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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27th May, 2016

+ CRL.A. 461/2011

RAJU @ QAYOOM

..... Appellant

Through: Mr.Mukesh Kalia with
Ms.Astha, Advocates

versus

STATE

..... Respondent

Through: Mr.Akshai Malik, APP for the
State alongwith SI Om Prakash
from Police Station Amar
Colony, Delhi

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

For detailed order, see Crl.A.179/2011.

Sunita Gupta
(SUNITA GUPTA)
JUDGE

MAY 27, 2016

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Signature Not Verified
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By:AMULYA

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27th May, 2016

+ CRL.A. 179/2011

SIMRAN @ MEENA KHAN Appellant
Through: Mr.Mukesh Kalia
with Ms.Astha, Advocates

versus

STATE Respondent
Through: Mr.Akshai Malik, APP for the
State alongwith SI Om Prakash
from Police Station Amar
Colony, Delhi.

AND

+ CRL.A. 461/2011

RAJU @ QAYOOM Appellant
Through: Mr.Mukesh Kalia with
Ms.Astha, Advocates

versus

STATE Respondent
Through: Mr.Akshai Malik, APP for the
State alongwith SI Om Prakash
from Police Station Amar
Colony, Delhi.

AND

+ CRL.A. 1393/2012

ANNU MUKHERJEE Appellant

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Through: Ms.Kamlesh Jain, Advocate

versus

STATE & ORS.

..... Respondents

Through: Mr.Akshai Malik, APP for the
State alongwith SI Om Prakash
from Police Station Amar
Colony, Delhi.

Mr.Mukesh Kalia with
Ms.Astha, Advocates for R-
2&3.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

"Envy is the desire to have what someone else has. Jealousy is the fear of losing what you have. The more insecure you are about yourself or your relationship, the more jealous you are, because you are afraid to lose your significant other to someone else."

— Oliver Markus

1. Present is a glaring example of another brutal inhuman attack with acid on a young girl of hardly 25 years of age, out of jealousy giving rise to the present appeals.

2. Simran @ Meena Khan (hereinafter referred to as "A-1") and Raju @ Qayoom (hereinafter referred to as "A-2") assails the judgment dated 15.01.2011 in Session Case No. 49/10 arising out of FIR No.1036/04 PS Lajpat Nagar by which appellants were held

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guilty of the offence punishable under Sections 326/120B of Indian Penal Code (hereinafter referred to as 'IPC'). Appellants were absolved of the offence punishable under Section 307 IPC. Vide order on sentence dated 19.01.2011, they were sentenced to undergo rigorous imprisonment for 5 years and fine of Rs 1 Lac; in default of payment of fine, they were directed to undergo simple imprisonment for 6 months. Further, it was directed that 80% of total fine i.e Rs. 2,00,000/- be released to the victim as compensation for her welfare. The victim has also filed an appeal under Section 372 of Cr.P.C, praying for enhancement of the sentence under Section 326 of IPC being inadequate, grant of adequate compensation and other reliefs.

3. Since all the three appeals are arising out of a common judgment hence, all are taken up together for consideration and being disposed of by this common judgment.

4. The gravamen of the prosecution case, succinctly stated, is as follows:

4.1 Annu Mukherjee (hereinafter referred to as 'victim') a young girl aged 25 years, worked as a dancer in Rajdoot Hotel, Bhogal. A-1 also worked there as a dancer with other girls. About one month prior to the incident, a quarrel had taken place between victim and A-1 as latter was envious of the former as the former was more beautiful and was a good dancer. During that quarrel A-1 threatened her that if she quarreled with her she would get acid thrown at her and would get her killed.

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4.2 According to prosecution on 19.12.2004, as usual victim left her house and boarded her regular autorickshaw at about 7 P.M. to attend the work at Rajdoot Hotel. According to her, A-2, brother of A-1 was already standing near the TSR covering himself with the shawl. As the auto driver started the vehicle. A-2 removed his shawl and threw acid on her head and face from a glass. On falling of that liquid (now proved to be Sulphuric Acid) she received severe burn injuries on her face. When she cried out due to pain, first she was taken to Shahi Hospital then to Apollo Hospital and lastly to Safderjung Hospital.

4.3 While victim was under treatment at Apollo Hospital, on receipt of DD No.12 Ex.PW10/A from security supervisor Apollo Hospital regarding admission of Annu Mukherjee in injured condition due to acid attack, Ct. Balwant Singh (PW9) alongwith ASI Vedpal (PW15) reached Apollo Hospital and recorded the statement of injured (Ex PW1/A) which culminated in registration of First Information Report (Ex.PW13/A) against the accused persons for the offence punishable under Section 307 IPC, and investigation was taken up.

4.4 During the course of investigation, statement of TSR driver Parvez Alam was recorded. Footmat of TSR, Pant and shirt of Parvez Alam were seized. A-1 was arrested on 20.12.2004. At the instance of A-1, A-2 was arrested on 21.12.2004. Pursuant to his disclosure statement Ex.PW8/C, he got recovered one shawl, one jeans and pant from H.No.WZ-666 Padam Basti, Nangal Rai. He further got recovered a plastic bottle containing very little quantity of acid from garbage bin of gate no.2 near Esckon Temple, Garhi. On 07.01.2005,

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brother of injured produced a grey colour jersey, one chunni, pyzama and suit belonging to Annu Mukherjee. During the course of investigation, exhibits were sent to FSL. After completing investigation, chargesheet was submitted under Section 307/326/120B IPC.

5. On committal of the case, on going through the chargesheet and accompanying material, the learned Sessions Judge framed charges under Sections 307/326/120-B of the IPC against both the accused and on their denial of charges and claim for trial, they were tried in S.C.49/10.

6. In order to establish the guilt of the accused, the prosecution has relied upon evidence of 18 witnesses. All the incriminating circumstance was put to accused persons under Section 313 Cr.P.C but they pleaded innocence and alleged false implication in the case. They did not prefer to lead any defence evidence.

7. On considering and appreciating the entire evidence and after hearing arguments on both the sides, the trial Court held that though the prosecution has proved its case beyond reasonable doubt that it was the accused/appellant who threw acid on victim resulting in severe acid burn injuries on her person, the offence does not fall under Section 307 IPC, as put forth by the prosecution because the concerned doctor who prepared the MLC could not be examined due to non-availability, moreover, accused had no intention to kill her but only wanted to hurt her by doing such an act due to which she could not look better and dance better than her but one punishable under

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Section 326 IPC. Accordingly, he sentenced the appellants/accused persons, as noted above.

8. As already noted, accused Nos. 1 and 2 have challenged their conviction and sentence by filing separate appeals bearing Nos. 179/2011 and 461/2011, whereas the victim has challenged the inadequacy of the sentence and compensation for the offence punishable under Section 326 of IPC by filing Appeal No.1393/2012.

9. Taking me through the entire evidence on record and the impugned judgment, the learned Counsel for the accused vehemently contended that the impugned judgment of conviction is contrary to law and evidence on record; that the approach of the Trial Court in holding the accused guilty for the offences punishable under Sections 326 and 120B of IPC is wholly untenable and perverse resulting in grave injustice to the appellants. It is contended that the Court below has committed grave and serious error in not taking into consideration the material contradictions of various prosecution witnesses. Coming to the motive aspect, it is submitted that it is too flimsy and unbelievable, in the sense, no person would resort to such drastic act of throwing acid on victim, merely because she had a quarrel one month prior to the incident. A-1 was not even present at the time of incident. A-2 had no motive to commit crime. Owner of the hotel PW-7 does not speak about any quarrel between A-1 and complainant. PW4 and PW5 have not supported the case of prosecution. Incident took place in the evening of December at about 7.00 pm hence there was no sufficient light. It was a case of mistaken identity. Except for the observation of

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the court that complainant has lost her eyesight, there is no medical evidence to prove that she lost her eyes in this incident. Hence, it is submitted that the entire approach of the Trial Court was not only perfunctory but perverse one and as such, the impugned judgment of conviction and sentence passed are liable to be set aside and accused are entitled for acquittal on the ground of benefit of doubt.

10. On the other hand, the learned Additional Public Prosecutor appearing for the state argued in support of the prosecution case mainly relying upon the evidence of the victim PW1 and independent evidence of other injured eyewitness PW5. He also submitted that the Trial Court has considered the evidence in proper perspective to hold that it is A-1 who conspired to kill the girl and in pursuance thereof, accused/ A-2 threw acid on victim in the evening of 19/12/2004 at about 7.00 p.m. As such, appeals filed by accused, being devoid of merit, deserve dismissal.

11. At the outset, it is to be noted that there is not much dispute as to the factum of Annu Mukherjee receiving acid burn injuries at about 7:00 p.m. on 19th December 2004 near her house. The First Information Report, the evidence of all the prosecution witnesses especially the evidence of the doctors PW17, PW18, the evidence of the victim PW1, evidence of injured eyewitness PW5 and evidence of another eyewitness PW4 who came to spot immediately after the incident, beyond any doubt shows that on the date of incident victim did receive acid burns on her person and clothes. It is also not much in dispute that due to the burns, her entire face was burnt and has become

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totally scarred and both eyes were damaged. It is to be noted that it is nobody's case that the acid fell on her accidentally or she poured it on herself. As such, it is definite that somebody poured the acid on her.

12. Incidentally, the fact that A-1 and PW-1 Annu Mukherjee knew each other and worked together in Hotel Rajdoot where they used to work as dancers although is disputed by A-1 but PW1 has deposed so and there is no challenge to her testimony in this regard. Even otherwise, PW7 Kamal Sharma, Manager, Hotel Rajdoot deposed that A-1 and Annu Mukherjee were working as dancers in the Hotel. Although both of them were not regular employee but they used to perform dance in the restaurant as and when needed and they were paid for their performance for number of days. Hence, it was established that A-1 and Annu Mukherjee (PW-1) were working as dancers in Hotel Rajdoot.

13. The moot question before me is as to who caused the injuries on victim with acid and more importantly I have to see whether prosecution has succeeded in proving that it is the accused persons alone who did it.

14. The star witness of prosecution is the victim herself. In her evidence she has stated that she was working as a dancer in Rajdoot Hotel, Bhogal where accused (A-1) was also working as a dancer with other girls. Prior to this incident about one month back, a quarrel had taken place between her and A-1 as she was envious of her and was more beautiful and was a good dancer. During that quarrel, A-1 threatened her that if she quarreled with her, she would get acid

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thrown at her and would get her killed. She further stated that on 19.12.2004 in the evening she left the house and boarded her regular autorickshaw of one Parvez Alam (PW-5). A-2 was already standing near the TSR covering himself with the shawl. As the auto driver started the vehicle, A-2 after removing his shawl threw acid on her head and face from a glass. She received injury on her face and has lost her vision of both eyes and her face has been disfigured due to injuries. She identified voice of both the accused persons after having short conversation with both of them on the direction of the court.

15. At the outset, it is to be noted that this victim has withstood the exhaustive and searching cross-examination by the accused persons in spite of her present physical condition. On scrutinizing the testimony of the victim, it is clear that no material discrepancies/infirmities could be elicited in her cross-examination. Her entire statement reflects her sense of understanding and wisdom. There are no valid reasons to disbelieve the same.

16. The law is well settled that the evidence of injured witness has greater evidentiary value and unless compelling reasons exist, his/her testimony is not to be discarded lightly. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his/her presence cannot be doubted. His/her statement is generally considered to be very reliable and it is unlikely that he/she will spare the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he/she has sustained injuries at the time and place of occurrence and

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this lends support to his/her testimony that he/she was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his/her evidence on the basis of major contradictions and discrepancies therein.

17. In *Abdul Sayed v. State of Madhya Pradesh*, (2010) 10 SCC 259, Hon'ble Supreme Court laid down:

"26. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide Ramlagan Singh v. State of Bihar, 1972 SC 2593; Malkhan Singh & Anr. v. State of Uttar Pradesh, AIR 1975 SC 12; Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 957; Appabhai & Anr. v. State of Gujarat, AIR 1988 SC 696; Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra, (1995) 6 SCC 447; Bhag Singh & Ors. (supra); Mohar & Anr. v. State of Uttar Pradesh (2002) 7 SCC 606; Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Vishnu & Ors. v. State of Rajasthan (2009) 10 SCC 477; Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh, AIR 2009 SC 2261 and Balraje alias Trimbak v. State of Maharashtra (2010) 6 SCC 673.

18. While deciding this issue, a similar view was taken in, *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719, where Hon'ble Supreme Court reiterated the special evidentiary status accorded to the

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testimony of an injured witness and relying on its earlier judgments held as under:

"Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka, 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In State of U.P. v. Kishan Chand, (2004) 7 SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW4) has rightly been relied upon by the courts below.

19. The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

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20. The victim in the instant case has withstood the grueling onslaught of questions and has withstood to her story in the examination-in-chief and especially as to the act of the accused A-2 pouring/splashing acid on her. It is also to be noted that the accused has not even suggested remotely to her as to why she is implicating the accused persons falsely with such a ghastly incident. I find absolutely no material to hold that she is falsely implicating the accused and for what reason. As such, in my view, the Trial Court has rightly accepted her evidence to hold that it is the accused A-2 who in conspiracy with A-1 poured acid on her causing extensive physical damage to her.

21. The submission of learned counsel for appellant that it was evening of December and therefore became dark and it was a case of mistaken identity has no substance as A-2 is the brother of A-1 and was known to victim from before. Moreover, although initially he came covered with a shawl but after removing shawl, he took out the bottle and threw acid on the victim, as such, it was not difficult for her to identify him.

22. Though the testimony of injured witness herself is sufficient to sustain conviction and no further independent corroboration is required, however, it is to be noted that the prosecution has in addition, led evidence, ocular as well as circumstantial nature to connect the accused with crime.

23. In this regard, the first material evidence is in the form of PW 5 Parvez Alam, an auto driver in whose auto incident had taken place. He stated that on 19.12.2004 he had gone to pick up Annu Mukherjee

from her house at Garhi to Rajdoot Hotel and at about 7.00 pm when he started his TSR someone threw some substance on his TSR as a result of which Annu Mukherjee received burn injuries.

24. PW4 Shankar Lal who was present at his tea stall at Garhi, Lajpat Nagar saw some acid lying in a TSR where one girl was sitting and was crying that Raju had thrown acid on her.

25. Both these witnesses were, however, declared hostile by prosecution on the point of identity of the person who threw acid on victim.

26. The law is now well settled that merely because a witness is declared hostile, whole of his evidence is not liable to be thrown away but can be accepted by the courts after finding due corroboration and considering the same with care and caution. Here, it would be apt to refer to the following observations of the Hon'ble Supreme Court in the recent case of ***Rohtash Kumar v. State of Haryana***, 2013 (7) SCALE 472:-

"19. It is a settled legal proposition that evidence of a prosecution witness cannot be rejected in toto, merely because the prosecution chose to treat him as hostile and cross examined him. The evidence of such witnesses cannot be treated as effaced, or washed off the record altogether. The same can be accepted to the extent that their version is found to be dependable, upon a careful scrutiny thereof."

27. Similar pleas was taken in ***State of U.P. v. Ramesh Prasad Misra and Anr.*** AIR 1996 SC 2766, where Hon'ble Supreme Court held that evidence of a hostile witness should not be rejected in entirety, if the same has been given in favour of either the prosecution,

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or the accused, but is required to be subjected to careful scrutiny, and thereafter, that portion of the evidence which is consistent with either the case of the prosecution, or that of the defence, may be relied upon. It is the consistent view taken by Apex Court and this Court that the fact that the witness has been declared hostile at the instance of public prosecutor and was allowed to be cross-examined furnishes no justification for rejecting en block the evidence of the witness. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof, as held in *State of Gujarat vs. Anirudh Singh and Anr.*, (1997) 6 SCC 514; *Radha Mohan Singh @ Lal Sahib and Ors. Vs. State of U.P.*, (2006) 2 SCC 450; *Mahesh vs. State of Maharashtra*, (2008) 13 SCC 271; *Rajender and Anr. vs. State of U.P.*, (2009) 13 SCC 480; *Govindapa and Anr. vs. State of Karnataka*, (2010) 6 SCC 533; *Paramjit Singh @ Pamma vs. State of Uttarakhand*, AIR 2011 SC 200; *Rameshbhai Mohanbhai Koli and Ors. vs. State of Gujarat*, (2011) 3 SCC (Cri) 102; *Koli Lakhmanbhai Chanabhai vs. State of Gujarat*, (1999) 8 SCC 624; *Prithi vs. State of Haryana*, (2010) 8 SCC 536; *Ramesh Harijan vs. State of Uttar Pradesh*, (2012) 5 SCC 777.

28. Although PW-5 denied having seen anyone throwing acid on his TSR or A-2 being responsible for the same, however, is the cardinal principle of evaluation of evidence '*A may tell lies but circumstances do not.*' Record reveals that due to throwing of acid, he also sustained injuries on his right and left palm, left shoulder and left side of neck.

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He went to Apollo Hospital where his MLC Ex.PW6/A was prepared.
At that time following history was given:-

"28 year old Mr.Parvez Alam, autorickshaw driver was driving his vehicle with the passenger Miss Anu Mukherjee sitting on back seat (passenger's seat) when a person (known to pt.) – Mr.Raju (Brother of Anu's friend) threw acid on Anu, and over the process some splash of acid also fell on the driver's body"

29. It is significant to note that the incident took place at about 7.00 pm. He arrived at the hospital at 7.50 pm and immediately after the incident, aforesaid history was given when there was no time of deliberation or embellishment.

30. It was PW5 Parvez Alam only who removed victim to Apollo Hospital as is recorded in her MLC Ex.PW16/C. Her MLC Ex.PW16/C was prepared wherein following history was noted:

"25 years old female reported to Apollo Triage with alleged history of Acid burns on face involving both eyes and forehead. Incident happen today at about 7 pm while going to job in three wheeler (Riksha) near her home East of Kailash. Patient reported to Apollo Triage at about 8.10 pm."

Local examination revealed:

'Area affected burn over face, upper jaw, both cheeks, both eyes and forehead. Small burn over left arm.'

On the same day, she was shifted to Safdarjung Hospital with alleged history:

"sustaining acid burns while she was coming out of her house, someone (as stated by the patient 'Raju' brother of Simran/Meena Khan) threw

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acid over her. She had quarrel with Simran one month back and she (Simran) was giving warning for the same since last month."

It was observed *"loss of vision B/L eyes/pain"*. Injuries were opined to be grievous.

31. Moreover, PW-5 admits that his clothes i.e., Pant Ex.PW5/A1 and shirt Ex.PW5/AW were seized vide memo Ex.PW5/B. He also admitted that seizure memo of shawl of Annu Mukherjee Ex.PW5/A bears his signatures. That being so, it is clear that for some ulterior reasons witness did not identify the accused being assailant of the crime although in his auto rickshaw the entire incident took place and it was he who removed injured to hospital.

32. Similarly, PW4 although did not identify the accused but deposed that the girl was crying that *"Raju had thrown acid on her."*

33. Further, on receipt of DD No.12 Ex.PW10/A from Apollo Hospital regarding admission of injured with acid burns, ASI Vedpal alongwith Constable Balwant reached the hospital. Injured was declared fit for statement. Her statement Ex.PW1/A was recorded wherein she gave not only the details of entire incident but also named the assailants which resulted in registration of FIR Ex.PW13/A. It is to be kept in mind that incident took place at about 7.00 pm. Statement of victim was recorded by 10.55 pm on the same day and FIR was registered at 11.15 am. Early reporting of the incident by victim with all vivid details regarding the incident and assailants gives an assurance regarding truth of the version.

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34. In the case of *Jai Prakash Singh vs. State of Bihar*, (2012) 4 SCC 379, it was observed as under:

"The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

35. Apart from this, the evidence of the seizure witness and Investigating Officer shows that clothes of the accused used on the day of incident were seized on information of the accused himself. Clothes of victim were handed over by his brother and clothes of TSR driver and paidan of autorickshaw were also seized and same were subjected to forensic investigation. As per report of Dr.Madhulika Sharma, Assistant Director, Forensic Science Lab, sulphuric acid was found on shawl, paidan of autorickshaw, shirt, jeans and clothes of victim.

36. These are sufficient circumstantial evidence to connect the accused with the crime in question.

37. Last but not the least, A-1 has taken a false plea by denying the fact that Annu Mukherjee was working as a dancer in Rajdoot Hotel, Bhogal where she was also working as a dancer with other girls as is reflected from her answer, was pursuant to question nos. 3 and 4 of

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her statement recorded under Section 313 Cr.P.C. However, it is amply proved from the testimony of the victim duly corroborated by the record brought by PW7 Kamal Sharma, Manager of Hotel Rajdoot that this accused and the complainant were working as dancers and used to perform dances as and when required and they were paid for their performance for number of days. It has been held time and again that when an accused furnishes false answers as regards proved facts, the Court ought to draw an adverse inference against him and such an inference shall become an additional circumstance to prove the guilt of the accused. In this regard, reference can be made to *Peresadi v State of U.P.*, Manu/SC/0100/1956 (1957) Cr.L.J 328, *State of M.P. v. Rattanlal*, AIR 1994 sC 458; and *Siddarth Vashisht v. State*, AIR 2010 SC 2352.

38. The Trial Court has considered all these aspects in proper perspective and even on reappraisal of the entire evidence, there is no reason to differ with the view taken by the Trial Court that prosecution has succeeded in proving beyond any reasonable doubt that A-1 was envious of victim and one month prior to incident had threatened her of dire consequences and with that end in view, entered into a conspiracy with her brother A-2 who poured acid and caused acid burns injuries to PW-1 resulting in extensive burns especially on her face and loss of eyesight.

39. That being so, the Appeal Nos.179/2011 and 461/2011 filed by A-1 and A-2 being, bereft of merit, stand dismissed.

40. Now coming to Appeal No.1393/2012 filed by the victim she seek enhancement of sentence to the maximum prescribed for offence

under Section 326 IPC, enhancement of compensation, rehabilitation by bearing the entire treatment amount and compensate her adequately to live a human like life in the society.

41. Counsel for the complainant, challenging the leniency in sentence and meagre compensation awarded to the complainant submits that by their heinous act of acid attack, the accused persons have made the face of a poor, young and beautiful girl of hardly 26 years of age hideous and blind in both eyes. She has been reduced to mangled flesh and has become a prisoner in her own house. The court has ignored the lifelong plight of complainant causing a grave miscarriage of justice to her as well as the society. Disability certificate has been placed on record to show that there is 100% blindness of both eyes. She further submits that on seeing her pathetic condition on television, some Supreme Court Judge got her some employment but she is getting only Rs.18,000/- per month. She had to undergo several operations for which heavy expenses were incurred by borrowing money from others. As such, counsel submits that sentence awarded to accused is too inadequate. Same deserves to be enhanced and complainant is entitled to be suitably compensated. Reliance has been placed on *Parivartan Kendra vs. UOI & Ors.* 2016 (1) RCR Criminal 336.

42. Learned Additional Public Prosecutor for the State submitted that the Trial Court committed an error in acquitting the accused for the offence under Section 307 of IPC and convicting him for a lesser offence punishable under Section 326 of IPC. It is contended that as the accused had the knowledge as well as the intention to commit

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murder of victim and in this regard has used a deadly corrosive material like acid on her face, the Trial Court was in error in acquitting them for the said charge of attempt to murder. It is submitted that even if the State or for that matter, complainant has not challenged acquittal of the appellants for offence under Section 307 IPC, after issuing notice to the appellants, court can still convict them for this offence. Even as regards sentence for offence under Section 326 IPC, it is urged that sentence is highly inadequate and deserved to be enhanced. Reliance is placed on *State of Karnataka by Jalahalli Police State vs. Joseph Rodriguis* 2006 SCC Online Kar 494.

43. On the other hand, learned counsel for appellant submits that A-1 is a widow and has two children. A-2 is also having three children out of whom two are critically ill. A-1 has already undergone a period of four months in detention where A-2 initially remained in jail for 18 months and thereafter for eight months. Antecedents of A-2 are clear. A-1 was although booked for offence under Section 302 IPC but has been acquitted. As such, it is submitted that keeping in view their family responsibilities, there is no good reason to enhance their sentence. Moreover, they are not financially sound to pay compensation.

44. In *State of Karnataka* (supra) relied upon by learned APP for the State facts were substantially similar. That was also a case of acid burn injuries and while acquitting the accused for offence under Section 307 IPC, he was convicted under Section 326 IPC. State preferred an appeal challenging acquittal of accused under Section 307 IPC. While dealing with the question what is just and proper

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sentence, Hon'ble Supreme Court considered some of the observations by great jurist and Hon'ble Supreme Court itself. Relevant paras are extracted as under:

48. Lord Denning while appearing before the Royal Commission on 'Capital Punishment' expressed the following view:

"Punishment is the way in which society express its denunciation of wrongdoing and in order to maintain respect for law, it is essential that punishment inflicted for grave crimes should reflect revulsion felt by the great majority of the citizens. For them it is a mistake to consider the object of punishment as being deterrent or reformatory or preventive and nothing else. The truth is that some crimes are so outrageous that society insists on adequate punishment because the wrong doer deserves it, irrespective of whether it is deterrent or not."

49. In the case of **State of M.R v. Bala alias Balram** reported in (2005) 8 SCC 1 the Hon'ble Supreme Court observed thus:

"The rationale for advocating the award of punishment commensurate with the gravity of the offence and its impact on society, is to ensure that a civilised society does not revert to the days of "eye for an eye and tooth for tooth". Not awarding a Just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted."

42. In the case of **State of M. P. v. Munna choub and Anr.** reported in (2005) 2 SCC 710, the Hon'ble Supreme Court while consider this aspect in detail observed thus:

"The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the state. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the Courts are required to mold the sentence system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of

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society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence."

Therefore law as a cornerstone of the edifice of "order" should meet the challenges confronting the society.

Friedman in his "law in changing society" stated thus

"State of criminal law continues to be as it should be a decisive reflection of social consciousness of the society." Therefore, in operating the sentencing system the law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of crime, the manner in which it was planned and committed, the motive for commission of the crime, the nature of the weapon used and all other attending circumstances are relevant facts which would enter into the area of consideration. "

43. In **Mahesh v. State of M.P.** reported in MANU/SC/0246/1987 : (1987) 3 SCC 80, the Hon'ble Supreme Court while considering death sentence observed thus:

"It will be a mockery of Justice to permit the accused the escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justice system of this country suspect. The common man will lose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon."

Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure such serious threats. The duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. (see Sevak Perumal v. State of T.N.).

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct."

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44. In **Jashubha Bharatsinha v. state of Gujarat** MANU/SC/1561/1994 : (1994) 4 SCC 353, the Hon'ble Supreme Court observed:

"The Courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed defect of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society."

45. In the case of **Ravji v. state of Rajasthan** MANU/SC/0215/1996 : (1996) 2 SCC 175, it is held that:

"It is the nature and gravity of the crime and not the criminal, which art germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual but also against the society to which the criminal and the victim belong."

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47. It is true that reformation as a theory of punishment had become the trend but that theory is applicable to such crimes, in which the damage is repairable or even if the damage cannot be repaired, salvation by other mode is possible. That theory is inapplicable in offences where damage is immense irreparable and cannot be retractable and as such; severe punishment is the only mode.

48. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that the Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment."

46. While dealing with the gravity of the offence, it was observed:

"43. In the present case, the accused after giving threat to Haseena, has made preparation for the crime by purchasing large quantity of sulphuric acid from the shop of P.W.8 and then poured the same on

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PW7. There is nothing to show contra that either he had no knowledge or intention. The consequence of pouring large quantity of sulphuric acid on the head is likely to cause death must be known to him or has to be inferred and as such in our view, the offence clearly falls under the category of attempt to murder punishable under Section 307 of IPC and not under Section 326 of IPC.

44. Even otherwise, the Court cannot shut its eyes to obnoxious growing tendency of young persons like accused resorting to use corrosive substances like acid for throwing on girls, causing not only severe physical damage but also mental trauma to young girls. In most of the cases the victim dies because of severe burns or even septicemia or even if luckily survives, it will only be a grotesque disfigured person, depending upon the intention, knowledge, severity and the extent of damage caused to the victim.

45. If one takes a look at the photograph of Haseena before the incident and afterwards which we reproduce here, one would shudder to look at the damaged face. It cannot be denied that by this rash act of throwing acid on the face of a person like Haseena not only the accused causes severe physical injury especially if thrown on face but also shatters the mental equilibrium if thrown on face by trauma of the unfortunate victim. Apart from the physical and mental damage caused to the victim, we have to consider its effect on the parents of Haseena and in turn on the society also.

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54. In the present case the accused/appellant for the reasons best known to him alone, has taken a drastic step of securing a deadly corrosive substance-sulphuric acid in large quantity and poured of the same on Haseena. As can be seen from the photographs of the unfortunate victim (which we are reproducing here as a part of the judgment), she was a young girl of hardly 20 years of age with pretty face and by one stroke the accused/appellant has made her face hideous and also blind in both eyes. By mere look at the faces (before and after the incident) it needs no great imagination to feel, not only her physical but also mental trauma. She cannot come out of the house and walk in the streets with blind eyes, nose, lips, forehead reduced to mangled flesh and thus has become a prisoner in her own house for a lifetime. One has to consider the plight of the poor parents who named their beautiful daughter Haseena (which literally means beautiful) and now everyday

they have to look at the mangled face and cry in silence. We can imagine what they may be feeling and wishing that their daughter be rather dead than live with such a ghostly face.

55. The Learned Counsel for the appellant/accused and the accused pleaded before us that leniency may be shown on the ground of the accused being a young person and after coming out of jail, may try to settle in life. But we asked them, what about the victim? A young beautiful girl who has now to carry all along her entire life, the hideous face, who has lost hopes forever of leading normal life including loss of a chance of marriage, the revered dream of every girl viz., motherhood, for no fault of her and this is only because of the act of the accused.

56. We asked ourselves what punishment would be sufficient/reasonable for such a criminal. If the plight of the victim is considered, in our view, only the ancient though, termed barbaric principle viz "eye for eye" would really meet the ends of justice. However, that punishment is not permissible now. Now we are in a more civilised society governed by law. The Court has to balance the gravity of the crime with the appropriate punishment. By his ghastly act, the accused has turned a beautiful girl into a human being of ghostly in appearance. The injuries caused are very painful and will haunt the victim throughout her life. The accused has made her to suffer a life worse than death. Therefore, the minimum punishment that can be awarded in such a case is the maximum punishment provided for the offence punishable under Section 307 IPC. After deep thought and consideration including the plea of the accused, we sentence the offender to imprisonment for life for the offence punishable under Section 307 of the IPC. We also award a compensation of Rs.2,00,000/- to be paid by the accused in default to undergo imprisonment for 3 years in addition to the fine already awarded by the Trial Court. As the compensation awarded by the Trial Court has been deposited the same shall be disbursed to the parents of Haseena under the arrangements suggested by the trial Court. If the additional compensation now awarded is realised, the same also shall be paid to the victim-P.W.7 or her parents."

45. Keeping in view the rise in such ghastly crimes, in **Laxmi vs. UOI, W.P.(CrI.)No.129/2006** decided on 18.07.2013 Hon'ble Supreme Court passed the following order:-

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"6. The Centre and States/Union Territories shall work towards making the offences under the Poison Act, 1919 cognizable and non-bailable.

7. In the States/Union Territories, where rules to regulate sale of acid and other corrosive substances are not operational, until such rules are framed and made operational, the Chief Secretaries of the concerned States/Administrators of the Union Territories shall ensure the compliance of the following directions with immediate effect:

(i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.

(ii) All sellers shall sell acid only after the buyer has shown:

a) a photo ID issued by the Government which also has the address of the person.

b) specifies the reason/purpose for procuring acid.

(iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.

(iv) No acid shall be sold to any person who is below 18 years of age.

(v) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to Rs. 50,000/-

(vi) The concerned SDM may impose fine up to Rs. 50,000/- on any person who commits breach of any of the above directions.

8. The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:

(i) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.

(ii) A person shall be made accountable for possession and safe keeping of acid in their premises.

(iii) The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.

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9. The concerned SDM shall be vested with the responsibility of taking appropriate action for the breach/default/violation of the above directions.

10. Section 357A came to inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31.12.2009. Inter alia, this Section provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

11. We are informed that pursuant to this provision, 17 States and 7 Union Territories have prepared 'Victim Compensation Scheme' (for short "Scheme"). As regards the victims of acid attacks the compensation mentioned in the Scheme framed by these States and Union Territories is un-uniform. While the State of Bihar has provided for compensation of Rs. 25,000/- in such scheme, the State of Rajasthan has provided for Rs. 2 lakhs of compensation. In our view, the compensation provided in the Scheme by most of the States/Union Territories is inadequate. It cannot be overlooked that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments. Having regard to this problem, learned Solicitor General suggested to us that the compensation by the States/Union Territories for acid attack victims must be enhanced to at least Rs. 3 lakhs as the after care and rehabilitation cost. The suggestion of learned Solicitor General is very fair.

12. We, accordingly, direct that the acid attack victims shall be paid compensation of at least 3 lakhs by the concerned State Government/Union Territory as the after care and rehabilitation cost. of this amount, a sum of Rs. 1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs. 2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the above direction.

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11. While disposing of the writ petition of **Laxmi v. Union of India**, Apex Court inter alia held, thus:

10. We have gone through the chart annexed along with the affidavit filed by the Ministry of Home Affairs and we find that despite the directions given by this Court in **Laxmi v. Union of India** (2014) 4 SCC 427], the minimum compensation of Rs. 3,00,000/- (Rupees three lakhs only) per acid attack victim has not been fixed in some of the States/Union Territories. In our opinion, it will be appropriate if the Member Secretary of the State Legal Services Authority takes up the issue with the State Government so that the orders passed by this Court are complied with and a minimum of Rs. 3,00,000/- (Rupees three lakhs only) is made available to each victim of acid attack.

11. From the figures given above, we find that the amount will not be burdensome so far as the State Governments/Union Territories are concerned and, therefore, we do not see any reason why the directions given by this Court should not be accepted by the State Governments/Union Territories since they do not involve any serious financial implication.

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13. Insofar as the proper treatment, aftercare and rehabilitation of the victims of acid attack is concerned, the meeting convened on 14.03.2015 notes unanimously that full medical assistance should be provided to the victims of acid attack and that private hospitals should also provide free medical treatment to such victims. It is noted that there may perhaps be some reluctance on the part of some private hospitals to provide free medical treatment and, therefore, the concerned officers in the State Governments should take up the matter with the private hospitals so that they are also required to provide free medical treatment to the victims of acid attack.

14. The decisions taken in the meeting read as follows:

- The private hospitals will also be brought on board for compliance and the States/UTs will use necessary means in this regard.
- No hospital/clinic should refuse treatment citing lack of specialized facilities.
- First-aid must be administered to the victim and after stabilization, the victim/patient could be shifted to a specialized facility for further treatment, wherever required.

- Action may be taken against hospital/clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357C of the Code of Criminal Procedure, 1973.

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17. We, therefore, issue a direction that the State Governments/Union Territories should seriously discuss and take up the matter with all the private hospitals in their respective State/Union Territory to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries.

18. We also issue a direction that the hospital, where the victim of an acid attack is first treated, should give a certificate that the individual is a victim of an acid attack. This certificate may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.

19. In the event of any specific complaint against any private hospital or government hospital, the acid attack victim will, of course, be at liberty to take further action.

20. With regard to the banning of sale of acid across the counter, we direct the Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health and Family Welfare to take up the matter with the State Governments/Union Territories to ensure that an appropriate notification to this effect is issued within a period of three months from today. It appears that some States/Union Territories have already issued such a notification, but, in our opinion, all States and Union Territories must issue such a notification at the earliest.

21. The final issue is with regard to the setting up of a Criminal Injuries Compensation Board. In the meeting held on 14.03.2015, the unanimous view was that since the District Legal Services Authority is already constituted in every district and is involved in providing appropriate assistance relating to acid attack victims, perhaps it may not be necessary to set up a separate Criminal Injuries Compensation Board. In other words, a multiplicity of authorities need not be created.

22. In our opinion, this view is quite reasonable. Therefore, in case of any compensation claim made by any acid attack victim, the matter will

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be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes."

46. Moreover, in the year 2013, Justice Verma Committee was constituted in response to the countrywide peaceful public outcry of civil society against the failure of government to provide a safe and dignified environment for the women in India, who are constantly exposed to sexual violence. The immediate cause was the brutal gang rape of a young woman known as "Nirbhaya's case" Committee dealt with various issues including "acid-attack" and opined:

"Acid Attacks

4. *We understand that a most heinous form of attack on women, which is commonplace in several Asian and African countries, is the throwing of acid on women for a multitude of reasons, including alleged adultery, turning down advances from men, and also as a form of domestic violence. Acids and other corrosive substances are thrown on women or administered to them, thereby causing death or physical and psychological damage with unfathomable consequences. The 226th Report of the Law Commission of India, which dealt particularly with this offence stated:*

"Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him".

5. *In a certain sense, the aggressor is conscious that self-worth and self-esteem of a woman often lies in her face, which is a part of her personality. The dismemberment of the face or the body is not merely an offence against the human body but will cause permanent psychological*

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damage to the victim. What happens when there is permanent physical and psychological damage to a victim, is a critical question and law makers have to be aware that offences are not simply based on the principle of what might be called offence against the body, i.e., damage of the body, but they must take into account the consequences on the right to live with dignity which survives the crime. This is an important consideration both in the fields of criminology and also in the field of sociology.

6. The Law Commission studied instances of acid attacks and also laws to deal with the offence in various countries including Australia, Bangladesh, Cambodia, China, El Salvador, Ethiopia, Italy, Laos, Malaysia, Nepal, Pakistan, Thailand, Sri Lanka, Uganda, UK, USA and Vietnam. However, the incidence in Bangladesh, India, Pakistan, Cambodia and Uganda are much higher and are on the rise. The Bangladesh Government therefore enacted a law called the Acid Offences Prevention Act, 2002. The Law Commission after examining the law in various jurisdictions, came to the conclusion that a separate Act should be proposed for dealing with compensation to victims of acid attacks, rape, sexual assault, kidnapping.

7. Traditionally, the offence is dealt with under Section 326 of the IPC which deals with 'Voluntarily causing grievous hurt by dangerous weapons or means.' This provision also deals with causing grievous hurt using 'corrosive substances' which include acids.

8. In fact in *Sachin Jana Vs. State of West Bengal*, a case involving acid attack which had caused disfigurement of the victim, the Supreme Court applied Section 307 IPC (Attempt to murder) read with Section 34 on the basis that to justify a conviction under Section 307 it was not essential that 'bodily injury capable of causing death was inflicted'. The Section made a distinction between the act of the accused and its result. Therefore it was not necessary that the injury actually caused to the victim should be sufficient under ordinary circumstances to result in death. The court is only required to see whether the act, irrespective of its result, was done with the intention or knowledge mentioned in Section 307. It was sufficient if there was intent coupled with an overt act in execution thereof. The Supreme Court in this case, also relied upon the decision in *State of Maharashtra Vs. Balram*.

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9. *The gender specificity and discriminatory nature of this offence does not allow us to ignore this offence as yet another crime against women. We recommend that acid attacks be specifically defined as an offence in the IPC, and that the victim be compensated by the accused. However in relation to crimes against women, the Central and State governments must contribute substantial corpus to frame a compensation fund. We note that the existing Criminal Law (Amendment) Bill, 2012, does include a definition of acid attack."*

47. Thereafter by virtue of criminal law (Amendment Act), 2013, Section 326A and 326B were inserted in Indian Penal Code which reads as follows:

"326A. Voluntarily causing grievous hurt by use of acid, etc.- Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]

326B: Voluntarily throwing or attempting to throw acid. - Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years, but which may extend to seven years, and also be liable to fine.

Explanation 1.- For the purposes of Section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2.- For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.]”

48. True, Sections are not retrospective in nature but incorporation of these sections reflects the gravity and seriousness of the offence.

49. In the present case, the appellants for the reasons best known to them alone, has taken a drastic step of securing a deadly corrosive substance -- acid in large quantity and poured the same on victim. Victim was a young girl of 25 years of age with pretty face and by one stroke the appellants have made her face hideous and also blind in both eyes. By mere look at the faces (before and after the incident), it needs no great imagination to feel, not only her physical but also mental trauma. She cannot come out of the house and walk in the streets with blind eyes, nose, lips, forehead reduced to mangled flesh and thus, has become a prisoner in her own house, for a lifetime. A young beautiful girl who has now to carry all along her entire life the hideous face, who has lost hopes forever of leading normal life including loss of a chance of marriage, the revered dream of every girl viz. motherhood, for no fault of her and this is only because of the accused. The very sight of the victim (who was present in the Court at the time of hearing) is traumatizing. If the Court could be traumatized by the mere sight of injuries caused to the victim by the inhuman attack on her, what would be the situation of the victim, perhaps, cannot be judged. Nonetheless, Court cannot be oblivious of the fact of her trauma.

50. Apart from the mental and physical damage caused to the victim, its effect on her family were grave. It is her case that she lost her parents in an unfortunate car accident when she was barely 12 yrs of age. The only person left behind in the house was her infant brother of 1½ years of age. Due to poor financial condition she was forced to work as a dancer in Rajdoot Hotel. She was beautiful and talented. She remained a top dancer in the hotel for four years. Her success in dancing brought in jealousy amongst her co-dancers and she was threatened to either quit the profession or face dire consequences by A-1. With that end in view A-1 entered into conspiracy with A-2 and on the fateful day, A-2 committed the gruesome crime.

51. Neither State nor complainant challenged acquittal of appellant under Section 307 IPC. Although after giving notice to accused, court can consider the aspect of convicting the accused for this offence but Section 326 itself prescribes severe punishment by providing that it can go upto Life Imprisonment or 10 years. Keeping in totality of facts and circumstances, the sentence of 5 years awarded to the appellants, in my view, is on a very lower side hence the same is enhanced to 10 years.

52. Coming to quantum of compensation, the long line of judicial pronouncements of Hon'ble Supreme Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. As observed by Supreme Court in *Dayal Singh v. State of Uttaranchal* (2012) 8 SCC 263, the criminal trial is

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meant for doing justice to all – the accused, the society and the victim. Then alone can law and order can be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that the guilty man does not escape.

53. The Code of Criminal Procedure of 1898 contained a provision for restitution in the form of Section 545, which stated in Sub-clause 1(b) that the Court may direct “payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court”.

54. The Law Commission of India in its 41st Report submitted in 1969 discussed Section 545 of the Code of Criminal Procedure of 1898 extensively and stated as follows:

“46.12. Under Clause (b) of Sub-section (1) of Section 545, the Court may direct “payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.” The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The word “substantial” appears to have been used to exclude cases where only nominal damages would be recoverable. We think it is hardly necessary to emphasise this aspect, since in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice, they are not particularly liberal in utilizing this provision. We propose to omit the word “substantial” from the clause.

55. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Code of Criminal Procedure Bill, 1970, which aimed at revising Section 545 and introducing it in the form of Section 357 as it reads

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today. The Statement of Objects and Reasons underlying the Bill was as follows:

"Clause 365 [now Section 357] which corresponds to Section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the Court imposes a fine the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the Court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors."

56. The code of Criminal Procedure of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Objects and Reasons that Section 357 was "intended to provide relief to the proper sections of the community" and that the amended Code of Criminal Procedure empowered the Court to order payment of compensation by the accused to the victims of crimes "to a larger extent" than was previously permissible under the Code. The changes brought about by the introduction of Section 357 were as follows:

"(i) The word "substantial" was excluded.

(ii) A new sub-Section (3) was added which provides for payment of compensation even in cases where the fine does not form part of the sentence imposed.

(iii) Sub-section (4) was introduced which states that an order awarding compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision."

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57. The amendments to the Code of Criminal Procedure brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences.

58. The object of introducing the section was intended to reassure the victim that he or she is not forgotten in the criminal justice system. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where “the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated.” Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.

59. Despite the fact that the power vested in Courts under Section 357 and 357A of the Code, the provision have by and large been mostly neglected/ignored.

60. In *Hari Singh v. Sukhbir Singh and Ors.*, (1988) 4 SCC 551, Hon’ble Supreme Court lamented the failure of the Courts in awarding compensation to the victims in terms of Section 357(1) of the Code of Criminal Procedure. The Court recommended to all Courts to exercise the power available under Section 357 of the Code of Criminal Procedure liberally so as to meet the ends of justice. The Court said:

“.....Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.”

61. This view was reiterated in *K.A.Abbas H.S.A vs. Sabu Joseph* (2010) 6 SCC 230, *Ankush Shivani Gaikwad vs. State of Maharashtra* (2013) 6 SCC 770, *Mohd. Haroon vs. Union of India* (2014) 5 SCC 252, *Abdul Rashid vs. State of Odisha & Ors.* (2014) 1 ILR Cr.L.J. 202.

62. In exercise of the powers conferred by Section 357A of the Code of Criminal Procedure, 1973 Delhi Victims Compensation Scheme, 2015 was approved by the Lt. Governor of National Capital Territory of Delhi for providing funds for the purpose of compensation to the victims or their dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. The relevant portion of the scheme is reproduced hereinbelow:

“13. INTERIM RELIEF TO THE VICTIM-

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- *Provided further that in cases of acid attack a sum of Rs.One lakh shall be paid to the victim within 15 days of the matter being brought to the notice of DSLSA/DLSA. The order granting interim compensation shall be passed by the DSLSA/DLSA within 7 days of the matter being brought its notice and the DSLSA shall pay the compensation within 8 days of passing of order. Thereafter an additional sum of Rs.2 lakhs shall be awarded and paid to the victim as expeditiously as possible and positively within two months.*

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Victims of Acid Attack-

S.No.	Particulars of loss or injury	Minimum Limit of compensation	Upper Limit of compensation
13.			Victims of Acid Attack
a.	In case of disfigurement of face.	Rs. 3 Lakhs	Rs.7 Lakhs
b.	In case of injury more than 50%	Rs. 5 Lakhs	Rs.7 Lakhs
c.	In case of injury less than 50%	Rs. 3 Lakhs	Rs.5 Lakhs

63. After the insertion of Section 326A and 326B in Indian Penal Code by Criminal Law (Amendment) Act 2013, Section 357B and 357C were inserted in Criminal Procedure Code by Act 13 of 2013 providing for compensation in addition to fine under Section 326A and treatment to victims. The same reads as under:

"357B. Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.- The compensation payable by the

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State Government under Section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.

357C. Treatment of victims.- All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident."

64. In the instant case, the victim has not placed anything on record as to how much expenses were incurred by her in her treatment unlike *Parivartan Kendra* (supra) however, one cannot lose sight of the fact that such restorative surgeries, cost a fortune. Moreover, the compensation is not to be awarded only in terms of the physical injury, the Court has also to take note of victim's inability to lead a full life and to enjoy those amenities which is being robbed of her as a result of the acid attack, therefore, this Court deems it appropriate to recommend the case to Delhi State Legal Services Authority to award compensation to the victim as per the provisions incorporated in 'Delhi Victims Compensation Scheme, 2015'. It is impressed upon the Member Secretary, DLSA to decide the quantum of compensation and its disbursement to the complainant within sixty days of the receipt of the judgment.

65. Copy of the judgment be sent to Member, Secretary, DLSA and learned Additional Public Prosecutor is directed to communicate the aforesaid observations to the concerned and State Govt. is directed to

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ensure that victim be provided with such help and rehabilitation as per the guidelines provided in Laxmi's case.

66. In result, for the reason stated above, Crl.A.No.179/2011 and 461/2011 filed by the accused are dismissed whereas Appeal No.1393/2012 filed by the complainant/victim stands allowed.

67. As per record, the sentence of A-1 and A-2 was suspended vide order dated 04.08.2011 and 23.09.2011 respectively and they were released on bail. The appellants are directed to surrender before the Trial Court on or before 04.06.2016 failing which, learned Trial Court would take steps for getting the appellants arrested for serving the remaining period of their sentence.

Copy of the judgment alongwith trial court record be sent back immediately.

(SUNITA GUPTA)
JUDGE

MAY 27, 2016
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