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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 14th November, 2014

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CRL.A. 815/2013

IDRISH @ RAHUL

..... Appellant

Through

Mr. B.S. Chowdhary, Advocate

versus

STATE NCT OF DELHI

..... Respondent

Through

Mr. M.N. Dudeja, APP for the State
with SI Sumit, PS Prashant Vihar.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Mohd.Idrish(appellant) challenges the correctness of the judgment dated 23.05.2013 of learned Additional Sessions Judge in Sessions case No.61/11 arising out of FIR No.115/10 P.S. Paschim Vihar u/s 304/324/34 IPC vide which he was held guilty for committing offence punishable u/s 304 Part II IPC and Section 324 IPC and Order on sentence dated 24.05.2103 vide which he was sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs.2,000, in default simple imprisonment for 15 days u/s 304 Part II IPC and rigorous imprisonment for 1 year u/s 324 IPC. Both the sentences were ordered to be run concurrently. Benefit of Section 428 Cr.P.C was given to the convict.

2. The gravamen of the prosecution case is that on 11.04.2010, Rakesh Kumar, son of Kundan Lal was going in a TSR to Rohini Sector 20 at about 11 p.m. When the TSR reached Behra Enclave underpass, Outer Ring Road at about 11.15 p.m, one motor cycle came from behind. Idrish was sitting on the pillion seat. After bringing the motor cycle near the TSR, accused Idrish threw acid on him, as a result of which he sustained burn injuries. Some of the substance also fell on the TSR driver who also sustained burn injuries. Rakesh Kumar informed his wife Kiran and asked her to reach near Ghorewala Mandir. Rakesh Kumar himself reached Ghorewala Mandir in another TSR. His wife took him to RML hospital where proper treatment was not administered to him, as such he was removed to Safdarjung hospital. On receipt of DD No. 36A, Ex.PW2/A from Duty Officer regarding throwing of acid at underpass near Peeragarhi, PW2 ASI Dilbagh Singh along with PW5 Ct. Sunil reached the spot where he found a TSR bearing registration No.DL-1R-C-0641. He went to SGM hospital where he came to know that one Amit was provided treatment and thereafter discharged. On receipt of information from RML hospital that one Rakesh in injured condition on whom the acid had been thrown was admitted in the hospital, ASI Dilbagh Singh reached RML hospital but could not find Rakesh there. On the next day i.e. 12.04.2010, SI Sita Ram of P.S. Khayala informed him that Rakesh, the injured of this case has been admitted in Safdarjung hospital and as such he

reached Safdarjung hospital and found Rakesh admitted there. After taking permission from the concerned Doctor to record the statement of Rakesh, he recorded his statement Ex.PW2/B and got the case registered u/s 326/34 IPC. During the course of investigation, accused/appellant was arrested. However, co-accused could not be arrested. On 08.07.2010, family members of the injured informed the police officials about the death of Rakesh, as such the dead body was sent to SGM hospital. Post mortem on the dead body was got conducted. Viscera was sent to FSL. After completing investigation, charge-sheet was submitted u/s 304/324/34 IPC.

3. In order to substantiate its case, prosecution examined 20 witnesses. Except mere denial of the offence alleged against the accused in his 313 questionnaire, no other specific stand was taken by the appellant nor was any defence evidence- oral or documentary placed before the Court. Based on the evidence before the Trial Court and the incriminating circumstances existing against the appellant, the conviction and sentence came to be imposed by the Trial Court which has been assailed by filing the present appeal.

4. Assailing the findings of the learned Trial Court, Shri B.S.Chaudhary, Advocate for the appellant submitted that the involvement of the appellant in the incident is not established beyond reasonable doubt. As per the statement made by the deceased himself, he was a chain snatcher, as such he must be having several enemies. Moreover, the

injured was conscious when he was admitted in the hospital. His statement should have been recorded then and there. But it was recorded after 24 hours. Moreover relying upon the testimony of PW4 Amit Kumar who was the TSR driver, it was submitted that even the injured was unaware of the identity of the assailant as it has come in the statement of this witness that the passenger had accused him that the persons who had thrown the acid are his companions. Moreover identification of the accused by this witness is not reliable as in cross examination he has deposed that he informed the police that he cannot identify the accused as the driver of the motor cycle was wearing a helmet and he could not pay attention to the person who was the pillion rider as he was concentrating on driving the TSR. Moreover testimony of PW1 Kiran wife of the deceased is not worthy of credit as the case of prosecution is that the incident took place at about 11/11.30 p.m. However, this witness has testified that she received the telephone call from her husband at about 10.40 p.m. Neither any bottle nor any mug was recovered from the spot. Under the circumstances, it was submitted that although the injury on the person of Rakesh is not disputed, however, appellant is not responsible for causing any such injury. It was further urged that enmity has not been proved as no complaint was made either by the deceased or his wife to the police prior to the incident. Lastly it was submitted that the death of the deceased is not due to throwing of acid as the post mortem report reflects that the death has

occurred due to septicemia. The injured was discharged from the hospital and the death has occurred after a lapse of about one month. Therefore, may be due to negligence on the part of the deceased himself or his family members in post care, the death may have taken place but the same is not as a result of the acid burn injuries. Alternatively, it was submitted that the appellant is in jail since 23.05.2013. He deals in buying and purchase of old clothes. He has the responsibility of maintaining his wife and four minor children, as such he be released on the period already undergone.

5. Rebutting the submissions of learned counsel for the appellant, Shri M.N.Dudeja, learned APP for the State submitted that there is no dispute regarding the identity of the accused inasmuch as, as per the statement of the deceased made to the Investigating Officer of the case which formed the basis of FIR, both the deceased and the accused were chain snatchers. However, certain disputes arose between them on account of division of the looted money and, therefore, their relations became strained. Thereafter the accused had been threatening the deceased with dire consequences. On the fateful day also, he came on a motor cycle and threw the acid upon the victim and some of the acid also fell on the TSR and the TSR driver, which fact stands proved from the testimony of the driver of the TSR, PW4 Amit Kumar. It is further submitted that the statement made by the deceased which formed the basis of FIR is in fact his dying declaration which was made while the deceased was in a fit state

of mind to make the statement in which he has given a detailed account of the incident and the overt act of the accused. Not only that, immediately after the incident, he also informed his wife on telephone regarding the incident which has been narrated by her before the Court, as such the same forms part of *res gestae*. It was the wife of the injured who removed him to hospital where the injured remained hospitalised for about two months and ultimately succumbed to his injuries. The injuries were the immediate cause of his death. It was further submitted that non-recovery of mug or the bottle is immaterial. As regards difference in time as given by the wife of deceased, same is inconsequential. The prosecution had succeeded in establishing its case beyond reasonable doubt. The impugned judgment does not suffer from any infirmity which calls for interference, as such the appeal is liable to be dismissed.

6. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

7. On 11.04.2010, on receipt of DD No.36A Ex.PW2/A regarding throwing of acid at underpass near Peeragarhi, PW2 ASI Dilbagh Singh along with PW5 Ct. Sunil Kumar reached the underpass, Outer Ring Road, Peeragarhi where he found one TSR bearing registration No.DL-1R-C-0641. After leaving Ct. Sunil at the spot ASI Dilbagh Singh went to SGM hospital where he came to know that one Amit Kumar PW4 was treated there and discharged. Thereafter, he reached the spot again but could not

find any clue about the incident. Around midnight he received information from RML hospital that one Rakesh in injured condition on whom acid was thrown had been admitted in the hospital. He reached RML hospital but could not find Rakesh there. On 12.04.2010, SI Sita Ram, P.S. Khayala came to P.S.Paschim Vihar and informed them that Rakesh was admitted in Safdarjung hospital. As such, ASI Dilbagh Singh reached Safdarjung hospital and found Rakesh admitted there. After obtaining permission of the concerned doctor in the hospital to record statement of Rakesh who was declared fit for statement, he recorded statement of Rakesh Ex.PW2/B bearing his thumb impression at point 'B'. FIR u/s 326/34 IPC was got registered. This statement Ex.PW2/B refers to the relation between Rakesh and Idrish as both of them used to indulge in pick pocketing together and both of them were involved in many criminal cases. It further refers to the fact that their relation became strained about 3 years prior to the incident on division of the booty whereafter Idrish had been threatening to teach him a lesson. It also refers that on 07.04.2010 he had gone to Patiala House Court to attend a Court hearing where also Idrish had threatened to see him. This statement further refers to the incident dated 11.04.2010 wherein he stated that he had gone from his house at about 10.30 p.m to Ghorewala Mandir, Raghubir Nagar. At about 11 p.m, he hired a TSR for Rohini Sector 20. When TSR reached underpass, Outer Ring Road, Behra Enclave at about 11.15 p.m., one

motor cycle on which Idrish was sitting on the pillion side came from behind and Idrish threw some substance upon him as a result of which he sustained burn injuries. Some substance also fell on the TSR driver. TSR driver got down from the TSR and followed the motor cycle. He informed his wife Kiran on telephone and asked her to reach Ghorewala Mandir. He himself reached Ghorewala Mandir in another TSR. His wife took him to RML hospital from where he was taken to Safdarjung hospital. Inlaws of Idrish were residing at House No.F-733 Raghbir Nagar. He prayed for action against Idrish and his associate who was driving the motor cycle..

8. The main question for consideration, therefore, is whether the statement made by the deceased can be taken as a dying declaration and reliance can be placed upon the same.

9. In *State of Karnataka v. Shariff*, (2003) 2 SCC 473, the Supreme Court held that the statement of the injured in the event of his death may also be treated as dying declaration. The Court has to be on guard that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly it can base its conviction without any further corroboration. In *Paras Yadav and Ors v. State of Bihar*, (1999) 2 SCC 126, it was held that the statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of

injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and in a fit state of health to make the statement.

10. The matter also came up for consideration in ***Rafique @ Rauf and Ors. v. State of U.P.***, AIR 2013 SC 2272 where also the statement of injured recorded u/s 161 Cr.P.C by the Investigating Officer of the case when he was in injured condition immediately after the incident was treated as dying declaration. It will be advantageous to reproduce the observations made by Hon'ble Supreme Court in this regard which are as under:-

“16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had

been made at the earliest opportunity and was not the result of tutoring by interested parties. (Emphasis added)

18. We also wish to add that as on date, there is no statutory prescription as to in what manner or the procedure to be followed for recording a dying declaration to fall within the four corners of Section 32(1) of the Evidence Act. The presence of Magistrate; certification of the doctor as to the mental or the physical status of the person making the declaration, were all developed by judicial pronouncements. As has been repeatedly stated in various decisions, it will have to be found out whether in the facts and circumstances of any case the reliance placed upon by the prosecution on a statement alleged to have been made by the deceased prior to his death can be accepted as a dying declaration, will depend upon the facts and circumstances that existed at the time of making the statement. In that case it would mainly depend upon the date and time vis-à-vis the occurrence when the statement was alleged to have been made, the place at which it was made, the person to whom the said statement was made, the sequence of events, which led the person concerned to make the statement, the physical and mental condition of the person who made the statement, the cogency with which any such statement was made, the attending circumstances, whether throw any suspicion as to the factum of the statement said to have been made or any other factor existing in order to contradict the statement said to have been made as claimed by the prosecution, the nexus of the person who made the statement to the alleged crime and the parties involved in the crime, the circumstance which made the person to come forward with the statement and last but not the least, whether the said statement fully support the case of the prosecution.

19. In this context, we can also make a reference to a decision of this Court reported in **Cherlopalli Cheliminabi Saheb and Anr. v. State of Andhra Pradesh**, (2003) 2 SCC 571, where it was held that it was not absolutely mandatory that in every case a dying declaration should be recorded only by a Magistrate. The said position was reiterated in **Dhan Singh v. State of Haryana**, (2010) 12 SCC 277 wherein, it was held that neither Section 32 of the Evidence Act nor Section 162(2) of the Code of Criminal Procedure, mandate that the dying declaration has to be recorded by a designated or particular person and that it was only by virtue of the development of law and the guidelines settled by the judicial pronouncements that it is normally accepted that such declaration would be recorded by a Magistrate or by a doctor to eliminate the chances of any doubt or false implication by the prosecution in the course of investigation.

20. In a recent decision of this Court reported in **Sri Bhagwan v. State of U.P.**, 2012 (11) SCALE 734, to which one of us was a party, dealt with more or less an identical situation and held as under in paragraphs 21 and 22:

21. As far as the implication of 162(2) of Code of Criminal Procedure is concerned, as a proposition of law, unlike the excepted circumstances under

which 161 statement could be relied upon, as rightly contended by learned senior Counsel for the Respondent, once the said statement though recorded under Section 161 Code of Criminal Procedure assumes the character of dying declaration falling within the four corners of Section 32(1) of Evidence Act, then whatever credence that would apply to a declaration governed by Section 32(1) should automatically deemed to apply in all force to such a statement though was once recorded under Section 161 Code of Criminal Procedure. The above statement of law would result in a position that a purported recorded statement under Section 161 of a victim having regard to the subsequent event of the death of the person making the statement who was a victim would enable the prosecuting authority to rely upon the said statement having regard to the nature and content of the said statement as one of dying declaration as deeming it and falling under Section 32(1) of Evidence Act and thereby commend all the credence that would be applicable to a dying declaration recorded and claimed as such.

22. Keeping the above principle in mind, it can be stated without any scope for contradiction that when we examine the claim made on the statement recorded by PW-4 of the deceased by applying Section 162(2), we have no hesitation in holding that the said statement as relied upon by the trial Court as an acceptable dying declaration in all force was perfectly justified. We say so because no other conflicting circumstance was either pointed out or demonstrated before the trial Court or the High Court or before us in order to exclude the said document from being relied upon as a dying declaration of the deceased. We reiterate that having regard to the manner in which the said statement was recorded at the time when the crime was registered originally under Section 326 Indian Penal Code within the shortest time possible within which it could be recorded by PW-4 in order to provide proper medical treatment to the deceased by sending him to the hospital, with no other intention pointed out at the instance of the Appellant to discredit contents of the said statement, we hold that the reliance placed upon the said statement as the dying declaration of the deceased was perfectly justified. Having regard to our above conclusion, the said submission of the learned Counsel for the Appellant also stands rejected”.

11. In the case in hand, it has come on record that after obtaining permission of the Doctor to record the statement of Rakesh and when he was declared fit for statement, ASI Dilbagh Singh recorded statement of Rakesh Ex. PW2/B which bears his thumb impression at Point B. PW1 Kiran, wife of the deceased and PW3 Lakhan, son of the deceased have also deposed that statement of deceased was recorded by the police in the

hospital. PW16 Dr. Nishant Chhajer who examined the patient and prepared MLC Ex.PW16/A found him to be conscious and oriented. There was no occasion for tutoring the injured as immediately after the occurrence he informed his wife PW1 Kiran about the incident and the overt act of accused. Not only that when he was removed to hospital and examined by PW16 Dr. Nishant Chhajer, following history was given by the patient himself:

“alleged history of acid burn due to assault when two persons, one of whom was Idrish threw acid when the patient was going to Sultanpuri from his house in auto near Peeragarhi road and sustained burn injuries over face, upper chest, both upper and lower limbs”.

12. Under the circumstances, the injured was conscious and was fit to make the statement when he made the statement Ex.PW 2/B to ASI Dilbagh Singh. Since this statement relates to the cause of his death, same is admissible in evidence as his dying declaration wherein not only he gave a vivid account of the entire incident but also the overt act of the accused.

13. This statement finds substantial corroboration from the testimony of his wife PW1 Kiran who has deposed that she received a telephonic call from her husband that Idrish had thrown acid on him at Peeragarhi and she should immediately reach Ghorewala Mandir. She immediately hired an auto and reached Ghorewala Mandir where her husband met her. She took him to RML hospital in the same auto who advised her to take him to Safdarjung hospital. She informed her son PW3 Lakhan who also

reached there and then Rakesh was removed to Safdarjung hospital. The information given by the injured about the incident of throwing acid on him by the accused immediately after the incident and the narration of this incident by the wife of the injured falls in the category of *res gestae*.

14. Section 6 of the Indian Evidence Act reads as follows:

“6. Relevancy of facts forming part of same transaction.- Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

15. The essential feature is that if a fact, which is not in issue, but which is connected to the fact in issue as to form part of the same transaction, it is admissible. As per the above provision, it has been held that the statements by an injured witness to those who come immediately to the place, regarding the incident are admissible in evidence. The principle is known as *res gestae*.

16. In the decision reported in *Sukhar v. State of Uttar Pradesh*, AIR 1999 SC 3883, it was held as follows:

“Sarkar on Evidence (Fifteenth Edition) summarises the law relating to applicability of Section 6 of the Evidence Act thus:

1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover, the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of a transaction which is continuous.

2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.

3. The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and by-standers.

In conspiracy, riot & c. the declarations of all concerned in the common object are admissible.

4. Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated”.

17. In ***Gentela Vijayavardhan Rao v. State of A.P.***, AIR 1996 SC 2791, their Lordship while considering the law embodied in Section 6 of the Evidence Act held thus:

“The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" speaking, in exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*”.

18. In another judgment in ***Rattan Singh v. State of H.P.***, AIR 1997 SC 768, the Court examined the applicability of Section 6 of the Evidence Act to the statement of the deceased and held thus:

“...The aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity of time to the act of murder. Illustration 'A' to Section 6 makes it clear. It reads thus:

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

Here the act of the assailant intruding into the courtyard during death of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and place that the statement

of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act”.

19. In the decision reported in *Javed Alam v. State of Chhattisgarh*, (2009) 6 SCC 450, it was held as follows:

“Section 6 of the Evidence Act is an exception to the rule of evidence that hearsay evidence is not admissible. The test for applying the rule of res gestae is that the statement should be spontaneous and should form part of the same transaction ruling out any possibility of concoction”.

20. Substantially similar view was taken in *State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari and Ors.*, AIR 2013 SC 1441.

21. Applying the ratio of the aforesaid cases to the evidence of PW1 Kiran, there is no hesitation to arrive at the conclusion that her statement indicating that the injured told her that acid was thrown on him by Idrish is admissible u/s 6 of the Evidence Act since the statement was made by the injured to PW1 immediately after the incident. The submission made by the appellant that the testimony of PW1 Kiran is not worthy of credit as she testified that she received the phone call from her husband at 10.40 p.m but the incident according to the prosecution took place at about 11/11.30 p.m is immaterial as the time difference is a very minor difference and can at the most be termed as a minor discrepancy not touching the root of the prosecution case. Moreover, PW1 is an illiterate lady and may have not seen the exact time when she received the telephone call. Therefore, the submission is devoid of any merit.

22. The ocular testimony of PW1 Kiran and PW3 Lakhan regarding the injured sustaining injuries by acid burns on face and on both the hands and legs find corroboration from the medical evidence as narrated above from the MLC Ex.PW16/1 prepared by Dr. Nishant Chhajer. The Doctor has further deposed that on local examination, he found 70% deep acid burns with facial and respiratory burns. The nature of burn injuries was found to be grievous in nature.

23. The angle of enmity for committing the crime has also surfaced from the dying declaration of Rakesh wherein he stated that he used to earn his livelihood by pick pocketing in buses and he was involved in many criminal cases. Idrish was also indulging in pick pocketing. Earlier both of them used to do pick pocketing together and as such he knew him very well. He was also co-accused in several cases. About three years prior to the incident, the relations between the two became strained on account of division of the booty. Since then he had threatened to see him and even on 07.04.2010 when he had gone to attend a hearing at Patiala House Court, he had threatened him. PW1 Kiran has corroborated his version by deposing that accused and her husband used to work together for many years and some dispute was going on between them at the time of the incident. Prior to the incident, the accused had been threatening to kill her husband. He also threatened him about 1-1/2 months ago during a hearing in Patiala House Court. He also threatened him in her presence on the

occasion of Holi festival. The mere fact that no complaint in writing was lodged either by the deceased or his wife to the police is no ground to disbelieve their version regarding the strained relation between the deceased and the accused or the threat being administered to the deceased from time to time by the accused. True, enmity is a double edged weapon but that itself is not sufficient to discard the voluminous evidence coming on record showing the complicity of the accused in the crime.

24. The submission of learned counsel for the appellant that as per the testimony of PW4 Amit Kumar Sharma, the injured was in fact accusing him that the person who had thrown acid were his companions and, therefore, accused was not the person who threw the acid upon the victim, is not sufficient to discard the information given by the injured immediately after the incident to his wife implicating Idrish as the person who had thrown acid on him and thereafter to the Doctor who prepared his MLC Ex. PW 16/A and then to ASI Dilbagh Singh who recorded his statement Ex.PW2/B. The mere fact that the relation between Rakesh and Idrish had become strained is by itself not sufficient to raise suspicion on the consistent stand taken by the injured immediately after the incident when there was no possibility of manipulation or fabrication.

25. So far as the incident itself is concerned, the same also stands proved from the testimony of PW4 Amit Kumar Sharma who was the driver of TSR No.DL-1R-C-0641 in which Rakesh travelled from Raghbir Nagar

Chowk for going to Sultanpuri. This witness has also narrated that when TSR reached Peeragarhi, near petrol pump on Outer Ring road, suddenly two boys came from behind on a motorcycle and threw acid on the passenger. Some of the acid fell on his right hand and some acid fell on his pant. He felt burn injuries on his body. He immediately went to the PCR van parked near CNG pump and informed them about the incident. PCR van tried to trace the motorcyclist but could not do so. He went to SGM hospital in the PCR van for his medical treatment. Dressing was done on his injuries and he was discharged from the hospital. His testimony finds corroboration from PW15 Dr. Binay Kumar who examined him and prepared his MLC Ex.PW15/A. According to him, on local examination, there were superficial to deep burns over left arm, left and right scapular region, the right forearm, right hand, right side of forehead and right thigh. Under the circumstances, the incident regarding throwing of acid upon Amit Kumar Sharma as well as Rakesh stands proved from the testimony of PW4 Amit Kumar Sharma as well as dying declaration made by Rakesh, duly corroborated by the medical evidence. The involvement of the accused in the crime further stands proved from the dying declaration duly corroborated by the history given to the Doctor and the testimony of PW1 Kiran which finds substantial corroboration from the medical evidence.

26. As regards the last limb of the argument of learned counsel for the appellant that the incident took place on 11.04.2010- the injured was

discharged from the hospital on 05.06.2010 whereas he died on 08.07.2010 and as per the post mortem report Ex.PW6/A, the cause of death is septicemia consequent to infected burn injuries, therefore, death of Rakesh is not the immediate cause of injuries sustained by him, as such offence u/s 304 Part II IPC is not made out. This submission is devoid of merit as the post mortem report clearly shows that septicemia was consequent to infected burn injuries which were antemortem in nature and possible by chemical. Even otherwise the discussion whether Section 304 Part II IPC is attracted in the instant case is only academic inasmuch as it stands established that the injured sustained burn injuries by chemicals. The FIR was initially registered u/s 326 IPC. The appellant has been sentenced to undergo 7 years rigorous imprisonment for offence u/s 304 Part II IPC. The sentence u/s 326 IPC in fact extends upto imprisonment for life and or with imprisonment which may extend to 10 years and fine. That being so, whether the appellant is convicted u/s 304 Part II IPC or u/s 326 IPC, is of not much significance. That being so, no fault can be found in the findings of the learned Trial Court whereby the appellant was convicted u/s 304 Part II and Section 324 IPC. The findings are accordingly upheld. There is also no ground for interference in the quantum of sentence as the report submitted by the State regarding previous involvement of the appellant reflects that he is also involved in case FIR No.317/10, u/s 379/482/411/34

IPC P.S. Bindapur and FIR No.34/2010 u/s 356/379/411/34 IPC, P.S. Sagarpur.

27. In the result the appeal is bereft of merit and the same is accordingly dismissed.

Copy of the judgment along with Trial Court record be sent back. Appellant be also informed through Superintendent Jail.

(SUNITA GUPTA)
JUDGE

NOVEMBER 14, 2014
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