

z#1

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 808 OF 2017

[@ SPECIAL LEAVE PETITION (CRL.) 9390 OF 2015 ]

SHAJI

Appellant (s)

VERSUS

STATE OF KERALA & ANR.

Respondent(s)

J U D G M E N T

KURIAN, J.

1. Leave granted.

2 On 30.10.2015, this Court passed the following order :-

â S The application for impleadment is allowed.

Learned senior counsel for the petitioner contends, that the petitioner has been convicted under Section 326 of the Indian Penal Code. It is the contention of the learned senior counsel for the petitioner, that for conviction under Section 326 of the Indian Penal Code, it is imperative for the prosecution to establish firstly, that the accused is guilty of voluntarily having caused grievous hurt, and secondly, the grievous hurt should have been caused â S...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...â \235 It is the

2

contention of the learned senior counsel for the petitioner, that the prosecution has not been able to establish the second ingredient of the offence under Section 326 of the Indian Penal Code. Delay condoned.

Issue notice to the respondent-State of Kerala, returnable after two weeks.

Liberty is granted to the learned counsel for the petitioner to effect service on the standing counsel for the State of Kerala nominated for this Court.

Mr. Zulfiker Ali P.S., learned counsel, enters appearance on behalf of the newly added respondent and accepts notice.â \235

3. We have heard the learned counsel appearing for the appellant and the State. We have also heard the de-facto complainant, who is the additional respondent. Having regard to the peculiar facts of this case and the evidence available on record and in particular, the nature of injuries and the weapon used for inflicting such injuries, we are of the view that this is a case where the conviction should have been only under Section 325 IPC. Therefore, the conviction is altered to one under Section 325 IPC.

4. The appellant has filed an application for compounding the offence. The application is allowed.

3

Since the conviction has been compounded, the sentence is limited to the period already undergone.

5. With the above observations and directions, the

