

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

RESERVED ON : 27th March, 2014

DECIDED ON : 1st April, 2014

+ CRL.A. 1357/2011

SURAJ

..... Appellant

Through : Mr.Shekh Israr Ahmad, Advocate.

Versus

NCT OF DELHI

..... Respondent

Through : Mr.Lovkesh Sawhney, APP.

CORAM:

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Suraj (the appellant) impugns a judgment dated 17.02.2011 of learned Additional Sessions Judge in case FIR No.277/09 registered at Police Station H.N.Din by which he was convicted under Section 326 IPC. By an order on sentence dated 19.02.2011, he was awarded RI for five years with fine ₹10,000/-.

2. Prosecution case, as revealed in the charge-sheet, was that on 04.07.2009 at about 06.30 p.m. in front of House No.210, Near Qureshi Masjid, Basti Hazrat Nizamuddin, the appellant-Suraj voluntarily caused dangerous injuries to Sobha Rani, Prem Wati, Ritu and Thakur Singh by throwing acid on them with an intention to commit murder. The victims were medically examined. The Investigating Officer lodged First Information Report after recording complainant-Ritu's statement (Ex.PW-1/A). Statements of witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed under Section 307 IPC against the accused; he was duly charged; and brought to trial. The prosecution examined ten witnesses to establish appellant's involvement in the crime. In 313 statement, the appellant pleaded false implication and came up with the plea that acid was thrown by him after he was inflicted injuries on head by a lathi by his sister-in-law-Sobha Rani. He did not examine any defence witness. The trial resulted in his conviction under Section 326 IPC. It is significant to note that the State did not challenge his acquittal under Section 307 IPC.

3. I have heard the learned counsel for the parties and examined the file. Appellant's counsel urged that the injuries inflicted to the victims were the result of grave provocation when Suraj was hit/inflicted injuries

by a lathi on his head. No cross-case was registered against the assailants. The victims are his close relations and intended to grab his property. They have succeeded in grabbing one jhuggi after his detention in jail. Prayer was made to modify the sentence order as the appellant was not involved in any criminal case and has suffered custody for about more than a year. He is unmarried and none else is there to look after his property/jhuggi. Learned Additional Public Prosecutor urged that the prosecution witnesses have categorically deposed that acid was thrown at them intentionally and voluntarily by the appellant without any provocation.

4. The occurrence took place at around 06.30 p.m. The victims Sobha Rani, Prem Wati, Ritu and Thakur Singh had sustained burn injuries due to throwing of acid and were medically examined vide MLC's (Ex.PW-8/A, Ex.PW-8/B, Ex.PW-8/C and Ex.PW-8/D respectively) at Safdarjung hospital. The MLCs record their arrival time at 09.30 p.m. PW-8 (Dr.Monisha) medically examined the victims and opined the nature of injuries sustained by them as 'dangerous caused by acid'. Daily Dairy (DD) No.56B about the occurrence was recorded at 06.48 p.m. The investigation was marked to ASI Narender who with HC B.D.Niwas went to the spot. Rukka (Ex.PW-10/A) was sent for

registering the FIR at 11.30 p.m. after recording statement (Ex.PW-1/A). Apparently, there was no inordinate delay in lodging the FIR. In the complaint, Ritu (PW-1) described the incident in detail and disclosed as to how and under what circumstances Suraj threw acid on her and her mother-Sobha Rani. When her aunt Prem Wati and brother Thakur intervened, Suraj also threw acid on them. While appearing as PW-1, Ritu proved the version given to the police without major variations. She deposed that on 04.07.2009 at about 06.30 p.m. when she and her mother were present in the house, the accused-Suraj came and started abusing them. When her mother objected to that, the accused threatened to deface her. Thereafter, accused-Suraj went inside his house, brought a bottle filled with acid and threw it on her mother's breast. He also threw acid on her which caused burn injuries on her right side face, both the shoulders and also the front upper portion of chest. When Prem Wati and Thakur arrived on hearing the noise, the accused threw acid on them also. They were taken to Safdarjung hospital by her father who was informed on telephone. The police arrived at the hospital and recorded her statement (Ex.PW-1/A). In the cross-examination, she admitted that Suraj was her paternal uncle (chacha) and they all lived in the houses in the same compound. She was taken to Safdarjung hospital by her cousin in his lap

as she had become unconscious. She denied the suggestion that her mother and brothers in a quarrel with the accused caused injuries to him on his head by a lathi and when the accused threatened to inform the police, someone from the family picked-up the acid bottle and threw towards him which hit on the wall and the acid splashed on the victims. PW-3 (Rohit) also implicated Suraj for throwing acid on all of them. Similar is the testimony of PW-4 (Sobha Rani) and PW-5 (Prem Wati). Injuries sustained by the victims due to acid are not under challenge. In 313 statement, the appellant admitted that acid was thrown by him due to grave provocation for causing injuries by a lathi on his head. It was imperative for the appellant to establish beyond doubt that the injuries were inflicted whilst deprived of the power of self-control by grave and sudden provocation. He, however, did not adduce any evidence to substantiate his defence. He did not implicate any specific individual who had inflicted injuries to him on his head by a lathi. No such crime weapon was recovered. The appellant did not lodge complaint with the police for causing injuries to him. MLC on record reveals that he was taken to Jai Prakash Narayan Apex Trauma Centre, AIIMS at 08.15 p.m. and was medically examined. In the alleged history mentioned therein, it is recorded that he was given beatings at around 06.00 p.m. in an assault by

people. Suraj did not give any explanation as to what had prompted any individual/victim to inflict injuries by a lathi on his head. He took conflicting and inconsistent pleas during trial. In cross-examination of PWs, he put suggestions that someone from the family had thrown acid on him, which hit the wall and its splashes caused injuries to the victims. No such suggestion was put to PW-8 (Dr.Monisha) to ascertain this possibility. The statements of victims, except PW-2 (Thakur Singh), are consistent. Despite cross-examination, no material discrepancies emerged in their statements to disbelieve them. PW-2 (Thakur Singh), however, did not support the prosecution on all material facts and stated that injuries were not caused to his mother and sister in his presence and he sustained burn injuries due to acid when his sister Ritu @ Reshma grappled with him. Exclusion of his statement would not dilute the cogent and reliable version given by the other victims. Court observations were recorded when the victim-PW-1 (Ritu), a young girl of 23 years, showed burn marks still visible on her face and right shoulder. She even attempted to show other burn marks on shoulder and upper chest. However, considering the modesty of a woman, she was not allowed to do so. PW-4 (Sobha Rani) also showed her both hands which still had a scar of burn injuries during recording of her statement in the court. The photographs

on record demonstrate the gravity of the injuries sustained by the victims particularly by Ritu and Sobha Rani. The ocular testimony is in consonance with the medical evidence. The judgment is based upon fair appraisal of the evidence and findings on conviction need no interference.

5. The appellant was awarded RI for five years with fine ₹10,000/-. Nominal roll dated 08.11.11 reveals that the appellant had suffered incarceration for one year and ten days besides remission for two months and five days. He had no history of criminal case and was the first offender. His overall jail conduct was satisfactory. The dispute had occurred suddenly among the family members. Substantive sentence was suspended vide order dated 14.11.2011 and the appellant was enlarged on bail. Nothing has come on record if he misused the liberty or indulged in any such activity after his release. The victims had sustained burn injuries to the extent Sobha Rani (15%), Ritu (10%), Thakur Singh (1%) and Prem Wati (1%). Considering all these circumstances and the fact that the appellant also sustained injuries on his body, sentence order is modified and the substantive sentence awarded by the trial court is reduced to RI for three years with fine ₹1,000/- and failing to pay the fine to further undergo SI for fifteen days under Section 326 IPC.

6. The appeal stands disposed of in the above terms. The appellant is directed to surrender before the Trial Court on 16.04.2014 to serve the remaining period of sentence. The Registry shall transmit the Trial Court records forthwith along with the copy of this judgment.

(S.P.GARG)
JUDGE

April 01, 2014
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