

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 26th November, 2009*
Judgment Delivered on: 30th November, 2009

+ **CRL. A. 597/2008**

YASHPAL @ MUKESH @ CHATTOO ...Appellant
Through: Ms.Purnima Sethi, Advocate

Versus
STATE Respondent
Through: Mr.M.N.Dudeja, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and order dated 22.10.2007 the appellant has been convicted for the offence punishable under Section 326 IPC. Vide order dated 25.10.2007 he has been sentenced to undergo imprisonment for life.

2. While convicting the appellant, who was charged for the offence punishable under Section 307 IPC, the learned Trial Judge has returned a finding that the evidence did not establish that the appellant intended to cause the death of the

complainant Renu. Evidence established that the appellant intended to cause grievous hurt to Renu by means of a substance which was deleterious to human body. While imposing the extreme sentence to undergo imprisonment for life the learned Trial Judge has noted that Renu had not only been facially disfigured but had lost vision in both eyes and was unable to see.

3. As per the prosecution the appellant was angry with Renu who had refused a marriage proposal from the appellant and in retaliation, on 15.2.2006, when Renu was tending to cattle belonging to her father and was on the street, at 11:30 AM the appellant threw acid on Renu. He targeted her face. As a result of acid burns the whole face of Renu got disfigured. She suffered acid burn injuries on her chest, abdomen and hands. She lost vision in both eyes.

4. The physical deformity of Renu has been noted by the Court while recording the testimony of Renu on 9.11.2006. It has been noted that Renu aged 17 years was brought to Court in a veil by her sister and when she lifted the veil the Court noted that due to acid burn injuries the eye lids of both eyes had joined and she was rendered totally blind.

5. We need not note the entire evidence led at the trial for the reason when examined under Section 313 Cr.P.C.

the appellant responded to the last question as to what else did he have to say by stating:-

“I have been falsely implicated in this case. I am innocent. I and Ms.Renu were having love affair and her brother & father came to know about this fact. They became annoyed and they threatened me not to meet with her and threatened to take my life. I had tattooed the name of Renu on my hand. Her brother saw me alongwith Renu talking to her on the date of incident and got annoyed and in a fit of anger threw acid upon me but I saved and the acid fall upon Renu. I also sustained burn injuries on my hand in the process.”

6. It is apparent that Renu's brother who was examined by the prosecution as PW-1 namely Rahul Sharma was present when the unfortunate incident of Renu being burnt with acid took place. The appellant has himself so stated but has further alleged that it was Renu's brother who threw acid at the appellant who saved himself and the acid fell on Renu. Thus, the fate of the appellant would hinge on the testimony of Rahul Sharma, the brother of Renu and Renu herself.

7. Before noting the testimony of Rahul Sharma and Renu, we may note that pertaining to the incident which took place at 11:30 AM information was received at the police station when DD No.23B was recorded and was handed over to SI Virender Singh Punia PW-13 who accompanied by Const.Devender Kumar PW-4 left for the place of the incident

and therefrom to G.T.B.Hospital where he recorded Renu's statement Ex.PW-2/A and after making an endorsement Ex.PW-13/A thereunder forwarded the same at 1:45 PM for FIR to be registered. It is apparent that Renu's statement which has formed the basis of the FIR was registered promptly without giving much time to Renu to fabricate the facts.

8. As deposed to by SI Virender Singh Punia PW-13, a bottle containing acid and a steel glass was seized by him from a shelf inside the room occupied by the appellant Yashpal which were seized by him as recorded in the memo Ex.PW-1/A.

9. The MLC Ex. PW-5/A of Renu proves, as recorded therein that Rahul Sharma had brought her at G.T.B.Hospital and she had suffered 30%-35% burns due to a corrosive substance. The injury was opined to be grievous by Dr.Sanjeev Arora PW-10 who was working as a Senior Resident at the said hospital on 28.8.2006 when opinion was obtained on the MLC of Renu pertaining to the injuries recorded therein.

10. The appellant was apprehended on 18.2.2006 and was examined at G.T.B.Hospital Shahdara by Dr.Ashok Kumar PW-12 who prepared the MLC Ex.PW-12/A noting therein that there was small irregular erythematous charred lesion over face suggestive of sprinkle of corrosive acid as also similar burn injury over right wrist area.

11. On being cross examined Dr.Ashok Kumar stated that depending upon the distance between the victim and the assailant, if the distance is more the possibility of the acid coming on one's own body is remote, but if the distance is less or the victim tries to save himself, the possibility of the assailant sustaining the injuries as noted by him was possible.

12. Renu PW-2 deposed that the appellant was a tenant under her father and on 15.2.2006 threw acid on her face and ran away. We note that this is her statement recorded by SI Virender Singh Punia i.e. the statement Ex.PW-2/A. She denied the suggestion that her brother Rahul threatened the accused who was talking to her when the incident took place and it was her brother who threw acid towards the accused, but the same fell on her.

13. Rahul PW-1 deposed that he was in his house and at around 11:15 AM when his sister was bathing buffaloes on the street she gave a cry and he went out. He saw his sister injured and accused running away.

14. We note that Rahul has been cross examined with reference to his being a student and being away to school. We also note a contradictory line of cross examination adopted by suggesting to Rahul that it was he who threw acid on the

appellant because he was angry when he saw the appellant talk to his sister.

15. Learned counsel for the appellant attempted to pick holes in the testimony of Renu and Rahul and intended to urge that therefrom she can show that Rahul was not present and hence could not have seen the appellant run away. Counsel urged that Rahul was at his school.

16. We are not noting the said alleged discrepancies for the reason in his statement under Section 313 Cr.P.C. the appellant has admitted Rahul being present. He has stated that Renu's brother was present. That apart, Renu's MLC Ex.PW-5/A records that Rahul had brought Renu to the hospital. The said document prepared contemporaneously shows that Rahul, though a student, had not gone to school on 15.2.2006.

17. We may further note that while cross-examining Rahul, suggestions have been given to him that it was he who threw acid at the appellant but the same fell on his sister.

18. We conclude that the finding returned by the learned Trial Judge that Rahul was present in his house when his sister suffered acid burn injuries is correct.

19. Two issues need to be decided. Whether Rahul, out of anger, threw acid on the appellant and in the process burnt

his sister is within the realm of possibility and secondly if first question is answered against the appellant, whether the sentence imposed is excessive.

20. Two pieces of evidence conclude the issue against the appellant. The first is the testimony of SI Virender Singh PW-13 who has clearly deposed that he seized a bottle of acid and a steel tumbler with some acid inside from the room in possession of the appellant, seizure whereof was recorded by him in the memo Ex.PW-1/A. Even Rahul Sharma PW-1 has deposed that the seizure memo was signed by him and that the same i.e. the bottle and the tumbler was seized from the room of the appellant. At this stage we may note that there is a typographic error in the testimony of PW-1 wherein it is recorded: *'On 15.2.06 in the evening police had recovered one steel glass, one bottle both containing acid and one knife from the accused of accused'*. It is apparent that the last three words of the sentence should read: *'room of accused'*. The second evidence is the testimony of Dr.Ashok Kumar PW-12 as per which the injuries on the person of the appellant could be result of acid falling on him when he threw the same at the victim.

21. The fact that a bottle containing acid and a tumbler having acid therein was recovered from the room of the appellant is telltale evidence against the appellant.

22. That the appellant absconded after the incident and was apprehended on 18.2.2006 is further indicative of his guilt.

23. We would be failing not to note that the burn injuries on the face and the wrist of the appellant are fairly superficial. If he was the target as claimed by him we fail to understand as to how he received fairly simple and superficial acid burn injuries and Renu received such grievous injuries. The acid burn injuries on the right wrist of the appellant are suggestive of the fact that he had the container with acid held on by the right hand and when he jerked the hand while using the wrist to throw acid on Renu, some splashes fell on his wrist.

24. We may note that the two witnesses examined in defence by the appellant have simply proved that the appellant was in love with Renu. What turns thereon? Why not the motive for the reason neither Renu nor her parents desired that Renu should get married to the appellant.

25. We concur with the finding returned by the learned Trial Judge that the evidence establishes that the appellant was the one who threw acid on Renu and ran away.

26. On the quantum of sentence, learned counsel cited two decisions reported as 2009 (4) SCC 26 State of M.P. vs. Kashiram & Ors. and 2009 (4) SCC 57 Ram Das vs. State of MP.

27. In the first decision we note that the High Court had reduced the sentence which was enhanced by the Supreme Court. We wonder why said decision was cited. In the second decision sentence was reduced to the period already undergone pertaining to a conviction for the offence punishable under Section 324 IPC i.e. the offence of causing hurt.

28. Offence punishable under Section 324 IPC carries a maximum sentence of 3 years and noting that the appellant Ramdas had been litigating for 14 years, noting the agony and financial sufferings the sentence was reduced to the period already undergone i.e. 15 months.

29. It is apparent that even the second decision has no applicability in the instant case where the injury caused is a grievous injury, so opined to be by Dr.Sanjeev Arora PW-10.

30. Burning of girls with acid on account of the girls resisting the lecherous advances of street Romeos' are

increasing by the day. It is time that such acts are rewarded with commensurate punishment.

31. Poor Renu, she has to live her life with an ugly face and deprived of the joys of life. She cannot enjoy the beauty of nature. She has been rendered totally blind.

32. Under the circumstances we find no infirmity in the discretion exercised by the learned Trial Judge to inflict the highest possible sentence for the offence punishable under Section 326 IPC i.e. imprisonment for life. Instant case warrants the punishment which has been inflicted. After all, it is the duty of a Court to pay heed to the society's cry for justice.

33. We find no merit in the appeal which is dismissed.

34. Since the appellant is in jail, copy of the present judgment and order be sent to the Superintendent, Central Jail, Tihar for being made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

November 30, 2009
mm / dk