Bombay High Court
Abdul Sajid Abdul Sadiq vs State Of Maharashtra on 20 March, 2003
Equivalent citations: 2003 (4) MhLj 306
Author: R Batta
Bench: R Batta
JUDGMENT R.K. Batta, J.

1. The applicant was tried for attempt to commit murder under Section 307 read with Section 34 of the Indian Penal Code, along with two others. The co-accused were acquitted of the charge, but the applicant was held guilty under Section 326 of the Indian Penal Code and was sentenced to R.I. for two years as also fine of Rs. 1,000/-, in default, to suffer R.I. for one month. The appellant filed an appeal before the Sessions Court and the learned Additional Sessions Judge, Washim dismissed the appeal. The appellant challenges the concurrent findings of two Courts below by filing this revision.

2. Learned Advocate for the applicant urged before me that even on admitted facts the offence as against the applicant would not fall under Section 326 of the Indian Penal Code but that it would fall under Section 324 of the Indian Penal Code. In support of this submission, it is urged by him that PW-3 admits that there was scuffle between the applicant and victim Mushtaq and the injury in question is alleged to have been inflicted during the said scuffle. According to the learned Advocate for the applicant, though according to the doctor the injury in question is said to be grievous yet the prosecution through medical evidence or otherwise has failed to prove that the injury in question falls under any clause of Section 320 of the Indian Penal Code. He also drew my attention to the Medical Certificate (Exh.41) which was proved by Doctor (PW-5) wherein it has been clearly opined that the injury was likely to heal within ten to twelve days, if no complication occurs. No fracture was found. He, therefore, contends that the prosecution has neither been able to establish that the injured victim suffered severe bodily pain during the space of 20 days nor that he was unable to follow his ordinary pursuits for the said period. He, therefore, contends that the offence in question would fall under Section 324 of the Indian Penal Code and taking into consideration that the applicant had been in custody for about six months, the said period be treated as sufficient punishment and the applicant be ordered to be acquitted of the charge under Section 326 of the Indian Penal Code.

3. On the other hand, learned A.P.P. appearing on behalf of the respondent/State, has urged before me that according to the Medical Officer (PW-5), the injury was grievous in nature and taking into account that according to the Medical Certificate (Exh-41), the injury would take ten to twelve days to heal; it follows that the injury in question would fall within the ambit of Clause 8 of Section 320 of the Indian Penal Code. According to the learned A.P.P., Clause 8 of Section 320 consists of three parts which have to be read independent of each other namely, (i) any hurt, which endangers life; (ii) any hurt which causes the sufferer to be during the space of twenty days in severe bodily pain; and (iii) any hurt on account of which the injured is unable to follow his ordinary pursuits. According to her, the expression occurring in second part of Clause 8 of Section 320 namely, "during the space of twenty days" cannot be read and incorporated into the expression "unable to follow his ordinary pursuits". It is pointed out by her that the use of 'comma' after the words "bodily pain" and before the expression "or unable to follow his ordinary pursuits" makes it crystal clear that the

concept of twenty days cannot be introduced or incorporated in the third part of Clause 8 of Section 320 namely, "or unable to follow his ordinary pursuits".

4. In order to deal with the arguments advanced by the learned A.P.P., it will be necessary to first refer to principles of interpretation relating to punctuations. The American view has noted down in N. S. Bindra's Interpretation of Statutes, IX Edition under Chapter 2 note (h) Punctuations and Brackets at pages 98-99 is as under :-

"American view--Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to when all other means fail, but the Court will first take the instrument by its four corners, in order to ascertain its true meaning; if that is apparent on judicially inspecting the whole, the punctuation will not be suffered to change it. For the purpose of arriving at the true meaning of a statute Courts read with such stops as are manifestly required. Punctuation is a minor, and not a controlling, element in interpretation, and the Courts will disregard the punctuation of a statute, or re-punctuate it, if need be, to give effect to what otherwise appears to be its purpose and true meaning. Punctuation marks are no part of an Act. To determine the intent of the law, the Court, in construing a statute, will disregard the punctuation or will re-punctuate it, if that be necessary, in order to arrive at the natural meaning of the words employed."

5. Maxwell on the Interpretation of Statutes has dealt with punctuation as under :--

"Punctuation is disregarded in the construction of statutes, since there was generally no punctuation in old statutes as engrossed on the Parliament Roll, and not all of the modern vellum prints of statutes are punctuated. "In an Act of Parliament there are no such things as brackets any more than there are such things as stops." "Before 1850 there was no punctuation in the manuscript copy of an Act which received the Royal Assent, and it does not appear that the printers had any statutary authority to insert punctuation thereafter. So even if punctuation in more modern Acts can be looked at (which is very doubtful), I do not thing that one can have any regard to punctuation in older Acts." In the same way, the manner in which a statute has been printed, the indentation of the paragraphs and so on, is irrelevant.

The irrelevance of punctuation has two consequences.

First, a provision in a statute may be read as though the punctuation which appears on the face of the Act were omitted. By Section 113(4) of the Housing Act 1957, "the local authority shall from time to time review rents and make such changes, either of rents generally or of particular rents, and rebates (if any) as circumstances may require." This is to be read as though there were no comma after "rents" where that word occurs for the third time. "The obligation," said Harman L.J., " is not to make rebates, as grammatically it should be if the comma were there, but to make changes of rebates (if any)."

Secondly, where it is necessary to give a provision a particular construction which is at variance with the way in which the section is punctuated, it may be read as though there were in fact punctuation where none appears on the fact of the Act. Section 10 of the Fugitive Offenders Act, 1881 conferred

on a superior Court power to discharge a fugitive where "by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise... it would be unjust or oppressive or too severe a punishment to return" him. It was held that, apart from cases of a trivial nature, the Court's discretion to discharge a fugitive could be exercised in any case in which the return of the man would be unjust or oppressive or too severe, and was not confined to cases in which the application appeared not to have been made in good faith. In other words, the section was given a wide construction, as though a comma had been inserted before "or otherwise."

6. Craies on Statute Law, Seventh Edition, under sub-head 'Construction where no punctuation' in Chapter X, foot note 60 at page 198 has referred to the case of Alexander v. Mackenzie, 1947 J. C. 155 (Scot.) in which Lord Jamieson said, "While notice may be taken of punctuation in construing a statute, a comma or the absence of a comma must be disregarded if to give effect to it would so alter the sense as to be contrary to the plain intention of the statute."

7. Sutherland in Statutory Construction third edition, vol. 2 Article 4939, pp 447-78 states --

"The better rule is that punctuation is a part of the Act and that it may be considered in the interpretation of the Act but may not be used to create doubt or to distort or defeat the intention of the Legislature. When the intent is uncertain, punctuation, if it affords some indication of the true intention, may be looked to as an aid. In such a case the punctuation may be disregarded, transposed, or the Act may be re-punctuated if the Act as originally punctuated does not reflect the true legislative purpose. An Act should be read as punctuated unless there is some reason to the contrary, and this is specially true where a statute has been repeatedly re-enacted with the same punctuation."

8. In Indian Law, the position, however, is different and punctuation has often been taken into consideration. The use of hyphen was taken notice of by a Full Bench of Seven Judges in hap Ahmed v. Abrahmji Ahmadi. In Gale v. Gale, 47 PR 1911 (FB), the interpretation of the last paragraph of Section 3(1) of the Indian Divorce Act, IV of 1869 came for consideration and Sir Aurthur Reid, C.J., with whom Kensington, J., concurred, put the matter thus, "The punctuation of the words 'the husband and wife reside or last resided together" indicates clearly that 'together' must be read with "last resided" only and had intention of the Legislature been to make 'together' apply to 'reside' we should have expected a comma after 'reside' and after 'resided'. Rattigan, J., who agreed hesitatingly with the majority opined: "Legal documents in strictness should not be punctuated, and that the rule applies equally to Acts of Legislatures, and it may have been for this reason that the comma was omitted after 'reside'.

9. In Jupiter Insurance Company v. Abdul Aziz, AIR 1923 Rangoon 185, the Bench did not consider it always safe to rely on punctuation as a deciding factor in a question of construction. In Niaz Ahmed v. Parsottam Chandra , Sulaiman J. felt that the difficulty was caused mainly by the punctuation and following the dicta of the two Privy Council cases ignored the comma. In Birendra Lal Chaudhary v. Nagendra Nath Mukherjee, (1935) 39 CWN 910, it was observed that, no doubt there is an old rule that the punctuation is not a part of the statute, but where it is not contended

that the punctuation is wrongly placed, there is no reason why the punctuation should not be taken as a good guide for the purpose for which it is there, namely to understand the passage. In Indian Cotton Co. Ltd. v. Hari Poonjoo, AIR 1937 Bom. 39, the Court, after taking into consideration the previous Bombay case and the two Privy Council cases held that in considering the plain words of a section punctuation could not be relied upon. In re Krishnaji Gopal, AIR 1940 Bom. 360, the Court made full use of the comma after the word 'conditions' and of the omission thereof after the work 'circumstances', in the expression 'shall in such circumstances and under such conditions, if any, as may be specified in the order...'

10. The Apex Court in A.K. Gopalan v. State of Madras took notice of comma in constructing Sub-clause (7) of Article 22 of the Constitution and observed :--

"The use of the word "which" twice in the first part of sub-clause, read with comma put after each, shows that the legislatures wanted these to be read disjunctive and not conjunctive."

11. In Ashwin Kumar v. Arabindo Bose, it has been laid down that when a Statute is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to the punctuation. Hence, punctuation may have its uses in cases, but it cannot be allowed to control the plain meaning of the text.

12. In M. K. Salpekar (Dr.) v. Sunil Kumar Shamsunder Chaudhari, AIR 1988 SC 1841, the Apex Court had to construe Clause 13(3) (v) of the C. P. and Berar Letting of Houses and Rent Control Order, it was held that the provision permits ejectment of a tenant on the ground that "the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and 'does not reasonably need the house." In holding that the requirement that the tenant 'does not reasonably need the house' has no application when he 'has secured alternative accommodation' the Court referred and relied upon the punctuation comma after the words alternative accommodation.

13. It, therefore, follows that while marks of punctuation contained in a statute will not generally be wholly ignored by the Court in interpreting a statutory provision, it may not always be safe to rely or punctuation as a deciding factor. The Court is required to give importance to the language used by legislature and if it is found that the word used in the section when read as a whole, clearly furnish a clue to the legislative intent underlying the section and they admit of an interpretation consistent with the said legislative intent, any punctuation work which is inconsistent with such construction will be disregarded and the punctuation will not be allowed to control the plain meaning of the text.

14. In the light of the above principles of use of punctuations in the interpretation, I shall now deal with the controversy in question which pertains to Clause 8 of Section 320, which reads as under :--

"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."

This clause can be divided into three parts, namely, (a) any hurt which endangers life, (b) which causes the sufferer to be during the space of twenty days in severe bodily pain, and (c) or unable to

follow his ordinary pursuits. The first part is totally independent and it deals with any hurt which endangers with life. In so far as second part is concerned, there is no ambiguity since it provides for case of any hurt which causes the sufferer to be during the space of twenty days in severe bodily pain. The problem only arises since after the second clause there is a comma and then follows the third clause, "or unable to follow his ordinary pursuits". If the third clause is read totally independent it would mean that if a person is not able to follow his ordinary pursuits even for one day as a result of any hurt it may lead to conviction under Section 326 of the Indian Penal Code which is punishable with life imprisonment or with imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine which obviously does not appear to be the intention of the Legislature. The dominant object of Clause 8 of Section 320, Indian Penal Code is that it makes any simple hurt as grievous if it endangers life or causes severe bodily pains to a person during twenty days and he is unable to follow his ordinary pursuits. The third clause has to be read ejusdem generis in the light of earlier two clause in order to give meaning to it. The first clause deals with any hurt which endangers life and second clause deals with any hurt which causes the sufferer to be during the space of twenty days in severe bodily pain. It is in this light that the third clause is required to be given a meaning and in order to give meaning to the same as also to the intention of the legislature the use of comma in between the word 'pain' and 'or' has to be ignored. If the comma is ignored then it follows that in order to make any hurt fall within the ambit of Clause 8, the injured person should be unable to follow his ordinary pursuits during the space of twenty days. In fact, this view gets support indirectly from a large number of authorities of different Courts in which, of course, the implication of existence of comma in between the words 'pain' and 'or' in Clause 8 of Section 320 has not been specifically dealt with.

15. In Queen Empress v. Vasta Chela and Ors., 1895 I.L.R. Bombay Series (Vol. XIX) 247, the question which came up before the Division Bench of this Court was that the injured had remained in hospital for a space of twenty days and the Joint Sessions Judge had drawn inference that the injured was during that period unable to follow his ordinary pursuits, it was held that in the absence of any evidence to that effect it was not possible legally to draw such inference inasmuch as an injured person may be quite capable to follow his ordinary pursuits long before twenty days are over and yet for the sake of permanent recovery or greater ease or comfort be willing to remain as a convalescent in a hospital, especially if he is fed at the public expenses. It was pointed out that mere fact that the sufferer did not attend his duty for the statutory period or that he remained in hospital for that period is no indication of his ability to do so.

16. In Mathu Paily v. State of Kerala, 1962 (1) Cri.L.J. 652, the evidence was to the effect that the injured was in-patient in the hospital for more than twenty days, but the doctor had not been questioned whether the hurt caused the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits. It was pointed out that it is only if there is such proof that it would be safe to conclude that the injury would come in under the description of grievous injury. The Kerala High Court quoted with approval the following observations made by the Division Bench of this Court in Queen Empress v. Vasta Chela (supra) to the following effect :--

"An injured man may be quite capable of following his ordinary pursuits long before twenty days are over and yet for the sake of permanent recovery or greater ease or comfort be willing to remain as a

convalescent in a hospital, especially if he is fed at the public expense."

When the patient is treated in a hospital, the opinion of the Medical Officer attending on him on the point of his disability is very important. Unfortunately that is lacking in this case."

It was, therefore, held that the mere fact that the sufferer did not attend his duty for the statutory period or that he remained in the hospital for that period is no indication of his inability to do so.

17. In State of Gujarat v. Samaj, , after following the judgment of the Division Bench of this Court in Queen Empress v. Vasta Chela (supra), it has been laid clown :--

"What is required to be established under Section 320(8) of the Penal Code is that there must be hurt caused to the person and that he was unable to follow his ordinary pursuits during the space of 20 days. Both the ingredients have got to be established by the prosecution and it would not be enough to say that he remained in the hospital for 20 days. The mere fact that he remained in the hospital would not be enough to conclude that he was unable to follow his ordinary pursuits during that period : (1895) ILR 19 Bom. 247, Rel. on."

18. In Ponni alias Ponibas v. Savarimuthu Nadar and Ors., 1989 (1) Crimes 414, it was found that the victim was in hospital for 48 days. After referring to the judgment in Joseph @ Duraian, 1985 M.L.J. Cri. 1, it was contended that the description of injury whether it is simple or grievous by the Doctor is not decisive and that it is for the Court to decide finally upon the matter. It is pointed out that as per Section 320, Indian Penal Code eighth clause, a person who is unable to follow his ordinary pursuits during the space of 20 days on account of the injury is deemed to have sustained a grievous injury. It was further contended that the fact of being in the hospital itself would not be a sufficient proof that the person was unable to follow his ordinary pursuits, and for this proposition reliance was placed on Jaina Pradhan v. State, 1982 Cri.L.J. (NOC) 217 (Orissa) and State of Gujarat v. Samaj (supra). In Jain Pradhan v. State (supra), it was held that the fact of victim for remaining in hospital for about a month would not be a proof that he sustained grievous injury in the absence of evidence that the hurt caused to the sufferer to be during the space of 20 days, in severe bodily pain or unable to follow his ordinary pursuits. In State of Gujarat v. Samaj (supra), it was held that the mere fact that he remained in hospital would not be enough to conclude that he was unable to follow his ordinary pursuits during that period. Of course, in this judgment, the view taken was altogether different and it was pointed that unless special circumstances are alleged, the fact that injured was in government hospital will by itself prove that he was unable to follow his ordinary pursuits. With due respect, I find it difficult to agree with this view.

19. In Dav Dayal s/o Jag Mohan v. The State of Rajasthan, 1991 Cri.L.J. 2321, the injured was admitted in the hospital for 13 days; none of the injuries were dangerous to life and there was no evidence to show that he suffered severe bodily pain for twenty days. It was held that the injury did not fall within definition of grievous under Section 320, Indian Penal Code and conviction under Section 326, Indian Penal Code was not maintainable. It was pointed out that merely because some doctors state that a particular injury is grievous or dangerous to life cannot become so, unless it falls within the definition of the same as given under the Penal Code. It was further pointed out that

there was no evidence on record to show that even though he was discharged from the hospital he could not perform for 20 days his ordinary pursuits or that he was in severe bodily pain for 20 days.

20. In Babloo alias Sujeet v. The State of Madhya Pradesh, 1995 Cri.L.J. 3534, after relying upon Queen Empress v. Vasta Chela (supra) and State of Gujarat v. Samaj (supra), it was noticed that the hospitalisation was not for 20 days. It was held that it cannot be said that the injured was unable to follow his ordinary pursuits for 20 days so as to fall within the ambit of Clause 8 of Section 320 of the Indian Penal Code.

21. In Pritam Singh v. State, 1996 Cri.L.J. 7, the allegations were that the accused in quarrel inflicted injury on the victim by blade of scissor and there was no evidence that the victim was in severe bodily pain or unable to follow his ordinary pursuits and as such Clause 8 of Section 320 was not attracted merely because the victim remained in hospital for twenty days. An injury was found to be simple in nature caused by sharp weapon and as such conviction under Section 326 altered to one under Section 324 of the Indian Penal Code. The High Court noticed that the doctor had nowhere stated that the injured was unable to follow his ordinary pursuits though he remained in the hospital for 20 days. It was pointed out that Clause 8 of Section 320 of Indian Penal Code speaks of two things, (i) any hurt which endangers life and (ii) any hurt which causes the sufferer to be during the space of 20 days, and (iii) (a) any severe bodily pain, or (b) or unable to follow his ordinary pursuits.

22. Dr. Sir Hari Singh Gour's in Penal Law of India, 11th Edition, Volume 3, sub heading "Disabling sufferer from following ordinary pursuits" at page 3212, has stated that the test of grievousness is the sufferer's inability to attend to his ordinary duties for a period of twenty days. What is required to be established is that there must be hurt caused to the person and that he was unable to follow his ordinary pursuits during the space of 20 days. It is also pointed out that doctor should be questioned whether the hurt caused the sufferer to be during the space of 20 days in severe bodily pain or unable to follows his ordinary pursuits and it is only when there is such proof that the hurt caused the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits that it would be safe to conclude that the injury would come under the description of grievous injury.

23. Coming to the case under consideration, the assault with knife is alleged to have taken place during the scuffle. PW-3 has stated that when he reached, the scuffle between the complainant/injured and accused No. 1, namely the applicant, was going on. The medical evidence of Doctor (PW-5) shows following injuries on the person of victim Mushtaq :--

1) Stab injury at the base of sternum of size 1" x 1/4 x 1". Bleeding present, injury appears to be fresh.

2) Abrasion over abdomen just above umbilicus of size 1/4".

3) Abrasion over index finger of left hand over interphalangeal joint. According to Doctor (PW-5), injury No. 2 was grievous and was possible by the knife in question. He however categorically stated that no fracture was detected from X-ray Report except that the Doctor (PW-5) merely stated that the injury was grievous. The prosecution did not bring any other facts which would be necessary for

bringing the case under Clause 8 of Section 320 of the Indian Penal Code. Neither it was elicited from the doctor that the injury was endangering to life nor that the injured suffered severe bodily pain during the space of 20 days nor that he was unable to follow his ordinary pursuits during the said period. In the absence of such evidence having been led by the prosecution, it is not possible on the basis of the evidence of Doctor (PW-5) to hold that the injury in question falls under Clause 8 of Section 320 of the Indian Penal Code. Besides this also. Medical Report (Exh.41) states that the injury was likely to heal within ten to twelve days, if no complications occurred. Therefore, on the facts of the case, the conviction of the applicant under Section 326 of the Indian Penal Code cannot be sustained, but the offence disclosed would fall under Section 324 of the Indian Penal code. The trial Court has sentenced the applicant to suffer R.I. for two years as also fine of Rs. 1,000/- in default, to suffer R.I. for one month under Section 326 of Indian Penal Code which was confirmed by the appellate Court.

24. In view of the fact that the applicant is held guilty under Section 324 of the Indian Penal Code instead of under Section 326 of the Indian Pena! Code and also taking into consideration that the applicant has been in custody from 18-8-1996 to 1-10-1996 and from 20th May 1999 to 18th September, 1999 that is to say for about six months, I am of the opinion that the ends of justice, taking into consideration the age of the applicant, shall be met by ordering the sentence already undergone as sufficient punishment under Section 324 of the Indian Penal Code. The revision is accordingly allowed in aforesaid terms. The conviction of the applicant under Section 326 of the Indian Penal Code is set aside and the applicant is held guilty under Section 324 of the Indian Penal Code. The period of custody already undergone by the applicant from 18-8-1996 to 1-10-1996 and from 20th May, 1999 to 18th September, 1999 is considered as sufficient punishment for the crime in question. The revision stands disposed of in aforesaid terms.