

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

Judgment Reserved on: December 02,2014

% *Judgment Delivered on: December 05, 2014*

+ **CRL.A.438/2014**

MOHD.AHMAD HUSSAIN Appellant
Represented by: Mr.Rajender Chhabra, Advocate

versus

STATE Respondent
Represented by: Ms.Aashaa Tiwari, APP for the State
with Insp.Satyavir Singh, SHO
P.S.Bharat Nagar and Insp.Ashok
Kumar.

CRL.A.1580/2014

STATE Appellant
Represented by: Ms.Aashaa Tiwari, APP for the State
with Insp.Satyavir Singh, SHO
P.S.Bharat Nagar and Insp.Ashok
Kumar.

versus

MOHD.AHMAD HUSSAIN Respondent
Represented by: Mr.Rajender Chhabra, Advocate

CORAM:
HON'BLE MR. JUSTICE PARDEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PARDEEP NANDRAJOG, J.

1. Vide impugned decision dated December 14, 2013 Mohd.Ahmad Hussain has been held guilty for the offence punishable under Section 304 IPC (Part-I or Part-II not stated in the impugned decision); for the offence punishable under Section 307 IPC; for the offence punishable under Section

326 IPC; and for the offence punishable under Section 324 IPC. Vide order on sentence date December 16, 2013, he has been sentenced to undergo rigorous imprisonment for 10 years for the offence of culpable homicide not amounting to murder, the offence of attempted murder, and the offence of causing grievous injuries with corrosive substance and 3 years for the offence of causing simple injuries by dangerous means.

2. Gulab is the deceased. Salma Khatoon is the person who was statedly attempted to be murdered. Rehmati and Veena are the two persons who were grievously injured with a coercive substance. Jahangir was the one who received simple injuries by dangerous means.

3. Mohd.Ahmad seeks his acquittal. Having obtained leave to appeal, vide Crl.A.No.1580/2014 the State seeks his conviction for the offence punishable under Section 302 IPC concerning the death of Gulab.

4. DD No.25A, Ex.PW23/A, was recorded by ASI Shadi Lal at 8:07 PM on June 24, 2010 at P.S.Bharat Nagar to the effect that from the Police Control Room information was received that at G-300, Madrasi J.J.Colony, a quarrel was taking place. Investigation was entrusted to SI Dharambir Singh PW-25 who, accompanied by Ct.Kailash PW-24, reached G-300, J.J.Colony and learnt that the injured had been shifted to Babu Jagjivan Ram Memorial Hospital in the PCR van. Leaving behind Ct.Kailash he reached Babu Jagjivan Ram Memorial Hospital where he met Veena PW-12, Salma Khatoon, PW-17, Smt.Rehmati PW-20, Jahangir PW-21, who had suffered acid burns. He also found an infant aged about 2½ years named Mohd.Gulab admitted at the hospital with burn injuries.

5. MLC Ex.PW-4/A, Ex.PW4/B, Ex.PW-5/A, Ex.PW-5/B and Ex.PW-5/C of Veena, Jahangir, Gulab, Salma Khatoon and Rehmati respectively had been prepared by then. The same record that the five injured persons had been brought in a PCR van to the casualty of the hospital at 9:05 PM on June

24, 2010. It was recorded that all the patients had acid burn injuries and were conscious. Whereas Rehmati, Veena and Jahangir were oriented, it was recorded in the MLC of Salma Khatoon and Gulab, that the two, though conscious, were confused and disoriented. All the injured were removed to LNJP hospital in an ambulance and therefore SI Dharmbir Singh collected the clothes of the injured from their hospital beds and seized the same vide seizure memo Ex.PW-25/A-1. He proceeded to LNJP where he recorded Salma Khatoon's statement Ex.PW-17/A, and making an endorsement Ex.PW-25/B beneath the statement, he got the FIR, Ex.PW-2/A, registered.

6. In the statement Ex.PW-17/A, Salma Khatoon disclosed name of Mohd.Ahmad as the one who had thrown acid on her and in the process Rehmati, Veena, Jahangir and Gulab also suffered acid burns. Loosely translated, Salma Khatoon's statement Ex.PW-17/A which formed the basis of the FIR reads as under:-

"Smt. Salma Khatoon D/o. Md. Wazir, R/o. House NO. L-26, J.J. Colony, Wazirpur, Delhi Age 26 years, Mobile NO. 9654038442 made her statement as under:

I reside at the aforesaid address and I am a home maker. I had got married with Mohd. Ahmad S/o. Mohd. Muslim R/o. Village Misoul, Police Station Damda, Distt. Sitamani, Bihar eight years ago. We have a daughter i.e. Chandni Khatoon, Age 7 years who lives with me. Approximately 7 years ago I was orally divorced by my husband Mohd. Ahmad and now I have been residing at the aforesaid address for approximately one year. Mohd. Ahmad had taken away my younger sister Afsana Khatoon from her matrimonial home i.e. at Village Panjiya, Distt. Sitamani, Bihar approximately six months ago and then my sister had gone somewhere even away from him. Approximately one week ago, I received a call from Mohd. Ahmad who asked me where was Afsana Khatoon. I replied that I did not know. Then he said that I myself had hid Afsana Khatoon somewhere and he asked me either to inform him about Afsana or he

would destroy my face and would leave me of nowhere. On 24.06.2010 Mohd. Ahmad called me and said that he was coming to me for talk. I had gone to see my acquaintance Rahmati W/o. Mohd. Rafique R/o House No. G-300, 4th Floor, J.J. Colony, Wazirpur at about 6:00 O' Clock in the evening. I, Rahmati, her two children Jahangir and Mohammad Gulab and Veena W/o. Sh. Mahesh, R/o. Trinagar, Delhi were sitting in the room and were talking among ourselves that at about 7:45 O'Clock in the evening Mohd. Ahmad reached there itself and got seated and started abusing me and misbehaving with me. He had been hiding a small box inside the side pocket of his pants regarding which I and Veena asked whereon he said that it was a bottle of beer. Then he asked me where was Afsana and I replied that I did not know. He said, 'Bitch (saali)! I shall leave you of nowhere and now itself I am going to destroy your face.' Out of a sudden he took away the box from the pocket of his pants and threw it on me due to which I got burnt and the acid affected Rahmati, Jahangir, Gulab and Veena also who were present there and they too sustained burn injuries. We raised an alarm and he fled away. There was irritation on our bodies due to the acid burn and so we poured water on our bodies from a bucket which was lying there. Mohd. Ahmad had intentionally thrown acid on me with the intention of killing me so that I might not be an obstacle between him and my sister. Legal action may be initiated against him. I have heard the statement and the same is correct."

7. SI Dharambir Singh went to the scene of the crime and through Ct.Dalbir PW-1 got the scene of the crime photographed. 11 photographs Ex.PW-1/1 to Ex.PW-1/11 were taken. He lifted concrete from the floor after breaking the floor slab and control earth.

8. Gulab battled for his life but was vanquished on July 20, 2010. Insp.Ashok Kumar PW-27 seized the dead body and sent the same to the mortuary of Babu Jagjivan Ram Memorial Hospital where Dr.Chetan Kumar PW-7 conducted the post-mortem and opined that death was due to septicaemia as a result of ante-mortem a burn injuries which had severely

damaged the right side of face, portions of the right side of the chest, both upper limbs, both thighs, legs and feet, entire back of the chest and the entire neck. He prepared the post-mortem report Ex.PW-7/A.

9. The exhibits seized were sent for forensic examination and vide report Ex.PX sulphuric acid was detected on the clothes of Veena, Jahangir, Gulab, Salma Khatoon and Rehmati which were seized by SI Dharambir Singh as also in the plastic container as also concrete material picked up from the place of the occurrence.

10. At the trial the four injured, Veena, Salma Khatoon, Rehmati, and Jahangir who appeared as PW-12, PW-17, PW-20 and PW-21 deposed facts in complete sync with what Salma Khatoon had said in her statement Ex.PW-17/A, and we find that the four witnesses have withstood the test of cross examination.

11. Learned counsel for the appellants, except for pointing out minor variations which are normal and are expected when four persons deposed to the same facts, could not show anything worthy of being noted by us and hence requiring consideration and analysis thereof to shake the credibility of the four injured eye witnesses, who have no motive to falsely implicate Mohd.Ahmad.

12. The MLCs Ex.PW-4/A, Ex.PW-4/B, Ex.PW-5/A, Ex.PW-5/B and Ex.PW-5/C of Veena, Jahangir, Gulab, Salma Khatoon and Rehmati were proved by Dr.Diwakar Parsad PW-4 who had examined Veena and Jahangir and by Dr.Sanjay Kumar PW-5 who had worked with Dr.Rahul who had examined Gulab, Salma Khatoon and Rehmati. Dr.Chetan Kumar PW-7 proved the post-mortem report and the various police officers who were associated with the case proved the facts concerning seizure of the exhibits, their onward movement to the forensic laboratory. Ct.Dalbair PW-1 proved the 11 photographs Ex.PW-1/1 to Ex.PW-1/11 taken by him.

13. Since the injuries suffered by Salma Khatoon, were opined to be grievous and dangerous as per MLC Ex.PW-5/B and a corrosive substance i.e. sulphuric acid was used to assault her, believing the testimony of the four injured eye witnesses, the learned Trial Judge has concluded that intention of Mohd.Ahmad was to kill Salma Khatoon and thus for the injuries caused to her has convicted Mohd.Ahmad for the offence punishable under Section 307 IPC. Pertaining to the death of Gulab the learned Trial Judge has held that notwithstanding Salma Khatoon was the prime target, knowledge has to be attributed to Mohd.Ahmad that by his act he was likely to cause death because the room was very small, and thus has convicted Mohd.Ahmad for the offence punishable under Section 304 IPC, without indicating whether the learned Trial Judge has found Part I or Part II thereof applicable. Since injuries suffered by Rehmati and Veena as per MLCs Ex.PW-5/C and Ex.PW-4/A were opined to be grievous, the learned Trial Judge has concluded that qua them Mohd.Ahmad has caused hurt by a corrosive substance and hence has held him guilty for the offence punishable under Section 326 IPC. Jahangir's MLC Ex.PW-4/B records that injuries suffered by him were simple but held to be by dangerous means because of sulphuric acid was used, the learned Trial Judge has convicted Mohd.Ahmad for the offence punishable under Section 324 IPC concerning the injuries suffered by Jahangir.

14. Whereas learned counsel for the State urged that pertaining to the death of Gulab the offence made out is murder for the reason knowledge has to be attributed to Mohd.Ahmad that if he threw acid on Salma Khatoon, substantial quantity thereof could fall on Gulab aged 2 years sleeping on the floor resulting in the death of the infant, learned counsel for Mohd.Ahmad would urge that the evidence establishes that Mohd.Ahmad wanted to deface the face of Salma Khatoon, and cause no injury to others. Notwithstanding

the size of the room being small, learned counsel argued that the photograph Ex.PW-1/9 shows that the plastic container in which Mohd.Ahmad carried sulphuric acid with him could at best contain 1 litre sulphuric acid. From said fact learned counsel urged that knowledge could not be imputed to Mohd.Ahmad on the reasoning followed by the learned Trial Judge to conclude that he had knowledge that by his act that he was likely to cause death and thus learned counsel urged that far from Mohd.Ahmad being liable for the offence of having murdered Gulab he would not even be liable for the offence of culpable homicide not amounting to murder for the death of Gulab, and at best would be liable for acting rashly and negligently resulting in the Gulab dying and hence would be liable to be convicted for the offence punishable under Section 304A IPC pertaining to Gulab's death. Learned counsel also argued that the immediate cause of death of Gulab was septicaemia and not the acid burns. Pertaining to the injuries caused by acid thrown on Salma Khatoon, learned counsel for Mohd.Ahmad urged that the testimony of the witnesses shows that angered by Salma Khatoon not disclosing her sister Afsana's whereabouts to Mohd.Ahmad, he got angry and his contemporaneous utterance that he was going to destroy her face establishes his intention to injure Salma Khatoon and not cause her death. Pertaining to the injuries caused to Veena, Jahangir and Rehmati, learned counsel for Mohd.Ahmad argued that he did not intend to cause any injuries to the said three persons, who suffered acid burn injuries since they were in the room where Salma Khatoon was sitting and thus the offence committed qua them would be punishable under Section 337 IPC.

15. The evidence on record, and this would be the testimony of Veena, Jahangir, Salma Khatoon and Rehmati, would bring out that Mohd.Ahmad was married to Salma Khatoon whom he had divorced and had started living with Afsana Khatoon, the sister of Salma Khatoon, who had left him and he

was annoyed at the fact that Salma Khatoon was not telling him where Afsana was living. On the day of the incident he came to House No.G-300, J.J.Colony and angrily asked Salma where Afsana was and when she replied that she did not know, he said that he would destroy her face and immediately threw acid at her. She was the primary target. She suffered the maximum acid burn injuries. As the acid was thrown from the plastic container, some got splashed on Rehmati and Veena and a little on Jahangir. Whatever fell down on the ground seriously and grievously injured Gulab who was 2 years old and thus Gulab suffered the most. The infant battled for nearly a month and died 26 days after he was injured.

16. Section 300 Fourthly reads : -

“If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commit such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

17. A litre of sulphuric acid thrown on Salma Khatoon would require knowledge to be imputed to Mohd.Ahmad that his act was so imminently dangerous that in all probability it could cause death. The MLC Ex.PW-5/B of Salma Khatoon shows that she had suffered acid burns over the face, right shoulder, right side of chest, left shoulder, left arm. After she was given primary medical aid in the casualty, she was shifted to LNJP hospital, and regrettably the prosecution has led no evidence as to for what duration she remained admitted at LNJP hospital. But, on the MLC it is recorded that on October 18, 2010 she was admitted once again in the Burns Ward of Babu Jagjivan Ram Memorial Hospital, and this would evince the serious nature of the burn injuries suffered by her. The contemporaneous utterance of Mohd.Ahmad that he would deface the face of Salma Khatoon may show his intention to cause hurt to her using a corrosive substance, but knowledge has

to be attributed to him of the kind contemplated by Section 300 Fourthly IPC because he used about 1 litre of sulphuric acid.

18. Thus, we concur with the view taken by the learned Trial Judge that the act of Mohd.Ahmad qua Salma Khatoon would constitute the offence punishable under Section 307 IPC.

19. Section 321 of the Indian Penal Code reads as under:-

“Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said ‘voluntarily to cause hurt’.

20. Thus, the definition of voluntarily causing hurt is not limited to only when there is an intention to cause hurt as a result of the act. It embraces knowledge that by the act the person concerned is likely to cause hurt to any person.

21. Thus, keeping in view the evidence that Mohd. Ahmad was aware of the presence of Veena, Jahangir and Rehmati in the room where Salma Khatoon was sitting when he threw acid at Salma Khatoon, and the size of the room was small, knowledge has to be attributed to Mohd.Ahmad of knowing that he was likely by his act to hurt said three persons, two of whom suffered grievous hurt and one simple hurt, and since the injury was caused by a corrosive substance to all, we concur with the view taken by the learned Trial Judge that pertaining to the injuries suffered by Veena and Rehmati the offence committed is punishable under Section 326 IPC and pertaining to the injury suffered by Jahangir, the offence committed is punishable under Section 324 IPC.

22. For injury suffered by Gulab and his death, concerning the argument that Gulab died after 26 days and the proximate cause of death was septicaemia and not burn injuries, we note that in the decision reported as

ILR (2009) Supp. 7 Delhi 413 Baljeet Kumar vs.State, a Division Bench of this Court 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. An earlier decision of this Court dated February 11, 2009 in CrI.A.No.37/2005 Mohd. Kamal Hussain Vs. State (GNCT of Delhi) was noted to the effect 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 paragraphs 40 to 42 of the decision in Mohd.Kamal Hussain's 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.”

23. Thus, the argument that qua the unfortunate infant Gulab, the cause of death was septicaemia and not the acid burn injuries, is rejected noting that infant Gulab suffered more than 30% burn injuries on his body. Our reasoning above concerning the injuries caused to Salma Khatoon as also Veena, Rehmati and Jahangir compel us to conclude that when Mohd.Ahmad entered the room which was small in size and saw that Salma Khatoon was sitting in the company of Veena, Rehmati and Jahangir and infant Gulab was sleeping next to her, knowledge has to be attributed to him that he was by his act likely to cause Gulab's death. Whereas knowledge attributable to Mohd.Ahmad regarding injury caused to Salma Khatoon, who was the prime target and on whom the acid was thrown and who suffered the maximum brunt, would be of the kind envisaged by Section 300 Fourthly of the Indian Penal Code, the knowledge attributable regarding injuries caused to Gulab would be of the degree contemplated by the third limb of 299 IPC because Gulab was not the primary target and was sleeping next to Salma Khatoon and this would mean that Mohd.Ahmad would be attributed knowledge of knowing that he was likely by such act to cause the death of Gulab. Thus, we concur with the view taken by the learned Trial Judge that the offence committed by Mohd.Ahmad qua the death of Gulab

would be culpable homicide not amounting to murder, and since knowledge is the source of said conviction, the offence committed would be punishable under Section 304 Part-II of the Indian Penal Code.

24. As regards the sentence imposed, noting that the same have to run concurrently, we maintain the sentence imposed.

25. Appeal filed by Mohd.Ahmad being Crl.A.No.438/2014 as also the appeal filed by the State being Crl.A.No.1580/2014 are thus dismissed.

26. Two copies of the decision shall be sent to the Superintendent Central Jail Tihar, one for their record and the other to be supplied to the appellant Mohd.Ahmad.

27. TCR be returned.

(PARDEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

DECEMBER 05, 2014

mamta/skb