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IN THE HIGH COURT OF DELHI

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Judgment reserved on: 31.07.2009

Judgment delivered on: 06.08.2009

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CRL. APPEAL 172/2008

BALJEET KUMAR

...Appellant

Through : Mr.Rakesh Malhotra, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) ...Respondent

Through : Mr.Pawan Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J.

1. Briefly stated, the case of the prosecution is that the appellant Baljeet Kumar was residing in a rented room at H.No.G-28 Harkesh Nagar on 18.12.2002. The deceased Murshid Alam along with his relative Ajmer Alam also resided in the same building, i.e. G-28 Harkesh Nagar, in a room taken on rent opposite the room of Baljeet Kumar. A month prior to 18.2.2002, an altercation had taken place between the appellant Baljeet Kumar and the deceased Murshid Alam, when Murshid Alam objected to Baljeet Kumar playing music at a very high volume. At that time the matter was settled with the intervention of neighbours; however, since then, accused

Baljeet was nurturing a grouse against the deceased and on a few occasions had threatened the deceased that he would take revenge. That on 18.2.2002, Baljeet Kumar called Murshid Alam to his room and upon Murshid Alam entering his room he ran away after pouring acid on him. Due to the acid burns, Murshid Alam succumbed to the injuries on 22.2.2002.

2. The process of law was set into motion, when somebody informed the Police Control Room at number 100 about Baljeet having poured acid on Murshid Alam. A PCR van immediately reached the spot i.e. G-28 Harkesh Nagar and removed the injured to Safdarjung Hospital. The Police Control Room forwarded the information to the Police Post at Okhla Industrial Area Phase II, since the place of occurrence fell within the jurisdiction of PS Okhla. At the said Police Post, DD No.28, Ex.PW-10/A, was recorded by the duty officer noting that a person named Baljeet Singh had poured acid on a person named Murshid Alam at house No.G-28 Harkesh Nagar. A copy of the DD entry was handed over to SI Satish Kumar PW-13 for investigation. Accompanied by Const.Sawata Kumar PW-10, SI Satish Kumar went to Safdarjung Hospital as the PCR van informed over the wireless that the injured was being removed to Safdarjung Hospital. At the hospital, SI Satish Kumar learnt that the injured Murshid Alam was admitted in the casualty. SI Satish Kumar moved an application Ex.PW-

13/A seeking the permission of the Chief Medical Officer to record the statement of the injured. On finding the patient fit for making a statement, the concerned doctor made endorsement Ex.PW-13/B on the said application at 7:50 PM to the effect that the statement of Murshid Alam could be recorded.

3. SI Satish Kumar PW-13 recorded the statement Ex.PW-13/C of Murshid Alam as per which he stated that he was a native of village Sithanabad, Laloo Tola, PS Simri, Badhtiyarpur, District Sahrana Vihar, and for the past few years was residing at G-28, Harkesh Nagar, in which house Baljeet was residing opposite to his room and that Baljeet Kumar used to play deck at a very high volume. A month back he had objected to Baljeet playing deck at a very high volume and on this an altercation had taken place between the two. With the intervention of other people, the issue was settled but Baljeet Kumar nurtured a grudge against him. Today i.e. on 18.2.2002, at around 5:00 PM Baljeet called him to his room and when he was at the door of the room of Baljeet, Baljeet poured acid on him as a result his face, chest and arms got burnt.

4. SI Satish Kumar made an endorsement Ex.PW-13/D under the statement Ex.PW-13/C and sent the same through Const. Sawata PW-10 to police station Okhla Industrial Area

Phase-II where HC Ranjit Singh PW-5 registered FIR No. 87/02, Ex.PW-5/A, for the offence punishable under Section 326 IPC.

5. After collecting the MLC Ex.PW-9/A of Murshid which recorded that the patient had received grievous injuries in the nature of 20% chemical burns, SI Satish Kumar left for the place of offence. There he met Ajmer Alam, who claimed to be an eye-witness of the incident. At the pointing out of Ajmer, SI Satish Kumar prepared a rough site plan Ex.PW-13/E of the place of incident; recording therein the room where Murshid resided, the room opposite the said room where a container containing acid and some acid burnt clothes were found and the passage in between the two rooms where burnt clothes were lying. A private photographer, Laxman PW-4, was summoned who took five photographs Ex.PW-4/1 to Ex.PW-4/5; negatives whereof are Ex.PW-4/6 collectively.

6. SI Satish Kumar seized a container Ex.P-1 containing acid lying at the spot, as recorded in the seizure memo Ex.PW-3/C. He seized a towel (gamcha) Ex.P-2, a T-shirt Ex.P-3 and a jacket Ex.P-4, which were in a partly burnt condition, from the room of the accused, as recorded in the seizure memo Ex.PW-3/B. Burnt and cut clothes, Ex.P-5 to Ex.P-9, stated to have been worn by the deceased when the acid was thrown on him were seized as recorded in the seizure memo Ex.PW-3/A.

7. SI Satish Kumar recorded the statement of Ajmer Alam under Section 161 Cr.P.C. He also recorded the statement of one Virender PW-6 under Section 161 Cr.P.C. On returning to the police station he thought it prudent to add the offence punishable under Section 307 IPC in the FIR. Efforts were made to apprehend Baljeet on the same day, which failed.

8. On 22.2.2002, at around 10.00 PM, Murshid Alam succumbed to his injuries and information regarding the same was conveyed to the police station where the duty constable noted said fact vide DD No.41, Ex.PW-13/F. Since Mushid Alam had died, the offence punishable under Section 302 IPC was added in the FIR. SI Satish Kumar proceeded to Safdarjung Hospital and seized the dead body of Murshid Alam and prepared the inquest papers, Ex.PW-13/G.

9. Dr.B.Swain PW-7, conducted the post-mortem on the dead body and gave his observations/report in the post-mortem report Ex.PW-7/A. He noted that *the total area of the body surface burnt is about 30%*. He opined that the cause of death is septicemia following ante-mortem burn injuries possible by corrosive substance.

10. SI Satish Kumar continued to search for the appellant, who remained untraceable till 25.6.2002, when Arvind Kumar, a brother of the appellant Baljeet Kumar

produced him before SI Satish Kumar. Appellant was arrested as recorded in the arrest memo Ex.PW-13/L on 25.6.2002. He interrogated the appellant and recorded his disclosure statement Ex.PW-13/N, wherein, inter-alia, he stated that he could get recovered the T-shirt worn by him at the time of the incident from his house. As recorded in the seizure memo Ex.PW-8/A a T-shirt which was burnt at places was recovered in the presence of HC Satya Prakash PW-8 and Const.Bhimesh PW-12; the recovery being from the house of the brother-in-law of the appellant which was pointed out by the appellant in Gauriganj, Sultanpur.

11. At the time of his arrest, it was noted by SI Satish Kumar that the appellant was having burn marks on his face and hand. Therefore, the appellant was taken to All India Institute of Medical Sciences for being medically examined. At the hospital, after being medically examined, Dr.Varun Dikshit prepared the MLC Ex.PW-13/P which records:-

“Keloid on the right hand dorsal surface, 6 X 0.8 cm. Similar keloid on the right mandibular margin 5 X 0.3 cm. Multiple similar scars over the upper limb on the arm, forearm and wrist on right side, size ranging from 0.5 X 0.5 to 1 X 1 cm. similar multiple scars on the left forearm and dorsal surface of left hand.

Opinion :

1. Scars are old in duration.
2. Reason for the scar cannot be given as the duration of the injury is old. Possibility of acid burn cannot be ruled out.”

12. On 6.9.2002 SI Mahesh Kumar PW-11 prepared the site plan to scale Ex.PW-11/A of the place of occurrence i.e. G-28 Harkesh Nagar, New Delhi.

13. The investigating officer sent the clothes lifted from the room of the appellant as recorded in the memo Ex.PW-3/B; the burnt and cut clothes lifted from outside the room of Murshid as entered in the memo Ex.PW-3/A; the container Ex.P-1 as also the T-shirt got recovered by the appellant from the house of his brother-in-law to the forensic science laboratory. The report Ex.PW-13/Q was sent by the FSL laboratory opining that on chemical examination it was revealed that the clothes seized from the room of the appellant, the T-shirt recovered at the instance of the appellant, burnt clothes lifted from outside the room of the deceased and the plastic container tested positive for the presence of Sulphuric Acid.

14. The appellant was sent to trial. Needless to state, the prosecution relied upon the statement Ex.PW-13/C of the deceased as the dying declaration of the deceased; the testimony of SI Satish Kumar to prove the dying declaration; eye-witness account by Ajmer Alam PW-3 and one Virender PW-6 who also claimed to be an eye-witness besides the recoveries/seizures effected and the FSL report pertaining thereto and the MLC of the appellant which showed that a few

days prior to his being medically examined he had suffered acid burns.

15. In all 14 witnesses were examined. We need not note the testimony of all the witnesses save and except the testimony of Ajmer Alam PW-3, Virender PW-6 and the testimony of SI Satish Kumar PW-13. But before that, we may note that the MLC Ex.PW-13/P of the appellant prepared by Dr.Varun Dikshit was proved by Dr.B.L.Chaudhary, PW-14 who deposed that he was familiar with the handwriting of Dr.Varun Dikshit and that the MLC Ex.PW-13/P was in the handwriting of Dr.Varun Dikshit. The MLC Ex.PW-9/A of the deceased prepared by Dr.Manish P.Zade was proved by Shri Narender Pal Singh PW-9 a record clerk at Safdarjung Hospital who deposed that he was familiar with the handwriting of Dr.Manish P. Zade and that the writing on the MLC was in the hand of Dr.Manish P.Zade. The post-mortem report Ex.PW-7/A was proved by the author of the report i.e. Dr.B.Swain PW-7.

16. Ajmer Alam PW-3 deposed that he was residing with the deceased Murshid Alam at House No.G-28, Harkesh Nagar for the last 4-5 years. Accused Baljeet Singh resided in a room opposite to their room. A month prior to 18.2.2002, an altercation had taken place between Baljeet Singh and Murshid Alam when Murshid Alam had objected to the loud music being played by Baljeet Singh. At that time, the matter was settled

with the interference of other people. But since then, the accused started nurturing grudge against Murshid Alam and even threatened Murshid on a number of occasions. On 18.2.2002, at about 4.45-5.00 PM when Murshid and he were present in the house, Baljeet called Murshid to his house. When Murshid reached the door of house of Baljeet, Baljeet threw acid on Murshid from a container. Baljeet immediately rushed from the room towards the gali. He i.e. Ajmer tried to apprehend Baljeet, who managed to escape. He returned to the spot, where other neighbours also gathered and with the help of scissors removed the burnt portions of clothes of Murshid. In the meantime somebody informed the PCR which arrived and took Murshid to Safdarjung Hospital. He i.e. Ajmer informed Hasib brother of Murshid and other relatives of Murshid on telephone and thereafter returned to the spot at about 8.30 PM. That he narrated the said facts to the police and pointed out the place of occurrence. That the container Ex.P-1 and the burnt clothes as recorded in the seizure memo Ex.PW-3/B were seized from the room of the accused and that he signed the seizure memo Ex.PW-3/B as a witness. He further deposed that the pieces of burnt cloth lifted from outside the room of Murshid as per memo Ex.PW-3/A were lifted in his presence and that he had signed the seizure memo Ex.PW-3/A as a witness.

17. On being cross-examined, Ajmer stated that the police reached the spot at about 5/5.15 PM. He admitted that Murshid was his distant brother. That his statement was recorded in his room at about 8.30 PM.

18. Virender PW-6 deposed that on 18.2.2002, when he was in the street abutting H.No. G-28 Harkesh Nagar, he heard Murshid Alam crying 'bachao bachao'. He saw Murshid Alam having acid burns on his face and his clothes were burnt. He saw Ajmer Alam remove the clothes of Murshid with the help of scissors and that he also went and helped Ajmer. He further deposed that he saw Baljeet Singh running away from that place saying 'maine Murshid Alam ka kaam tamam kar diya hai'. The police arrived and removed the injured to the hospital.

19. On being cross-examined he stated that he runs a "Parchoon" shop at G-28 Harkesh Nagar. Denying the suggestion that his shop remains closed from 2.30 PM to 5.30 PM, he stated that it remains closed from 12:00 Noon to 2.00 PM and that at the time of the incident he was returning from the street where he had gone to make some purchases from a salesman.

20. SI Satish Kumar PW-13, deposed that on 18.2.2002, at about 5.50 PM, he was handed over copy of DD No.28 for investigation. Accompanied by Const.Sawata Kumar PW-10,

he went to Safdarjung hospital and found Murshid admitted at the hospital. Vide Ex.PW-13/A he sought permission from the doctor to record the statement of Murshid. Vide endorsement Ex.PW-13/B, the doctor granted him permission to record the statement of Murshid. He recorded the statement Ex.PW-13/C of Murshid and made his endorsement Ex.PW-13/D thereunder. He sent Const.Sawata Kumar for registration of an FIR. He proceeded to the place where the crime was committed and met Ajmer Alam whose statement was recorded by him and on the pointing out of Ajmer Alam he prepared the rough site plan Ex.PW-13/E. He called a private photographer who took the photographs Ex.PW-4/1 to Ex.PW-4/5. At the spot he saw a container Ex.P-1 which he seized as recorded in the memo Ex.PW-3/C. From the room of the accused he seized a gamchha Ex.P-2, a T-shirt Ex.P-3 and a jacket Ex.P-4 which were burnt and recorded said fact in the seizure memo Ex.PW-3/B. Burnt sweater Ex.P-5, shirt Ex.P-6, pant Ex.P-7, vest Ex.P-8 and half sleeve sweater Ex.P-9 were seized from outside the room as recorded in the seizure memo Ex.PW-3/A. That Murshid Alam died on 22.2.2002, which information was received at the police station as recorded in DD No.41. He got the inquest proceedings conducted vide documents Ex.PW-13/G. The appellant was apprehended on 25.6.2002 when he was produced at the police station by his brother Arvind

Kumar. The appellant made a disclosure statement Ex.PW-13/N which was recorded by him as per which the appellant told him that the T-shirt which he was wearing when the crime was committed could be got recovered by him. The appellant thereafter got recovered the T-shirt Ex.P-1 which was seized as recorded in the memo Ex.PW-8/A.

21. We may note at this stage that two exhibits have been assigned the same exhibit mark. The plastic can has been exhibited as P-1. The T-shirt got recovered by the appellant has also been exhibited as P-1.

22. Holding that the evidence on record establish that the deceased, in full senses, made the statement Ex.PW-13/C, which pertained to the cause of the death of the deceased, had to be treated as a dying declaration, the learned Trial Judge has held that the first piece of incriminating evidence against the appellant is the said dying declaration. Holding that the testimony of Ajmer Alam PW-3 inspired confidence, the learned Trial Judge has held that the dying declaration of the deceased was corroborated by ocular evidence. With reference to the testimony of Virender PW-6, the learned Trial Judge has held that the same establishes the presence of the appellant at the place where the crime was committed and at the time of the crime and his conduct of running away also showed his guilt. With reference to the post-mortem report

which records that 30% of the body surface area was burnt and that the cause of death was septicemia due to complications created as a result of acid burns, with reference to the motive of past enmity, learned Trial Judge had concluded by holding that the acts of the appellant were the result of his intention to kill the deceased. The learned Trial Judge has also used, as an incriminating circumstance, the evidence that the MLC Ex.PW-13/P of the appellant prepared on 26.6.2002 after the appellant was apprehended and got examined at AIIMS shows acid scar marks on his upper limbs and the right hand. Thus, the conclusion drawn is that the appellant is guilty of having murdered Murshid Alam.

23. At the hearing of the appeal, learned counsel for the appellant urged:-

(a) That there was no proof of the deceased being fit for making a statement and that the doctor who purportedly made the endorsement Ex.PW-13/B on the application Ex.PW-13/A moved by SI Satish Kumar was not examined. Thus, counsel urged that the alleged dying declaration i.e. Ex.PW-13/C has to be ignored.

(b) Labeling Ajmer Alam as an interested witness, learned counsel urged that no credence can be given to the testimony of Ajmer Alam.

(c) Questioning the presence of Virender at the spot, learned counsel urged that though Virender also resided in a room in the same building where the offence was committed, he sold merchandise from a retail shop and was thus expected to be at his shop. Thus, counsel urged that Virender is a planted witness.

(d) That sulphuric acid is highly corrosive and it is just not possible to store the same in a plastic container and since the prosecution claims that a plastic can containing sulphuric acid was recovered from a room belonging to the appellant, the said fact is nullified behind the chemistry of sulphuric acid.

(e) Counsel submitted that the burn injuries noted on the hands and the forearms of the appellant were keloids which was possible due to many causes; one of them being acid burns. Thus, counsel urged that the MLC Ex.PW-13/P did not conclusively established that the appellant suffered burn injuries as a result of sulphuric acid.

(f) Counsel urged that assuming that the appellant threw the acid on the deceased, the fact of the matter remains that the deceased died after 4 days of the incident and the cause of death was septicemia following ante-mortem burn injuries. Referring to the MLC of the deceased wherein it is recorded that 20% body surface area was burnt due to acid, learned counsel urged that the twin effect of the said two facts

i.e. death being the result of septicemia after 4 days and body surface area being burnt was 20%, it cannot be said that the intention of the appellant was to cause the death of the deceased or that the appellant had knowledge that his act or the resultant injury would in all probability cause death. Thus, counsel urged that it was at best a case of making out an offence punishable under Section 304 Part II IPC.

24. It is no doubt true that the doctor who has made the endorsement Ex.PW-13/B on the application Ex.PW-13/A moved by SI Satish Kumar for recording the statement of Murshid Alam who was admitted at Safdarjung Hospital on 18.12.2002 has not been examined and thus the author of the endorsement has not proved the same. Thus, we are of the opinion that under the circumstances it may not be prudent to rely upon the statement Ex.PW-13/C of the deceased by treating it to be the dying declaration of the deceased.

25. Except for urging that, being a distant cousin of the deceased, Ajmer Alam was an interested witness, learned counsel for the appellant could not point out anything worthwhile with reference to the cross examination of Ajmer Alam, wherefrom his credibility can be impinged. We note that Ajmer Alam has withstood the test of credibility. A relative by said fact alone does not become an interested witness. An interested witness is a witness who has a motive to falsely

implicate the accused. No such motive has been alleged against Ajmer Alam. None has been brought out. Thus, Ajmer Alam, whose presence at the spot is natural, has to be accepted.

26. The third submission pertaining to the testimony of Virender is an utterly gibberish submission and has been urged without appreciating the testimony of Virender. The argument of learned counsel for the appellant is premised on the assumption that the shop of Virender is somewhere else and his residence is somewhere else. The argument ignores the fact that as per Virender he was a resident of house No.G-28, Harkesh Nagar. He deposed that he was running a retail shop at house No.G-28, Harkesh Nagar. Thus, the presence of Virender at the spot is natural who claimed to have returned to his shop after making purchases from the market and as he returned he saw the appellant running away saying 'maine Murshid Alam ka kaam tamam kar diya hai'.

27. The testimony of Virender PW-6 is admissible and relevant by virtue of Section 6 of the Evidence Act. It shows the contemporaneous acts and utterances of the appellant who was seen fleeing from the place of occurrence soon after the crime was committed. Needless to state it is conduct of guilt if seen running away from the scene of the crime and uttering words linked to the crime. In fact the utterances of

the appellant which were heard by PW-6 are nothing but an extra judicial confession made by the appellant, admitting his guilt in the crime.

28. We thus hold that the twin testimony of PW-3 and PW-6 inspires confidence and standing alone as also in conjunction with each other, establish the commission of the crime by the appellant.

29. That apart, the evidence of clothes seized from the room of the appellant as also the T-shirt recovered after he was arrested being proved to be having burn marks occasioned by an acid being sulphuric acid shows that the appellant had the said acid with him. The burnt clothes of the deceased also had sulphuric acid thereon. The said recoveries also are a link in the chain to establish the culpability of the appellant. The further link in the chain of circumstances is the MLC Ex.PW-13/P of the appellant which establishes that when he was medically examined on 26.6.2002, his right hand and forearms were having old scar wounds; being the result of acid falling on his hands and forearms.

30. The plea that sulphuric acid is highly corrosive and cannot be stored in a plastic container requiring an inference to be drawn that the can Ex.P-1 could not be the one in which sulphuric acid was stored has to be rejected for the reason polymethyl and polyethylene cans of high resistance to acidic

and caustic substances have been developed and are available in the market. The can Ex.P-1, could be one such can. It was for the appellant to have led evidence with reference to the can and brought out the chemical composition of the material of the can and upon showing that the material of the can was such that it would have been eaten away by acid, could such a submission have been urged.

31. No doubt, keloids can be the result of burn injuries occasioned by more than one cause, but burn injuries resulting from acid falling being one of the cause of keloids, cannot be ignored in the instant case for the reason the appellant has not explained as to how keloids were found on his hands and forearms. This fact was in the special knowledge of the appellant. The police or the prosecution could never reach out to the same. In the absence of any explanation from the appellant, an adverse inference has to be drawn against him.

32. Thus, we concur with the view taken by the learned Trial Judge that the evidence establishes that due to past enmity, the appellant intentionally poured sulphuric acid on Murshid Alam.

33. Law presumes that a man intends the consequences of his acts. At a murder trial the problem relatable to intention and the linkage with the act is that sometimes it becomes difficult to find out the real intention

which may be to simply injure the victim or it may be to cause a grievous injury to the victim or to cause the death of the victim.

34. Commonsense guides us that the nature of the assault, the attendant circumstances, the nature of the weapon of offence used and the ferocity of the attack would guide to determine the intention of the offender. Contemporaneous utterances of the offender would also be relevant.

35. This takes us to the last submission urged that the death being the result of septicemia after 4 days and 20% of the body surface area being burnt, it cannot be said that the intention of the appellant was to cause the death of the deceased or that the appellant had knowledge that his act or the resultant injury would in all probability cause death. The submission needs to be rejected in light of the observations in the decision reported as JT 2001 (9) SC 282 Patel Hiralal Joitaram Vs. State of Gujarat. In said case the victim was set on fire after some corrosive liquid was poured on her. She lived on for quite a few days and died due to septicemia. In para 35 to 38 of the decision it was opined as under.

“35. Section 299 IPC defines “culpable homicide” as “whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by

such act, to cause death, commits the offence of culpable homicide.”

36. Explanation 2 to Section 299 has a material bearing on the said contention and hence that is extracted below:

“Explanation 2 – Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.”

37. Section 300 IPC carves out two segments, one is culpable homicide amounting to murder and the second segment consists of culpable homicide not amounting to murder. Four clauses enumerated in the section are enveloped in the first segment. What is set apart for the second segment is compendiously described as “except in the cases hereinafter excepted” from out of the first segment. For the purpose of this case we deem it necessary to quote only the second clause in Section 300 IPC.

“2ndly – If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.”

38. In the present case, appellant did not even make an effort to bring the case within any of the four exceptions enumerated in Section 300. Hence the only question to be answered is whether he did the act with the intention of causing such bodily injury as he knew “to be likely to cause death of the deceased.” It is inconceivable that appellant would not have known that setting a human being ablaze after soaking her clothes with inflammable liquid would cause her death as the type of burns resulting therefrom would at least be “likely” to cause her death (if not they are sufficient in the ordinary course of nature to cause her death). The fact that she died only after a fortnight of sustaining those burn injuries, cannot evacuate the act out of the contours of the “2ndly” clause of Section 300 IPC. There was a little abatement of the ferocity of the flames which engulfed her as she, in the instinctive human thirst of getting extricated from

the gobbling tentacles of the fire, succeeded in tracing out of a water-flow. Such a reflex action performed by her had mitigated the conflagration of the flames but did not save her from the fatality of the calamity. Hence, the interval of fourteen days between the attack and her death is not a cause for mitigation of the offence perpetrated by the offender. We are, therefore, not impressed by the alternative argument advanced by the learned senior counsel for the appellant."

36. It becomes pertinent to note here, that while urging that, only 20% of the body surface of the deceased was burnt, the counsel has relied upon the MLC and has completely ignored the post-mortem report which categorically records that *the total area of body surface burnt is about 30%*. A Post-mortem report records the injuries on a body after an in-depth and incisive examination of the same and is expected to be more accurate than an MLC which merely records the superficial injuries which are evidenced by a quick and cursory examination of the body of the injured. There is therefore, no doubt, that 30% and not 20% of the body was burnt.

37. A Division Bench of this Court of which one of us viz. Pradeep Nandrajog, J. was a member of had an opportunity to consider medical jurisprudence pertaining to acid burns. A decision of the Supreme Court reported as AIR 1974 SC 2328 Sudershan Kumar vs. State of Delhi was noted. The said decision of the Division Bench dated 11.2.2009 in Crl.A.No.37/2005 Mohd. Kamal Hussain Vs. State (GNCT of Delhi) noted that as against burn injuries due to fire, acid burn

injuries deteriorate with the passage of time and death takes place after five or six days or even longer. Medical jurisprudence was noted that in case of burns by acid, if body area affected is above 30%, the same is usually fatal. In paras 40 to 42 of the said decision, it was observed as under:-

“40. The issue where the victim is burnt and the burns cover between 30% to 35% of the body and the death occurs after many days due to infection spreading in the vital organ of the victim has troubled the Courts evidenced by certain decisions holding that by its very nature of the act, burning a victim is an imminently dangerous act and in the least a very high degree of knowledge can be attributed to the offender of knowing the consequences of his act. Certain decisions have applied the principle of *causa causan* to hold that if some other event intervenes between the principal act and the resultant effect the said principle is not applicable and thus have reduced the gravity of the offence. But, said decisions relate to burn by fire.

41. In the case of acid burns, the jurisprudence is a little different. In the decision reported as AIR 1974 SC 2328 Sudershan Kumar vs. State of Delhi Modi's Medical Jurisprudence and Toxicology 17th Edn. was referred to wherein it was opined that: “The involvement of one-third to one-half of the superficial area of the body is likely to end fatally..... in suppurative cases, death may occur after five or six or even longer”. With reference to Taylor's Principles and Practice of Medical Jurisprudence 12th Edn. Vol.I it was noted that in cases of acid burns: “The chief danger to life is the occurrence of sepsis in the burned areas.” Accordingly, where the victim who had suffered 35% burns of the body due to acid and death resulted, it was held to be a case attracting Section 302 IPC.

42. The submission of the learned counsel for the appellant that afore-noted decision is distinguishable because in said case 35% of the body was burnt with acid and in the instant case the victim was burnt over 30% of the body is neither here nor there for the reason there is hardly any percentage difference

between 30% and 35%. In any case, the opinions would always have a margin of 5% on either side. These opinions are not formulas of mathematics and hence have not to be applied as equations.”

38. In the instant case, the post-mortem of the deceased records 30% of the body surface area being burnt. The cause of death is septicemia following ante mortem burn injuries possible by corrosive substance. The deceased died after four days of the incident. The utterance of the appellant heard by PW-6 soon after the incident ‘maine Murshid Alam ka kaam tamam kar diya hai’ shows his intention to finish off the deceased. The quantity of acid thrown on the deceased can be measured by the fact that 30% of the surface area of the body was burnt. Thus, the conclusions drawn by the learned Trial Judge cannot be faulted.

39. We find no merits in the appeal. The appeal is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

August 06, 2009
Dharmender / mm