

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

**RESERVED ON : 19<sup>th</sup> JULY, 2016**

**DECIDED ON : 08<sup>th</sup> DECEMBER, 2016**

+ **CRL.REV.P.472/2016 & CRL.M.A.Nos.10748-49/2016**

YASHWINDER MALIK

..... Petitioner

Through : Mr.Lovkesh Sawhney, Advocate  
with Mr.Jaideep Malik, Advocate.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.  
Ms.Anindita Pujari, Advocate with  
Mr.Santosh Kumar, Advocate for the  
victim.

+ **CRL.REV.P.183/2015 & CRL.M.A.No.4542/2015**

MANDEEP @ MAAN

..... Petitioner

Through : Mr.Sumit Chaudhary, Advocate.  
versus

STATE OF NCT OF DELHI

..... Respondent

Through : Ms.Nandita Rao, ASC.  
Ms.Anindita Pujari, Advocate with  
Mr.Santosh Kumar, Advocate for the  
victim.

**AND**

+ **CRL.REV.P.591/2015 & CRL.M.A.No.15110/2015**

SHAHEEN @ SHIVANI

..... Petitioner

Through : Ms.Anindita Pujari, Advocate with  
Mr.Santosh Kumar, Advocate.

versus

STATE OF HARYANA THROUGH GOVERNMENT OF NCT OF  
DELHI & ORS. .... Respondents

Through : Mr.Lovkesh Sawhney, Advocate with  
Mr.Jaideep Malik, Advocate for R2 &  
R5.  
Mr.Sumit Chaudhary, Advocate for  
R3.

**CORAM:**  
**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J.**

1. Aggrieved by an order dated 07.01.2015 of learned Addl. Sessions Judge in Sessions Case No.34/2001 arising out of FIR No.1178/2009 PS Panipat City by which charges under Sections 364A/342/376(2)(f)/511/506 IPC against Yashwinder Malik (P-1); and under Section 308 IPC read with Section 120B IPC; in the alternative under Section 326 IPC read with Section 120B IPC against Mandeep @ Maan (P-2) were ordered to be framed, the petitioners – (P-1 and P-2) have filed the instant petitions to challenge its legality and correctness. Status report is on record. The petitions are contested by the complainant / victim.
2. The victim / complainant has also filed CrI.R.P.591/2015 to challenge the order on charge to the extent that the Trial Court committed error in framing charge under Section 308 IPC and not Section 307 IPC.
3. I have heard the learned counsel for the parties and have examined the file minutely.
4. Admitted position is that the complainant 'X' (changed name) had married Arshad Siddiqui on 13.01.2007; it being a love marriage against the wishes of their family members. After the marriage, they started living at Panipat (Haryana) in February, 2007. The complainant joined GIAN

College, GT Road, Panipat on 27.05.2007 and worked there for about two and a half years. She also took admission in MBA course in the said college owned and controlled by P-1; her employer.

5. On 20.11.2009, the complainant was physically attacked and acid was thrown on her body; she was taken to Apollo Hospital, Delhi. The Investigating Officer after getting permission from the concerned doctor recorded victim's statement (Ex.PW-1/A). In the complaint, the victim disclosed that on 19.11.2009 at about 06.00 p.m. when she was going out of her office and was standing outside GIAN College to cross road, a boy aged around 22 – 23 years wearing red T-shirt who had covered his face threw acid on her face. The said boy was having a steel glass in his hand. The boy fled towards traffic lights. She immediately came back to the office where Roopak Malik met her. When she cried loudly, he (Roopak Malik) immediately took out his car and carried her to Prem Hospital for treatment. Her husband Arshad also arrived at Prem Hospital on getting information about the incident. Arshad shifted her to PGI, Rohtak where she stayed for about 2 or 3 hours. Thereafter, her brothers Arshad and Irshad also reached there. She advised her husband not to stay there as her family members were enraged due to her marriage with him. Thereafter, her family members and brothers shifted her to Apollo Hospital, Delhi. She claimed to identify the assailant.

6. During investigation, a bag and a glass (plastic) were seized vide seizure memo on 25.11.2009. Initially FIR was lodged under Section 326 IPC; Section 308 IPC was added subsequently.

7. On scanning the initial statement (Ex.PW-1/A) given by the victim to the Investigating Agency, it reveals that she did not suspect

involvement of the petitioners – (P-1 and P-2) in the crime. No role whatsoever was assigned or attributed to any of them. In categorical terms, she had implicated an ‘unknown’ boy aged around 22 – 23 years for throwing acid on her. She was unable to note the detailed features of the assailant as he had muffled his face and had escaped the spot soon after the incident. The complainant did not attribute any motive to the assailant for throwing acid on her body. Since the culprit could not be traced, the Investigating Agency filed an ‘untraced’ report before the Court concerned on 27.03.2010.

8. Needless to say, injuries sustained by the victim on her vital organs were grave and dangerous. She remained admitted for about ten days in ICU at Apollo Hospital. She had lost vision of both her eyes. She was referred to AIIMS where she remained admitted for about fifteen days. It is informed that she got eighteen surgeries in Apollo Hospital, AIIMS Hospital, B.L.Kapoor Hospital and Medanta Hospital. Number of documents showing the medical treatment taken by her are on record.

9. Since the victim had incurred lot of expenses in getting medical treatment, she approached Delhi Government for seeking compensation and filed an application for victim compensation under Section 357(A) Cr.P.C. on 17.09.2013. Order dated 07.02.2014 of Ms.Parminder Kaur, CJM-cum-Secretary, DLSA, Panipat, reflects that original request for victim compensation was made by the applicant / complainant to Women in Distress Cell, Delhi, which routed it to HALSA. As the incident pertained to Panipat District, it was sent before DLSA, Panipat vide letter dated 07.10.2013 received by her on 14.10.2013. To check status of the case for victim compensation, she called for the record from the Court of learned

CJM, Panipat. The concerned Ahlmad informed that no such case was pending or disposed of. SHO Mr. Vishal, PS City was called. Learned CJM called the victim on cell No.8130927295 to ascertain her physical and moral well being and to find out as to what had really happened. Order records that on 24.10.2013, the victim came along with Ms. Anjum, Floor Supervisor, 181, Women in Distress, New Delhi in her office. She gathered courage and made a statement forming basis of the instant FIR.

10. In the statement given to learned CJM on 24.10.2013, the victim disclosed that after coming to Panipat, she had changed her name as 'Shivani' to conceal her identity. She joined GIAN College as a Counselor on a monthly salary of ₹9,000/- on 27.05.2007. She further disclosed that P-1, her employer was caring and concerning. She became friendly with him; P-1 became possessive of her and did not permit her to talk to anybody else. On one occasion, he broke her phone and SIM card; he did not allow her to take leave. She took admission in MBA in the said college. Considering his undesired actions, she started searching for another job. When P-1 came to know about it, he gave her beatings as a result of which she sustained minor injuries; she threatened to quit the job. On that, P-1 cut his hand at many places and hit himself on the head with an iron rod to retain her by blackmailing emotionally. Fed up with all that, she joined other job at ICFE Accounting. Hardly she had worked there for two days, when P-1 sent his friends Anil and Sonu there. They talked in loud voice; touched her feet and requested her to see P-1 once; she agreed to it. When she came downstairs, after seeing P-1's wife there she came back. Again, at the request of Anil and Sonu, she sat in the car driven by P-1. On declining P-1's request to join his college, he started giving her beatings. Due to fear, in the evening,

she agreed to his proposal and joined GIAN College the next day. It was probably in August, 2009. The complainant further disclosed that P-1 attempted to establish physical relation with her. She frankly and clearly told P-1 that she would not tolerate it and threatened to leave the city. Thereafter he sent her a mail having caption "Did love needs the reason". Subsequently, this e-mail was deleted by him.

11. She further stated that on 10.11.2009, on her birthday her husband's manager had sent her SMS to wish 'happy birthday'. In response, she thanked him. The mobile came in P-1's possession and he sent obscene messages on her mobile to him. When her husband enquired about it, P-1 asked her to disclose that those obscene messages were sent by her. Declining to do so, she clearly told him to work with him till 01.12.2009 only. P-1 remained mum and that 'conduct' surprised her.

12. She further disclosed that on 19.11.2009 at 06.00 p.m. a boy in muffled face threw acid on her while she was coming downstairs from the office along with P-1. P-1 got a phone call while coming downstairs and asked her to go alone. After the acid was thrown, she cried loudly and ran towards the office. P-1's elder brother Roopak Malik present there wanted to throw water on her. Thereafter, he called P-1 who took her to Prem Hospital where her husband also arrived. She had insisted to go to AIIMS, Delhi but P-1 took her to Rohtak PGI from where she was shifted to Apollo Hospital. P-1, on his visit to Apollo Hospital, instigated her to name her husband for throwing acid on her. On that, she got enraged and told why she should not tell the police that it was thrown by his wife. P-1 asked her to do whatever he had said or else she and her husband would suffer dire consequences.

13. Undisputedly, Vikram, a juvenile, has since been convicted by a judgment dated 17.12.2015 by Juvenile Justice Board for committing offences punishable under Sections 326/308 IPC. Crl.A. 46/2015 filed by Vikram has resulted in its dismissal by a judgment dated 21.04.2016 of learned Addl. Sessions Judge.

14. At the outset, it may be noted that learned Standing Counsel for the State and complainant's counsel have fairly conceded that charge under Section 376(2)(f) IPC read with Section 511 IPC has been framed erroneously. This Section came to existence only in 2013 by the Act 13 of February, 2013 and can't have retrospective operation.

15. Pertinent to note is that in her initial statement dated 20.11.2009 (Ex.PW-1/A), the victim / complainant did not implicate the petitioners. She did not attribute any role whatsoever to them in the crime. She was categorical to allege that acid was thrown upon her by a 'boy' aged around 22 / 23 years who had covered his face. She did not assign any motive to the petitioners to hatch conspiracy with the assailant to inflict injuries on her body by throwing acid on her. After sustaining injuries, she immediately went back to the office and met Roopak Malik who took her for treatment to Prem Hospital in the vehicle. At Prem Hospital, her husband Arshad arrived and took her to PGIMS, Rohtak. Complainant's brother Arshad and Irshad also reached PGIMS, Rohtak and took her for treatment at Apollo Hospital. As per the complaint (Ex.PW-1/A), the complainant had advised her husband to stay away.

16. The Investigating Officer had moved an application to record victim's statement at Apollo Hospital; she was declared fit for making statement by the doctor on duty on 20.11.2009. The victim did not implicate

anyone in the 'alleged history' disclosed to the examining doctor at PGIMS, Rohtak. Since the victim was in the company of her husband and her brothers soon after acid attack, apparently, she was under no fear or pressure to exonerate the petitioners that time.

17. On 01.01.2010 her supplementary statement was recorded by SI Ramphal of PS Panipat. Implicating P-1's wife Madhu @ Bala, she accused her of making telephone calls to her husband to force her to leave the job in the college or else to face dire consequences. It forced her to leave the job at GIAN College several times. However, every time P-1 used to call her back on phone because of her good performance in computer related work. It resulted in strained relations between P-1 and his wife Madhu @ Bala. The victim suspected Madhu @ Bala to have planned to disfigure her by throwing acid upon her as she nurtured ill-will suspecting illicit relation between the two.

18. In the supplementary statement (Ex.PW-1/B), again none of the petitioners was assigned any overt act in the crime. The complainant only suspected Madhu's involvement primarily because she did not want her to remain employed at GIAN College; to have any relations whatsoever with her husband (P-1). Needless to say, the victim was under no pressure or fear not to name the petitioners to be the perpetrators of the crime on 01.01.2010.

19. Subsequent to that, complete silence was maintained by the prosecutrix for long four years and she did not initiate any proceedings whatsoever against the petitioners for the alleged crime. During this period, she got treatment at various hospitals at various places. There are no allegations if any time any threats were extended by the petitioners to her or they remained in her contact. The victim stayed back with her family at

Delhi. She had moved application to seek compensation under Victims Compensation Scheme. She was assisted by Ms.Anjum, Floor Supervisor in this regard. Only when her application for compensation came to be taken up by learned ACMM Panipat-cum-Secretary DLSA Panipat, she recorded her statement on 24.10.2013.

20. Scanning the comprehensive statement, it reveals that she suspected P-1's involvement in the crime as he was possessive of her and did not intend her to leave the job at GIAN College. She did not name any other individual to be involved in the crime. In the statement given before Secretary, DLSA, Panipat, she did not accused P-1 of hatching conspiracy with any specific individual(s) in throwing acid on her.

21. During investigation, the Investigating Agency was unable to collect any credible or reliable material whatsoever to connect the petitioners with the crime. Statement of Prem Kumar, a shopkeeper, who used to sell hydrochloric acid was recorded on 31.10.2013. He did not implicate anyone; he even did not state if acid allegedly thrown upon the victim was purchased by any of the petitioners from his shop. He did not identify any of the petitioners to have purchased the acid from his shop on any specific date for any consideration.

22. No other corroborating evidence whatsoever has been collected against any of the petitioners during investigation. The victim had admittedly joined GIAN College on 27.05.2007. She continued with her job at the said college till the occurrence in 2009. At no stage, she had lodged any complaint whatsoever against P-1's conduct and attitude. She did not ever get herself medically examined for the alleged physical harassment to her during that period. In her initial complaint lodged on

20.11.2009 she did not whisper a word to infer if P-1 had an evil eye upon her and wanted to retain her in the college at all costs. Only in her statement before DLSA, Panipat recorded on 24.10.2013, she gave an entirely conflicting, inconsistent and improved statement accusing P-1 to have an inclination for her. She even alleged him to have made an attempt to commit rape upon her. She did not divulge the date when the alleged attempt was made by him. At that stage also, she did not move any authority. Rather she continued to be in service in the college. Identity of Anil and Sonu named by her in her complaint (Ex.PW-1/A) has not been established. They were not sent for trial. Had P-1's conduct against the victim been not conducive, there was no occasion for her to rejoin the college.

23. The Trial Court in the impugned order heavily discussed about conspiracy hatched by the petitioners to throw acid upon the victim. It is relevant to note that Vikram, a juvenile was convicted by Juvenile Justice Board. In the said proceeding, a charge under Sections 326/308/120B IPC was framed against him. It appears that the prosecution was unable to establish the charge of conspiracy and for that reason Vikram was convicted only for committing offences under Sections 326/308 IPC. State did not challenge Vikram's acquittal under Section 120B IPC. The judgments of the Trial Court as well as of the Appellate Court do not talk about any conspiracy hatched by the petitioners along with Vikram.

24. No other evidence whatsoever has emerged on record from where it can be inferred if any such conspiracy was planned or hatched. In *Kehar Singh's case AIR 1988 SC 1883* brought out the legal position succinctly :

*“The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion of the plan is not, per se enough”.*

25. Meeting of minds of two or more persons while doing an illegal act or an act by illegal means is a sine qua non of the criminal conspiracy.

26. The impugned charge does not reveal when the said alleged conspiracy was formed and till which period it continued. The Court is conscious that in most of the cases it is difficult to get direct evidence of the agreement but the prosecution is required to place on record circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. In most cases, proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedents and subsequent conduct among other factors constitute relevant material. It is settled view that a few bits here and few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused for the offence of criminal conspiracy.

27. In the instant case, after about four years of the occurrence, Madhu @ Bala, P-1's wife was arrested and her disclosure statement came to be recorded on 30.10.2013. The facts disclosed in disclosure statement rule out hatching of conspiracy by her with her husband P-1. It rather records that she did not like her husband's familiarity with the victim and wanted her to leave the job. Since she suspected illicit relations between the

two, there used to be various quarrels between them. It prompted her to hatch conspiracy with Mandeep Maan who in-turn allegedly procured the services of his nephew Vikram to throw acid upon the victim. Apparently, there was no 'agreement' between P-1 and his wife Madhu @ Bala to infer conspiracy between them.

28. No evidence whatsoever has emerged to infer if pursuant to any such conspiracy any payment of ₹40,000/- was given to Mandeep Maan or Vikram. The disclosure statements per se are not admissible in the absence of any fact 'discovered' pursuant to it. The Court is aware that Section 27 Evidence Act is not contingent on the recovery of a 'physical' object. It embodies the doctrine of 'confirmation' by subsequent events. The fact investigated and found by the police consequent to the information disclosed by the accused amounts to confirmation of that piece of information. Only that piece of information, which is distinctly supported by confirmation, is rendered relevant and admissible under Section 27. [State (NCT of Delhi) vs. Navjot Sandhu, AIR 2005 SC 3820] In the instant case, no such fact disclosed in disclosure statement recorded after arrest has been confirmed by any acceptable evidence.

29. The operation of Section 10 Evidence Act is strictly conditional upon there being reasonable grounds to believe that two or more persons have conspired together to commit an offence.

30. Discussing the law on consideration of charge, this Court in the case of '*Prashant Bhaskar vs. State (Govt. of NCT of Delhi)*' in Crl.Rev.P.No. 385/2009 decided on 22.09.2009 held :

*“17. It needs no elaboration that at the stage of framing of charge, the court is required to evaluate the materials and documents which have been placed on record by the prosecution and taken at the face value, whether existence of the ingredients constituting the alleged offence or offences are disclosed. It is for this limited purpose alone that the court is permitted to sift the evidence. In para 7 of the judgment in (1990) 4 SCC 76 Niranjan Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijja & Ors. the Apex Court defined the parameters of the scope and consideration thus:*

*“7. The next question is what is the scope and ambit of the 'consideration' by the trial court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exist sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh 1977 CriLJ 1606 this Court observed that at the initial stage of the framing of a charge, if*

*there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal and Anr.1979 CriLJ 154 , this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post-office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face-value establish the ingredients constituting the said offence. After considering the case law on the subject, this Court deduced as under: (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of*

*finding out whether or not a prima facie case against the accused has been made out. (2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction under Section 227 of the Code of judge which under the present Code is a senior and experienced judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

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*From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients*

*constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.” (Emphasis supplied)*

18. The pronouncement of the Apex Court reported at *Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi)* MANU/SC/1453/2009 on this very issue can also be usefully adverted to and reads thus :-

*“..... It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for “presuming” that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”*

19. In a subsequent judgment reported at (1996) 4 SCC 659 *State of Maharashtra & ors. Vs. Som Nath Thapa & Ors.*, a three-Judge Bench of the Supreme Court explained the meaning of the word “presume”. Referring to dictionary meanings of the said word, the Court observed thus:

*“....If on the basis of materials on record, a court could come to the conclusion that*

*commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”*

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*24. It now becomes necessary to consider the material which was laid by the prosecution before the learned trial court. Two contradictory statements recorded by the investigating officer of the complainant as well as his son both of whom claim to be eye witnesses, which were separated by a period of three months, have been placed on record. The first statement recorded on the very next date after the incident, has named only two persons i.e. Shri Mahesh Sharma and his brother Manish Sharma @ Kallu and is categorical that no other person is involved in the incident. A second statement recorded several months after the incident on 10 th July, 2006 has sought to rope in the present petitioner. A graphic description of the alleged incident containing improvements in all material particulars is laid out in which even a role has been attributed to the petitioner. Scrutiny of the record which has been placed before this court would also show that there is no other material on the record at all placed along with the charge sheet under Section 173 of the Cr.P.C. before the trial court to show the presence of the petitioner or to connect him with the crime.*

*25. These statements/supplementary statements of the witnesses recorded by the investigating officer make no*

*mention about the earlier statement recorded on 6<sup>th</sup> April, 2006. Neither of these statements even attempts to explain the circumstances in which the second statement was being made or the reason thereof.*

*The very gap of three months between the incident and the statements by itself renders the same suspect and unsafe for reliance*

*26. In similar circumstances, this court in the judgment pronounced at 2007 (2) JCC 1415 Sunil Bansal Vs. State of Delhi held that while undertaking the permissible and necessary exercise of sifting of the materials and particularly keeping in mind the existence of two contradictory statements, a charge cannot be framed based thereon. The court observed that the subsequent statements were not only contradictory but unsafe as well and that the court cannot be expected to accept one version over another. It was held that the court would be justified in concluding that the version supporting the discharge of the petitioner is to be preferred. In the present case as well, the previous statement has completely ruled out any complicity of the accused person.”*

31. The evidence collected during investigation is highly scanty. No recovery has been effected at Mandeep Maan's instance pursuant to the disclosure statement dated 31.10.2013 made by him. No ulterior motive was assigned to Mandeep Maan to assist co-accused Madhu @ Bala. Apparently, there is no evidence against Mandeep Maan except disclosure statement of co-accused Madhu Bala which is inadmissible in evidence.

32. Settled position is that mere suspicion, however, strong cannot take the place of proof of guilt. Suspicion cannot amount to legal proof.

33. In view of the above discussion, the impugned charge against P-1 and P-2 cannot be held legally maintainable. Crl.Rev.P.472/2016 and

Crl.Rev.P.183/2015 filed by P-1 and P-2 respectively are resultantly accepted. Impugned order framing charge against them is set aside.

34. Regarding Crl.Rev.P.591/2015 filed by the complainant against P-1, P-2, Vikram and Bala to charge them under Sections 307 instead of 308 IPC, I am of the view that no convincing material exists on record to proceed against them under Section 307 IPC. As already observed, the prosecution was unable to gather any cogent and firm material against P-1 and P-2 even to proceed against them for committing an offence for the charges framed by the Trial Court. Vikram being a juvenile has already been convicted by the Juvenile Justice Board by a judgment dated 17.12.2015 under Sections 326/308 IPC. At no stage during the proceedings pending before Juvenile Justice Board, the prosecution or the complainant moved any application for framing charge under Section 307 IPC. Charge under Sections 326/308/120B IPC framed by the Juvenile Justice Board was never challenged. The said Court convicted Vikram after conclusion of trial only under Sections 326/308 IPC. The complainant did not challenge the said judgment. Vikram's appeal resulted in its dismissal by an order dated 21.04.2016. Apparently, after undergoing substantial portion of the sentence awarded by the Juvenile Justice Board, he cannot be held liable for committing offence under Section 307 IPC.

35. Regarding accused Bala, allegations against her that she conspired with co-accused persons to throw acid upon the victim. The acid was thrown upon the victim allegedly by Vikram who has already been convicted under Sections 326/308 IPC by Juvenile Justice Board for his individual role in the crime. For that reason, Bala cannot be held liable with the aid of Section 120B IPC for commission of crime under Section 307 IPC

when the alleged main offender was charged and convicted only under Section 308 IPC.

36. Revision petition filed by the complainant lacks merits and is dismissed.

37. Section 357A Cr.P.C., which has been inserted by virtue of an amendment brought about in the year 2009, postulates that a victim could approach the Legal Services Committee for seeking appropriate compensation to be paid by the State under the Victim Compensation Scheme applicable to the state where the crime has taken place. Presently “Delhi Victims Compensation Scheme, 2011” dated 02.02.2012 is applicable to the National Capital Territory of Delhi.

38. In the circumstances, bearing in the mind the mental agony and grievous nature of injuries suffered by the victim, I am of the considered opinion that victim must be reasonably compensated at the earliest by the concerned authorities as per law, irrespective of discharge of the petitioners.

39. The revision petitions are disposed of. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

40. All pending applications also stand disposed of.

**(S.P.GARG)**  
**JUDGE**

**DECEMBER 08, 2016 / tr**