

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

Delivered on: 07th December, 2015

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CRL.A. 714/2014

RAVI @ GOLU

.... Appellant

Represented by: Ms. Arundhati Katju and
Mr. Himanshu Suman,
Advocates.

Versus

STATE(NCT of Delhi)

..... Respondent

Represented by: Mr. Kamal Kr. Ghei, Addl.
Public Prosecutor for the State
with SI Uma Datt, P.S.
Mangolpuri.

CORAM:

**HON'BLE MR. JUSTICE SURESH KAIT
SURESH KAIT, J.**

1. By way of the present appeal filed under Section 374(2) Cr.P.C. appellant seeks setting aside of order of conviction dated 27.11.2013, whereby he was held guilty for the offences punishable under Sections 307/309 IPC.
2. Further seeks directions thereby setting aside the order on sentence dated 29.11.2013, whereby he was sentenced to undergo SI for 5 years with fine of Rs.5,000/- under Section 307 IPC. In default of payment of fine, he was further directed to undergo SI for 1 year and three months. For the offence punishable under Section 309 IPC, he was sentenced to undergo SI for one year with fine of Rs.5,000/- and in default of payment of fine, he was further sentenced to undergo SI for three months.
3. Vide DD No. 20A, information was received at PS-Mangol Puri

that a man had burnt a lady just ahead of Deepali Chowk, near Pitam Pura, Delhi. The statement of injured was recorded and registered above noted case against the appellant.

4. On completion of investigation, charge-sheet under Section 307/309 IPC was filed against the appellant on 23.11.2011 and on 30.04.2012 charge under Section 307 IPC was framed against him, to which he pleaded not guilty and claimed trial. Separate charge under Section 309 IPC was also framed against the appellant, to which also he pleaded not guilty and claimed trial.

5. Ld. Counsel appearing on behalf of the appellant submitted that the prosecution failed to prove the guilt of the appellant beyond reasonable doubt. It is a settled law that benefit of doubt has to be given to the accused and not the prosecution. Suspicion, however strong it may be, cannot be made the basis to convict a person. The Trial Court has failed to appreciate that statement of all prosecution witnesses were contradictory and confronting with each other. The testimony of prime witness, PW6 shows that on the date of incident, she was returning to her house, when the appellant stopped her and poured petrol upon her and thereafter upon himself and set himself on fire and then caught hold of her in the burning condition. During her cross-examination, she deposed that she was doing the work of maid servant and used to work in morning only. In the noon time, she used to go to learn the art of mehndi. Thus, if she used to learn mehndi in every noon, then how she was returning her house other than going to learn mehndi.

6. Ld. Trial Court has further failed to appreciate that the appellant had not put any fire on PW6, but he set himself on fire and then caught hold of her as per her testimony. But fact remains that during the noon time, place of occurrence remained congested and public persons were there. Thus, it is unbelievable that nobody from the public came to their rescue or prevented the appellant from doing so.

7. It is further submitted that the appellant is a married person having children. However, as per the testimony of PW6, a complaint was lodged against the appellant in the year 2005 and after that no complaint had been lodged against him. There was a gap of almost 6 years, but nothing had happened between this span of time. Thus, it is not believable that on the day of incident, the victim was returning to her house; the appellant suddenly came over there; stopped her and pour petrol on her; firstly set himself on fire and then caught hold of the victim.

8. Ld. Counsel further submitted that the Ld. Trial Court failed to appreciate that even if there was any complaint, however, there was no record to show the criminal intention or any evidence to corroborate the consequences or show any chain of events against the appellant. As per the testimony of PW6, she knew the appellant as he resides in her neighbourhood.

9. Ld. Trial Court has not appreciated the fact that no statement of any member of Kothi No. 117, Pushpanjali Enclave was recorded where PW6 was working to corroborate her statement. At the time of the incident, some public persons were gathered and one Lalit Prasad

@ Pintu, who is a cousin, i.e., son of Tau (paternal uncle) of the appellant came over there with a TSR and took the appellant and PW6 to the hospital. However, no statement of the said Lalit Prasad@Pintu was recorded by the police. Even the prosecution witnesses had no knowledge as to who had brought both the injured to the hospital.

10. Ld. Counsel for the appellant further submitted that as per the testimony of PW7 no residue of petrol, kerosene or diesel was detected by the FSL in Ex.P1 (Green Colour Bottle), Ex.P2 and Ex.P6. PW4, Constable Ashok Kumar in his testimony deposed that Investigating Officer had not recorded the statement of PW6 in his presence. As per the testimony of PW9, the age of the victim, PW6 was about 16 years at the time incident and if that is so, how the marriage of PW6 could be fixed and she was going to be married in a minor age. Thus, it is clear that PW6 was influenced by her family members and that is why, she gave the statement only under their influence.

11. Ld. Trial Court further failed to appreciate that nothing adverse was found from the family members of PW6 against the appellant. As per the testimony of PW10, during his cross-examination, it is specifically deposed that “if someone pour some inflammable material on himself / herself to burn, then the same shall involve the main trunk of the body, but in this case, it was not involved”.

12. Ld. Counsel submitted that the appellant and DW1 Arjun were playing cricket in their Jhuggi Camp near main Ring Road and on seeing someone burning, appellant reached over there and tried to save PW6. As a result of which the appellant also received 50% injuries,

which is not a disputed fact.

13. Ld. Counsel further submitted that the present case is registered under Section 307 IPC. There are 30 to 60% injuries on the person of PW6. Thus, maximum the case could be registered under Section 326 IPC. To strengthen her arguments, Id. Counsel has relied upon a case of **Dr. A. G. Bhagwat v. U.T. Chandigarh, 1989CriLJ214**, wherein the Hon'ble Supreme Court held as under:

“22. This brings us to the real controversy as to what offence the appellant has committed. As has been indicated right in the opening part of the judgment, he has been convicted under Section 307, I.P.C. In order to attract the applicability of this section to the facts of this case, it is necessary to find out that if the victim had met with death could the offence be one under & 302, I.P.C. It is well settled that for conviction under Section 307, I.P.C., if the intention or necessary knowledge to cause death as envisaged by Section 300, I.P.C., which defines murder is there, then it is immaterial whether or not any hurt was caused to the victim by the accused.

23. In other words, an act though sufficient in the ordinary course of nature to cause death would not constitute an offence under this section if the necessary intention or knowledge on the part of the accused is lacking. Thus for the purposes of this offence what is material is the intention or knowledge and not the consequence of the actual act done for the purpose of carrying out that intention. Intent essentially implies purpose and attempt is an actual effort made in execution of the purpose. Therefore, an attempt for purposes of Section 307, I.P.C., should stem from a specific intention to commit murder. Intention and knowledge being a man's state of mind cannot be proved by direct evidence thereof except through his own confession. In the absence of such a

confession they can be proved only by circumstantial evidence. In other words, these are matters of inference from all the circumstances available in a case. Such circumstances may well be motive, the preparation made, the declaration, if any, made by the offender at the time of commission of the offence, the weapon used the nature of the injuries actually inflicted Having given our thoughtful consideration to the entire matter in the light of the evidence on record we are of the opinion that both these ingredients of Section 300, I.P.C. are lacking in this case. We do not find any intention on the part of the appellant to kill the victim, i.e., PW. 18. There was no such strong motive on his part that he would like to eliminate her; rather, as has been deposed to by her, the appellant was only having lustful or amorous designs towards her. As has been disclosed by her, the appellant had made his intentions clear to her more than once that a woman like her should have been married to him or he wanted her friendship at any cost. Though the witness succeeded in frustrating these intentions of his yet we are of the opinion that that by itself could not provide the appellant with such a strong motive so as to kill her. It looks probable that on the day of occurrence, i.e., 27th April, 1985, he made the last effort to win her over or persuade her to succumb to his designs but having failed in that, thought of causing her harm or disfigure the very object of his attraction, i.e., her beauty, by sprinkling acid on her. It appears that having failed to achieve his object, he wanted her to be no more attractive to him or even to anybody else than to kill her. Further, the choice of time, place and weapon on the part of the appellant militates against any such intention. He can safely be attributed the knowledge that in case of any injury to her at that time, the best possible medical help would be available to her. Had he to see the end of her life, he could have chosen any other time and place and would have armed himself with a weapon which could be more effective. It is the case of PW. 18 herself that the appellant had almost acquired a habit of visiting her house when she was alone there. Besides this, we are not even sure as to the quantity of

sulphuric acid the appellant was carrying at the time of the commission of the crime. No doubt it is true that the prosecution has led evidence in the form of the statement of Mr. P. J. Abraham, Junior Medical Laboratory Technician, PW. 3, to suggest that in the first week of April, 1985 the witness supplied to the appellant "200 Mls of sulphuric acid in a phial" (as per the stand of the appellant he needed this corrosive material to clean the bath rooms and other sanitary fittings, etc. at his residence) yet it is not clear that the appellant was carrying the same quantity of acid even after 20 days, i. e. at the time of the commission of the crime. Further it is available from the evidence of PW18 herself that after sprinkling acid on her person and throwing the bottle which broke into pieces, the appellant tried to "throw her on the broken pieces of glass with her face downwards." This clearly indicates that the primary effort on the part of the appellant was to disfigure her or to spoil her face and looks.

24. *Similarly, we are of the opinion that the appellant did not want to give her injuries which can be said to be likely to cause her death. While analysing the requirements of Section 300, I.P.C. before somebody can be held guilty of murder, a Constitution Bench of the Supreme Court in Willie (William) Slaney v. State of Madhya Pradesh: 1956CriLJ291, observed:*

If there was no intention to kill, then it can be murder only if

- (1) the accused knew that the injury inflicted would be likely to cause death, or*
- (2) that it would be sufficient in the 'ordinary course of nature' to cause death, or*
- (3) that the accused 'knew' that the act 'must' in all probability cause death.*

If the case cannot be placed as high as that and the act is only 'likely' to cause death and there is no special knowledge, the offence comes under Section 304, Part II, Penal Code.

25. *It is thus patent that before an intended injury can be said to be 'likely' to cause death, it must be an injury which is*

sufficient in the ordinary course of nature to cause death. An injury "sufficient in the ordinary course of nature to cause death" essentially means that the death will be the most probable result of the injury having regard to the ordinary course of nature. The word 'likely' means 'probably', and can easily be distinguished from 'possibly': When the chances of a thing happening are very high, we say that it will most probably happen. In the case in hand, we have the opinion of Dr. Pradeep Rebela, PW. 16, who examined the injured immediately after the occurrence. He stated that "the burns on the body of Neelam Marwaha were deep. The nature of the injury was declared by him as grievous". When the police vide its application dated 27th April, 1985(Ex.PT) required him to express his opinion "as to whether the injuries mentioned in MLR is (are) sufficient to cause death in the ordinary course of nature", all that this witness had to say vide his endorsement Exhibit PT/1 was that the injuries mentioned in the MLR may cause death in the ordinary course of nature. (Emphasis supplied). It is thus patent that the doctor could not put the injuries suffered by Dr. Mrs. Marwaha at the level that these were likely to cause death in the ordinary course of nature. He, as a matter of fact, accepted in cross-examination that "in the ML report, I have not mentioned the degree of burns, I have given the degree today for the first time on the asking of the Public Prosecutor. I have not given the dimensions of the burns in the M. L. report I have only mentioned the word 'deep' with reference to the burns. I have not specified in the M. L. report the data on the basis of which I described the burns as deep....Since the burns were on the face and neck and the same disfigured the patient, I declared them as grievous". This evidence is thus far short of the stage that the victim was close to death. The use of the word 'may' by him in his opinion does not express anything more than a possibility or perhaps. He never found that these injuries were likely to cause death. Even Dr. Sawhney, PW. 17, conceded that "it is incorrect to suggest that 33% burns are usually fatal; rather it depends upon the depth of the burns whether they could

prove fatal or not." We are thus of the firm opinion that had the victim been unfortunate to meet her death, the appellant would not have been guilty of murder. Therefore, in the given facts and circumstances of this case, he cannot be held guilty of an attempt to murder, i. e., the offence prescribed in Section 307, I.P.C. To this extent, the trial Court appears to have gone wrong. At the same time we are satisfied that the evidence on record clearly discloses an offence punishable under Section 326, I.P.C. against the appellant. The injuries caused by him to Dr. Mrs. Marwaha are covered by clause Sixthly if not under clause Eighthly of Section 320, I.P.C. also as is suggested by the learned Counsel for the prosecution. Though during the course of hearing, Mr. Masodkar, the learned defence counsel raised a great deal of controversy in the light of the evidence of DW. 2, Dr. Mrudula Bhaskar Kirloskar about the depth and extent of the injuries suffered by PW. 18, yet we hardly find any necessity to delve into that in view of the above noted conclusion of ours that the act of the appellant is covered by clause Sixthly of Section 320, I.P.C. Further, we find no reasons to give weightage to the evidence of this witness over that of PWs. 16 and 17. It deserves to be pointed out here that an application was moved in the trial Court by the appellant that with a view to find out the dimensions of the injuries on the person of the injured, she be got medically examined by a Board of senior doctors not belonging to the P.G.I. where she was working. After hearing the two sides in the light of the material before it, the Court passed an agreed order on June 28, 1985 that the injured be got examined from Dr. C. P. Sawhney, Prof. and Head of the Department of Plastic Surgery, P.G.I., who was not only an eminent surgeon but was also at that time President of the Association of Plastic Surgeons of India. It was in pursuance of this order that Dr. Sawhney, PW. 17, was requested to medically examine Dr. Mrs. Marwaha in the light of the material available to find out "as much detail about the various alleged burn injuries as possible both in terms of the type of each burn and its dimensions so far as possible." Dr. Sawhney after examining

the injured, prepared his report, Exhibit PZ, which clearly indicates that he thoroughly examined the injured and the various documents prepared at the time of her medical examination by Dr. Rebela, PW16 and the subsequent records pertaining to her treatment. In this report while dealing with and detailing the injuries with reference to the areas of the body of the victim on which these had been caused, he observed the following injuries amongst others:

Head & Neck:-

Face:- Depigmented and erythematous scars with hyperpigmentation at periphery on both cheeks and right ear. Dept. II degree

Nose:- Small patch of erythematous scar over the bridge of the nose. All this comprises 2% of the surface area. ... II degree

Left ear:-

(i) Complete loss of lobule and loss of pinna in its lower half. IIIrd & IV degree.

(ii) Deformity of pinna and skin graft at back of the ear.

26. He also observed "there is marked permanent disfigurement, deformity and dysfunction as a result of this injury (these injuries)." We are thus satisfied that these injuries and more particularly the ones on the nose and the left ear of Mrs. Marwaha do detract from her personal appearance or looks and thus satisfy the requirements of clause Sixthly of Section 320, I.P.C. Courts of this country have repeatedly held that causing an injury on the nose of a person leaving a permanent scar or chopping off or cutting his ear, amounts to a grievous hurt in terms of this clause. We, however, have our doubts if the injuries suffered by this witness also satisfy the requirements of clause Eighthly of this section. We have already ruled out the first contingency envisaged by this clause, i.e., injuries endangered the life of the victim. The term "endangers life" is much stronger than an expression dangerous to life. This expression appears to have been designedly used by the Legislature to exclude cases of hurt which however dangerous to life, do not put life

in a given case to danger. Further, neither of the medical witnesses, i.e. P.W. 16 or 17, has opined that the patient either remained in severe bodily pain or was unable to follow her ordinary pursuits for a period of twenty days. As a matter of fact even she herself has not stated so as P.W. 18. All that was disclosed by her to the Court was "I underwent plastic surgery operation five times while admitted in the P.G.I. I am still indoor patient of P.G.I. and has (have) been brought therefrom by the nurse attending to me." This evidence, to our mind, falls far short of the requirements of this clause. It is nowhere shown that either the injuries were sufficient to cause severe bodily pain in spite of the treatment she had received for a period of twenty days or she actually did suffer that para Further the mere fact that Mrs. Marwaha did not attend to her duties for the statutory period or that she remained in the hospital for that period is no indication of her inability to do so. It has been ruled in Queen Empress v. Vasta Chela ILR (1895) 19 Bom 247 that an injured man may be quite capable of following his ordinary pursuits long before 20 days are over and yet for the sake of permanent recovery or greater ease or comfort, be willing to remain as a convalescent in a hospital, especially if he is fed at the public expense. Similar view has been expressed in Khair Din v. Emperor AIR 1931 Lah 280 : 1931 Cri LJ 1254 Mathu Paily v. State of Kerala and State (Delhi Administration) v. Mewa Singh (1969) 71 PLR 290. So mere remaining in a hospital as a patient for 20 days or more cannot by itself be equated with the patient remaining unable to follow his ordinary pursuits. Anyway, the fact remains that the appellant is guilty of an offence under Section 326, I.P.C., for having caused a grievous hurt to P.W. 18, by use of corrosive substantive, i.e., sulphuric acid. He, therefore, deserves to be punished under this section. Thus keeping in view the totality of the facts and circumstances of the case and more particularly the one that this conviction is not only going to entail his dismissal from service, but is also likely to blast his professional career, we are of the opinion that a sentence of five years' rigorous imprisonment would sufficiently meet the

ends of justice. At the same time we accept the opinion of the trial Court that besides the sentence of imprisonment, the appellant should also pay a sum of Rs. 10,000/- by way of fine, which in case of recovery would be paid to P.W. 18 by way of compensation. In case of default in the payment of this fine, he shall further undergo rigorous imprisonment for two years.”

14. Alternatively, the learned counsel submitted that the appellant is only 24 years of age and the sole bread earner in the family, having two minor children and old parents. Therefore, he has prayed to this Court that lenient view may be taken against the appellant.

15. I have heard the learned counsel for the parties.

16. The prosecution has examined 16 witnesses in all in order to prove its case. Thereafter, the statement of the appellant under Section 313 Cr.P.C. was recorded, wherein he has denied the charges levelled against him and has claimed that he is innocent and has been falsely implicated in this case. He further stated that on the date of incident, he was playing cricket with his friends and on hearing the noise, he reached at the spot and saw PW6 Tanuja in burning condition. He tried to extinguished the body of PW6, due to which he also sustained injuries and was removed to hospital in TSR by one Lalit Pradad @ Pintu.

17. Complainant Tanuja has been examined as PW6 who deposed that she used to work in the Kothis and on 18.08.2011, she was returning to her house. At about 1.30 PM, when she reached opposite Oriental Bank, appellant came there and stopped her. She knew the appellant as she used to reside in her neighbourhood. After stopping

her, appellant said “*tu us ladke se kaafi milti hai jis se teri sagain hui hai*” and further said “*tujhe aaj jinda nai chhodunga*” and while saying so he poured petrol on her from a green colour bottle, which he was having in his hand and after pouring petrol on her, he also poured petrol on him and set himself on fire and caught hold of her in burning condition with his arms. Due to which, the clothes worn by the complainant caught fire and she started burning. Thereafter, some public persons came over there and extinguished the fire. One Lalit Prasad @ Pintu, the son of his Tau (paternal uncle) also came there along with his TSR and removed them first to Jaipur Golden Hospital and from there to Ambedkar Hospital. Police recorded her statement as Ex.PW6/A. She further deposed that from Ambedkar Hospital, she was taken to LNJP Hospital on 19.08.2011. There, the Police met her again and made enquiries from her. At that time, she told the police that appellant used to chase her for a long time and asked her to marry him. Her father had fixed her engagement with another boy and knowing this fact, appellant got furious and due to the said reason, he stopped her on the way on the date of incident and poured petrol on her. Thereafter, he firstly set fire on her and then himself. Her supplementary statement was recorded by the police on 19.08.2011. PW6 has identified the green colour plastic bottle in the Court as Ex.P1, in which the appellant had brought the petrol. She also identified the clothes worn by the appellant at the time of incident collectively as Ex.P2 and also the clothes worn by her collectively as Ex.P3. Her medical record is collectively proved as Ex.P6/B.

18. PW11 Pushpa Devi, mother of PW6 deposed that on 18.08.2011 on receipt of information regarding her daughter Tanuja being burnt, she rushed to Jaipur Golden Hospital, where she came to know that Tanuja was referred to Ambedkar Hospital. Accordingly, she reached there and on asking by the police, the burnt clothes worn by her daughter were removed from the body of her daughter and some other clothes were provided to her. Thereafter, she handed over the burnt clothes of her daughter to the police which was taken into possession by the police vide seizure memo Ex.4/B.

19. PW13, Prashant, brother of injured Tanuja also supported the statement of his mother PW11 and identified the clothes of his sister collectively as Ex.P3 before the Court.

20. PW14, Gurbachan Singh, father of the injured deposed that when his daughter was in the hospital, Investigating Officer of the case had asked him to hand over the school certificate of his daughter and one copy of FIR no. 234/2005 earlier registered against the appellant under Sections 354/509 IPC. Accordingly, he handed over the same to the Investigating Officer, which were taken into possession vide Ex.P14/A and P14/B.

21. PW1 SI Ved Pal has proved copy of FIR as Ex.PW1/A and his endorsement as Ex. PW1/B. He stated that Constable Ashok Kumar came to the Police Station at about 5.30 PM and remained there for about half an hour, which is corroborating with MLC Ex. PW5/A of injured Tanuja.

22. PW2 SI Anil Kumar has proved his crime team report as Ex.

PW2/A. Nothing came out from his cross-examination to disbelieve his testimony.

23. According to PW16 SI Sudhir Rathi, Investigating Officer, on 18.08.2011, he was posted as SI at Police Station Mangol Puri. He was informed about the contents of DD No. 20A telephonically, so, he alongwith Constable Ashok Kumar reached at the spot and found some burnt clothes, pair of chappal, one matchbox and one green colour plastic bottle containing some liquid material lying at the spot. He came to know that injured was removed to Jaipur Golden Hospital. So after leaving Constable Ashok Kumar for safety of the spot, he reached the hospital and collected MLCs of Tanuja and the appellant, who have sustained 50% burn injuries. He submitted both the MLCs to the concerned doctor, who opined that appellant was not fit for statement, whereas injured Tanuja was fit for statement. Thereafter he came back to the spot. Crime team in-charge came there with photographer, spot was inspected and photographed. Investigating Officer prepared rukka Ex. PW16/A and handed over the same to Constable Ashok Kumar for registration of FIR. Accordingly, the said Constable came back and handed over him copies of FIR and rukka. Crime team in-charge handed over to him report Ex. PW2/A. He recorded the statements of the witnesses.

24. PW16 further deposed that from the spot he had collected one green colour plastic bottle and one blue colour lid. A little liquid smelling like petrol was found in bottle. The bottle was closed with its lid and taken into possession after sealing with the seal of 'SR'. Burnt

clothes, pair of chappal and matchstick lifted from the spot were taken into possession after sealing the same with the seal of 'SR'. Two small bottles found lying there were also sealed with the seal of 'SR' and were seized vide memo Ex. PW4/A.

25. PW16 deposed that thereafter, he alongwith Constable Ashok Kumar reached at Ambedkar hospital. Pushpa Devi and Prashant, mother and brother of injured Tanuja, were found present there. Burnt clothes were produced, which were taken into possession vide memo Ex. PW4/B after sealing the same with the seal of 'SR'. He also recorded statements of witnesses. Thereafter, he came back to PS and deposited the case property in the malkhana. On 19/08/2011, PW16 came to know that injured Tanuja and appellant were referred to LNJP hospital. Accordingly, he reached there and found Tanuja admitted there. He made further inquiries from her and recorded her supplementary statement. On 25/08/2011, he reached at the house of Tanuja, where her father met him, who produced school certificate of Tanuja in proof of her age and copy of FIR No. 234/05, which was lodged earlier. Father of Tanuja also handed over copy of high school mark-sheet, which was taken into possession. Photocopies of FIR No. 234/05 and mark-sheet are Ex. PW16/C and Ex. PW14/A respectively. He further deposed that appellant had sustained 50% burn injuries and not 60%. Case property was sent to FSL and FSL report was obtained. On completion of investigation, he filed the chargesheet. PW16 identified the bottle before the Trial Court as Ex. P1, burnt clothes as Ex. P2 collectively, burnt clothes of injured Tanuja as Ex. P3

collectively, hawai chappal as Ex. P4, two small vials as Ex. P5 collectively and matchstick as Ex. P6.

26. Learned defence counsel has cross examined this witness regarding the details of exhibits, which have not been mentioned in the seizure memo to dispute the identity of exhibits, which were collected from the spot, however, the learned Trial Court has rightly opined that so much detail is not required to be mentioned in the seizure memo and that all these exhibits had been duly identified by the witnesses before the Trial Court as the same, which belonged to the injured and appellant and were also found lying at the spot. Photographs have also been proved of these articles, which were lying at the spot.

27. Thus, it is proved beyond reasonable doubt that the case property was deposited with MHC(M) on 18/11/2011, which according to PW16 SI Sudhir Rathi was lifted from the spot on the same day, sent to FSL on 03/11/2011 and was received back after examination on 10/04/2012. PW7 Dr. Kanak Lata had received these pullandas on 03/11/2011. According to PW7, parcel No. 1 was found containing Ex.1, i.e., one green colour bottle. Parcel No. 2 was found containing Ex. 2, i.e., burnt clothes and parcel No.6 was found containing Ex.6, i.e., clothes of injured Tanuja. On examination, residue of petrol, kerosene and diesel could not be detected on Exs. 1, 2 and 6. She resealed the exhibits with the seal of "KLV FSL Delhi". Her report is Ex. PW7/A. She has also identified Exs.1, 2 and 6 before the court, which she had examined.

28. However, as stated by injured Tanuja, appellant had poured

petrol on her, incident had taken place on 18/08/2011 and the exhibits were sent and examined on 03/11/2011, i.e., after about three months and the learned Trial Court being conscious of the fact that it is well known that petrol evaporates quickly, specifically recorded that there could not be possibility of finding residue of petrol on the clothes of appellant and also on clothes of injured Tanuja and in the green colour bottle.

29. To prove the injuries sustained by Tanuja, prosecution has examined PW5 Dr. Ashwani Kumar, who stated that on 18/08/2011, at about 1.55 p.m., he examined injured Tanuja, daughter of Gurbachan Singh with alleged history of burns. She was having 60% burn injuries. On the same day, at about 1.57 p.m., he had also examined another injured Ravi @ Golu, who was brought by the PCR with alleged history of burns. He was found sustaining 50% burn injuries. Necessary treatment was provided. During the course of treatment, attendants of the aforementioned patients removed them to Ambedkar hospital. He had prepared MLCs of both the patients, which are Exs. PW5/A and PW5/B respectively, which bear his signatures at point A each.

30. PW9 Dr. Prashant Saxena, while working in the Ambedkar hospital, on 18/08/2011, at about 3.55 PM, had examined Tanuja, who was brought from Jaipur Golden Hospital with alleged history of burns due to throwing of inflammable liquid on her at 1.30 PM. On examination, there were superficial to deep burns upto 30 to 35% on her person. Thereafter, patient was referred to higher centre

due to non-availability of specialized burn unit. He prepared referral form, which is Ex. PW 9/A and bears his signatures at point A.

31. The appellant examined DW1 Arjun, who stated that on 18.08.2011, he alongwith appellant was playing Cricket near their jhuggi camp situated near Main Ring Road at about 1.00 PM. On seeing someone burning in fire across the road, they rushed to that place to see as to what was going on. After reaching there, appellant tried to extinguish fire and in this process, he also received burn injuries. In the meantime, his cousin came there in Auto and removed the appellant and injured girl to the hospital. In the cross examination, he stated that he cannot say as to who sat fire on whom. He reached at the spot after about 15 minutes. Appellant had not accompanied him at the spot, which shows that, if at all, this witness reached at the spot, he had reached there later on. He had stated that he did not see any articles lying at the spot, whereas according to the photographs produced on record Ex. PW3/1-6, burnt clothes were lying at the spot with one green colour bottle and one pair of chappal and these articles were taken into possession by the Investigating Officer, when he reached there on receiving DD No. 20A on 18/08/2011. DD No. 20A was recorded at about 1.36 PM and as has been deposed in the cross-examination, PW16 SI Sudhir Rathi was already on patrolling duty in the area when he received telephonic information regarding contents of DD No. 20A, so, he reached at the spot.

32. According to DW1 Arjun, they were playing cricket at about 1.00 PM and on seeing the incident, appellant reached there and he

reached at the spot after about 15 minutes. So, he must have reached at around 1.30 p.m., whereas incident had also taken place at about 1.30 p.m., so, he should be an eye witness to the incident, but he had not deposed so, hence, from his testimony, it seems that he reached at the spot later on, if at all he reached there.

33. Injured Tanuja had told to the police in her complaint Ex. PW6/A that appellant after threatening her that he will not spare her today poured petrol on her and thereafter, he poured petrol on himself and while saying as to why she was marrying some boy, appellant set himself on fire and then caught hold her so, she also caught fire. Before the Court also, PW6 had deposed the same facts, which are unrebutted and unshaken.

34. However, defence of the appellant is that he sustained burn injuries, while he was saving the complainant, but it seems to be improbable because if PW6 Tanuja wanted to commit suicide, then it could have been committed by her at her house and there was no necessity of committing it at a public place in the noon time at about 1.30 PM. Moreover, PW6 Tanuja had stated that petrol was brought by the appellant, so, her testimony cannot be disbelieved in any manner and defence of the appellant is not tenable.

35. Even after this case, a complaint was given on 11/11/2012 regarding the conduct of appellant, wherein he caused trouble to the family of complainant. Earlier also, one FIR No.234/2005 under Sections 354/509 IPC, Ex. PW14/B was got registered in the year 2005 at Police Station Rohini, on the complaint of PW6 Tanuja when

appellant tried to outrage her modesty . However, the same was compromised later on.

36. Considering the above noted facts, the learned Trial Court has particularly recorded that the witnesses have corroborated each other regarding the incident and appellant had failed to substantiate his defence. The appellant was charged for offence punishable under Section 307 IPC on the facts that he poured petrol on the complainant and set her on fire with himself by putting himself on fire, which shows that appellant was having intention and knowledge that by this act, he could have caused death of complainant Tanuja, so, the learned Trial Court has rightly recorded that prosecution has been able to prove the offence punishable under Section 307 IPC beyond reasonable doubts against the appellant for which, he was held guilty and convicted accordingly.

37. As the appellant was also charged for offence under Section 309 IPC, the learned Trial Court noted that from the evidence brought on record, being reliable and inspiring confidence, it was proved that appellant attempted to commit suicide and also tried to cause death of complainant Tanuja, so, prosecution has also been able to prove offence under Section 309 IPC beyond reasonable doubts against the appellant and accordingly, held him guilty and convicted.

38. As per the settled legal proposition, the Appellate Court should bear in mind the fact that the Trial Court had the benefit of seeing the witnesses, therefore, finding of facts are not to be interfered with by the superior courts unless there is glaring infirmity or irregularity in the

impugned order. However, the learned counsel for the appellant has failed to point out such frailty.

39. In view of the above, this Court does not find any infirmity, illegality or perversity in the impugned order dated 27.11.2013, therefore this Court confirm the same.

40. It is not in dispute that the appellant also received 50% burn injuries in the incident. He was declared unfit for statement by the treating Doctor. Therefore, he was released on anticipatory bail by the Sessions Court vide order dated 03.10.2011 as he was not in a position to be arrested. He is the only bread earner in the family consisting of wife, two minor children and old parents. He is at young age of 24 years. As per 'Nominal Roll' dated 27.05.2014, he has already undergone 5 months 28 days and earned 1 month and 25 days remission as on 24.05.2014. Since, then, 1 year 7 months passed and earned more than 3 months as remission. Thus, as on date, he has already completed 2 years & 5 months. Sufficient lesson has been taken by the appellant. Therefore, keeping in view the facts and circumstances of this case, this Court is of the view that the ends of justice would be met if the appellant is released on the sentence already undergone. Consequently, sentence awarded vide order dated 29.11.2013 is modified to the extent already undergone.

41. Accordingly, the Jail Superintendent is directed to release the appellant forthwith.

42. The Registry of this court is directed to send a copy of this judgment to the Jail Superintendent for compliance.

43. The present appeal is disposed of accordingly.

Crl. (M.B.) No. 1244/2014

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

DECEMBER 07, 2015

jg/sb/RS