitness), and PW5 (doctor) to hold that grievous hurt was caused by A1, while acquitting A2 and A3. As there was no intention to commit murder, the Court convicted A1 under Section 326 IPC.

5. Appellate Judgment in C.A. No.41 of 2023:

On appeal, the learned Principal Sessions Judge, Ramanathapuram, dismissed Criminal Appeal No.41 of 2023, confirming the conviction and



sentence. The appellate Court held that despite PW2 turning hostile and some inconsistencies in PW7, the core prosecution case stood proved through the cogent testimony of the injured witness (PW6), corroborated by PW1 and PW5, and the recovery of MO1 pursuant to A1's disclosure.

6. **Grounds in Revision:**

In revision, the principal contentions urged are,

6.1. **Nature of Injury Not Proved as "Grievous":** Though PW5 spoke of CT/X-ray showing fractures, no radiological reports (X-ray/CT) were produced or marked; only Ex.P5 (wound certificate) noting (i) 9 cm sutured wound (left frontal-temporal) and (ii) abrasion (right forehead) is on record. In the absence of radiological proof, a fracture if that is the basis for "grievous hurt" cannot be safely inferred.

6.2. **Earliest Medical Records Withheld:** The Government Hospital, Ramanathapuram, medical records and the treating Government doctor were not produced/examined, though PW6 admittedly first received treatment there.

6.3. **Complainant not an Eyewitness & PW2 Hostile:** PW8 (brother-in-law) lodged the complaint though not an eyewitness; PW2 did not support the prosecution about informing PW8; there are time and weapon-description inconsistencies.



6.4. **Recovery Under Section 27 Evidence Act:** The description of the recovered pipe (aluminium-coloured, ~1½ feet) does not tally with PW6's description (5–6 feet black iron rod).

6.5. While these grounds assail the entire prosecution case, the primary legal issue pressed concerns the absence of radiological proof to elevate the hurt to “grievous” under Section 320 IPC so as to sustain a Section 326 IPC conviction.

7. Statutory Framework Section 320 IPC (“Grievous Hurt”):

Section 320 IPC defines “grievous hurt” to comprise the following eight kinds:

- (i) Emasculation;
- (ii) Permanent privation of the sight of either eye;
- (iii) Permanent privation of the hearing of either ear;
- (iv) Privation of any member or joint;
- (v) Destruction or permanent impairment of the powers of any member or joint;
- (vi) Permanent disfiguration of the head or face;



(vii) Fracture or dislocation of a bone or tooth;

(viii) 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.

To bring a case within Section 326 IPC (voluntarily causing grievous hurt by dangerous weapons or means), the prosecution must prove that the hurt inflicted answers to one of the above clauses.

8. ***Precedents on Proving “Fracture”/Grievous Hurt:***

8.1. The Hon'ble Bombay High Court in ***Sheshrao Namdeo Atkare & Anr. v. State of Maharashtra***¹ emphasised that to return a finding of grievous hurt on the footing of fracture, the medical evidence must clearly establish the fracture; in the absence of radiological proof, Courts must exercise great caution in recording a finding of “fracture.”

8.2. The Hon'ble Supreme Court in ***Mayur Panabhai Shah v. State of Gujarat***², held that the *ipse dixit* of a doctor without supporting material (like X-ray/plate/report) is insufficient to conclusively establish a fracture so as to constitute grievous hurt; the prosecution must bring reliable medical evidence on record.

¹ CrI.A. No.3500 of 2002, decided on 22.01.2018 (Supreme Court)

² (1982) SCC (Cri) 442



8.3. The Hon'ble Patna High Court in **Mutukdhari Singh & Ors. v. Emperor**³, held that where the evidence is merely that a bone has been cut without proof of the extent (deep cut vs. superficial), Section 320 IPC cannot be invoked in the absence of proper medical proof; the finding of grievous hurt must rest on clear, objective evidence.

8.4. **Kumar v. State**⁴, This Court reiterated that unless a fracture is proved or the condition is so glaringly obvious that a clinical examination alone leaves no manner of doubt, it would be unsafe to hold that the prosecution has proved a fracture; mere reference in oral testimony is insufficient.

9. Fully fortified by the propositions supra, I am of the considered view that, unless the fact of fracture can be proved by evidence which is so glaring and obvious that a finding can be recorded by the Court relying on the clinical examination of the patient, it would be extremely unsafe to hold that the prosecution has proved fracture in the absence of radiological evidence.

10. **Analysis:**

10.1. Whether “Grievous Hurt” under Section 320 IPC Stands Proved?

³ AIR 1942 Pat 376

⁴ 2022 (3) MLJ (CrI) 217



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The only medical document marked is Ex.P5 (wound certificate) noting:

Wound 1: sutured wound over left frontal-temporal region – 9 cm;

Wound 2: abrasion over right forehead.

PW5 deposed that CT scan revealed bleeding and fractures; however, no X-ray/CT plate/report was marked; the Government Hospital records and doctor (first in point of time) were not produced/examined. There is no evidence that the injury resulted in permanent privation of sight/hearing, destruction/impairment of member/joint, or permanent disfiguration. There is also no evidence that the victim was in severe bodily pain or unable to pursue ordinary pursuits for 20 days, nor that the hurt endangered life. Thus, the only clause possibly invoked is Clause Seventh of Section 320 (i.e., fracture or dislocation of a bone or tooth). On this, radiological proof is absent.

Guided by Sheshrao Namdeo Atkare (SC, 22.01.2018), Mayur Panabhai Shah (1982 SCC (Cri) 442), Mutukdhari Singh (AIR 1942 Pat 376), and Kumar v. State (2022 (3) MLJ (Crl) 217), and in view of the non-production of radiological evidence, it would be unsafe to hold that the prosecution has proved a “fracture”. Consequently, the foundation for Section 326 IPC fails.



10.2. Whether Offence under Section 323 IPC is made out?

The consistent core through PW6 (injured) corroborated by PW1 (eye witness) and Ex.P5 (wound certificate) establishes that A1 assaulted PW6 with an iron pipe and caused hurt. PW2's hostility and PW7's inconsistencies, as rightly noted by both Courts below, do not demolish the core version of assault by A1. The discrepancies regarding weapon length/colour and Section 27 recovery go to peripheral aspects and do not negate the occurrence or the infliction of hurt by A1. Therefore, while the grievous character is not proved, the commission of hurt by A1 is proved beyond reasonable doubt. The appropriate conviction is thus under Section 323 IPC.

11. **Sentence:**

Section 323 IPC prescribes punishment of imprisonment of either description for a term which may extend to one year, or with fine which may extend to Rs.1,000/-, or with both.

Considering the nature of assault (single blow with a pipe on head region as per PW1/PW6), the injury profile (sutured wound of 9 cm and an abrasion), the absence of radiological proof of fracture, the time elapsed since 2017, and the submissions that the petitioner has already undergone pre-trial incarceration for 19 days, a moderate custodial sentence is warranted.



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12. Accordingly, the Criminal Revision Case is partly allowed.

12.1. The conviction of the petitioner (A1) under Section 326 IPC recorded by the learned Chief Judicial Magistrate, Ramanathapuram, in S.C. No.35 of 2019 (confirmed in C.A. No.41 of 2023 by the learned Principal Sessions Judge, Ramanathapuram) is set aside.

12.2. The petitioner (A1) is found guilty for the offence under Section 323 IPC and is convicted thereunder.

12.3. For the offence under Section 323 IPC, the petitioner (A1) is sentenced to undergo Rigorous Imprisonment for Three (3) Months and to pay a fine of Rs.1,000/-; in default of payment of fine, to undergo Simple Imprisonment for fifteen (15) days.

12.4. The period of detention already undergone by the petitioner shall be set off under Section 428 CrPC.

12.5. The bail bond, if any, shall stand cancelled. The trial Court shall take necessary steps to carry out this modified sentence. No costs.

31.10.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

- 1.The Chief Judicial Magistrate Court,
Ramanathapuram.
- 2.The Principal Sessions Judge,
Ramanathapuram.
- 3.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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