

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment reserved on: 16/02/2017****Judgment delivered on:03/05/2017****CRA No. 36 of 2006**

Ku. Dhanya Soman, D/o T.K. Soman, aged about 22 years, Student,
R/o R.T.R. F-4, Housing Board Colony, Chowki Kumhari, P.S. Old
Bhilai, Tahsil and District Durg (Chhattisgarh)

---- Appellant**Versus**

State of Chhattisgarh.

---- Respondent

For the Appellant	:	Shri R.S. Marhas & Shri Praveen Dhurandhar, Advocates.
For the State	:	Shri Vivek Sharma, Govt. Advocate.

and**CRR No. 129 of 2006**

1. Surendra Singh, S/o Rajgir Singh, Aged about 55 years,
2. Smt. Neelam Singh, W/o Surendra Singh, aged about 50 years,

Both are R/o MIG 4/6 Adityapur, P.O.- Adityapur, P.S.- Adityapur,
District - Saraykela Kharsawa (Jharkhand)

---- Applicants**Versus**

1. State of Chhattisgarh, Through Secretary Home Deptt. D.K.S. Bhawan, Raipur.
2. Rajendra Kumar Sahu S/o Puranic Sahu, Aged about 30 years, Occ.- Agriculture, R/o Village Ghudely, Thana Berla, District Durg.
3. Ram Bhagwan, S/o Kawal Singh, Aged about 31 years, Occupation - Agriculture R/o Village Pahanda, Thana Purani

Bhilai, Distt.-Durg (Chhattisgarh)

4. Dhanya Soman, D/o T.K. Soman aged about 22 years, Occupation-Student R/o R.T.R.F.- 4 Housing Board Colony, Chowki Kumhari, P.S. Purani Bhilai, District Durg (Chhattisgarh)

---- Respondents

For the Applicants	:	Shri B.P. Singh, Advocate.
For the State/respondent No.1	:	Shri Vivek Sharma, Govt. Advocate.
For respondents No.2 & 3	:	Shri Praveen Dhurandhar, Advocate
For respondent No.4	:	Shri R.S. Marhas, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice R.C.S. Samant

C A V JUDGMENT

Per R.C.S. Samant, J

1. Both the cases have arisen from the judgment of conviction and order of sentence passed by the Additional Sessions Judge, Durg in Sessions Trial No.35 of 2004 dated 03.01.2006, whereby the appellant was convicted under Section 307 read with 120-B of Indian Penal Code and sentenced to undergo RI for 10 years along with fine of Rs.25,000/- with default stipulation. By appeal this judgment of conviction and sentence is assailed by the appellant, whereas revision has been brought with prayer to enhance the punishment of respondents No.2, 3 and 4 to life imprisonment along with fine of Rs.10,000/-.
2. The case of the prosecution in brief is that appellant Dhanya Soman and applicant Rajeev Kumar Singh (PW/39) both had a love affair since they were studying in school. Applicant Rajeev Singh left school and went to Hyderabad for further studies for 3 years. Later on applicant Rajeev Singh came back and took

admission in the same college, where Appellant Dhanya Soman was undergoing her studies. Applicant Rajeev Singh wanted to renew his relationship with appellant, but the appellant avoided him saying that she is in love with Rajendra Sahu (co-accused). Applicant met with an accident and was admitted in hospital for treatment, where he received threatening phone calls. The applicant met with appellant - Dhanya Soman on 04-11-2003 in her hostel, where she was living to complain and allege that the threatening phone calls were made at her instance. Appellant gave the phone number of her Hostel to the applicant in the same meeting and asked him to call her after sometime. Applicant left with his friend Sumit Choudhary (PW/31) on a Scooty and he made a call from one S.T.D. booth in Sector-10, Bhilai. Appellant asked him about the place, from where he was calling. Applicant and his friend departed from there and arrived near Janjgiri turn of G.E. Road, Bhilai, when two boys came on motorcycle and after overtaking them, they threw the acid on applicant, on which he got injured and fell down on the spot and the person throwing acid fled from the spot. One Pradeep Sanyal (PW/7) gave information to the police, on which F.I.R. Ex.P/15 was recorded.

3. Injured applicant and his friend Sumit Choudhary (PW/31) were admitted in Sector-9 Hospital, Bhilai. Dr. Avinash Ashthana (PW/9) examined applicant Rajeev Singh and found burn injuries on his face, head, neck, chest, back, both hands, eyes and left leg. He reported the injuries to be of grievous in nature. Applicant was admitted vide Ex.P/16 and report Ex.P/17 about the injuries was submitted. Dr. M. Saraswati (PW/15) examined Sumit Choudhary (PW/31) and found him a victim of acid attack having burn injuries on his face, neck, back, leg, upper part of both hands about 32-35%, superficial to deep corrosive burn. His left eye was closed, right eye was normal, he was admitted vide Ex.P/2 and report on injuries was given vide Ex.P/21. Dr. Uday

Kumar (PW/16) has further treated the injured applicant Rajeev Kumar Singh (PW/39) and Sumit Choudhary (PW/31). Dr. Suryaprakash Saxena (PW/17), Dr. Mamta Sikoriya (PW/34), Dr. Neeta Sharma (PW/35), Dr. A.V. Deshpandey (PW/46) treated and reported on the injuries of applicant Rajeev Kumar Singh (PW/39) and Sumit Choudhary (PW/31). Left eye of applicant Rajeev Singh had to be removed surgically because of injury and infection.

Seizure vide Ex.P/3 was made of the Scooty bearing registration No.CG-07/ZP/9024, a bag and a dot pen from the spot. Spot map Ex.P/4 was prepared by Investigation Officer, accordingly. Spot map was also prepared by Patwari vide Ex.P/5. Co-accused Rajendra Kumar Sahu was interrogated in custody and, at his instance, vide memorandum Ex.P/6, a mobile phone was seized vide Ex.P/8. At the instance of co-accused Ram Bhagwan vide memorandum Ex.P/7, one motor cycle bearing registration No.CG-07/ZN/5672 was seized vide Ex.P/9. One bill register was seized from Manish Chemical showing sale of acid vide Ex.P/11, one register of phone calls was seized from St. Thomas College, Bhilai vide Ex.P/14. Dr. Surya Prakash Saxena (PW/17) examined co-accused Rajendra Kumar Sahu on 15/12/2013 and found injuries on the palm of his right hand vide Ex.P/27. Similarly, he also examined Ram Bhagwan and found injuries on his right thigh vide Ex.P/29, he could not give definite opinion vide his report Ex.P/30 and Ex.P/31 that the injuries on accused persons was caused by acid or not. Dr. Ulhas Gonnade PW/22 also examined co-accused Rajendra and Ram Bhagwan and reported vide Ex.P/33, Ex.P/34, Ex.P/35 and Ex.P/36 regarding the nature of injuries caused to the co-accused persons. Dr. Shiv Narayan (PW/23) was in the team of this examination.

Investigation regarding the phone calls made during the incident, was also made. Registration of phone number 07821276030 and call details were sought from telephone

department and report obtained. Further, registration and call details of Reliance mobile No.98271-45660 was also sought and obtained vide Ex.P/38 onwards. Details of phone numbers 5032566 of Principal of St. Thomas College, Bhilai was also obtained vide Ex.P/41 and Ex.P/43. Statement of witnesses were recorded. Appellant and co-accused persons were charge-sheeted for trial of offences under Sections 307, 326 and 120-B/34 of IPC.

Appellant and co-accused persons were charged under Section 307 (for two counts), 307/34 (for two counts) and 120-B of IPC. On denial of charges, prosecution has examined as many as 46 witnesses. On examination under Section 313 of Cr.P.C. appellant and co-accused persons denied all the incriminating evidence against them brought by prosecution, pleaded innocence and false implication. No specific stand was taken in defence by appellant. No witnesses were examined by defence. Impugned judgment was passed, in which, appellant stands convicted and sentenced, as mentioned in the paragraph above.

Co-accused Ram Bhagwan was convicted under Sections 307, 307 and 120 B of the IPC and sentenced with rigorous imprisonment of 10 years along with fine of Rs.25,000/-, RI for 10 years and fine of Rs.25,000/- and RI for 10 years with fine of Rs.10,000/- respectively. Co-accused Rajendra Sahu was convicted under Sections 307/34, 307/34 and 120-B of IPC and sentenced with RI of 10 years along with fine of Rs.25,000/-, RI of 10 years along with fine of Rs.25,000/- and RI of 10 years along with fine of Rs.10,000/- respectively. Both the co-accused separately preferred an appeal which has been withdrawn.

4. The grounds in appeal are these that the impugned judgment of conviction against the appellant, is passed erroneously without any basis of legally admissible evidence. Trial Court has failed to

appreciate the evidence of prosecution witnesses in true sense. It was never proved by the statement of any of the witnesses that appellant Dhanya Soman and complainant Rajeev Singh PW/39 had a love affair between them. There is no legal evidence of conspiracy against the appellant. For these reasons, the appellant was entitled for acquittal.

5. The grounds taken in revision are these, that the offence committed in this case is rarest of rare and the crime is not against the person, but is against the society. Appellant and co accused persons conspired to commit this offence in the style of habitual offenders. Hence, for these reasons, the sentence awarded to each of the accused persons needs to be enhanced. Prayer has been made for enhancement of sentence upto life imprisonment and fine of Rs.10 lacs for each of the accused persons.
6. Learned counsel for the appellant submits that prosecution has failed to prove the case of conspiracy against the appellant Dhanya Soman. The only piece of evidence for connecting appellant with the offence, was the phone calls made at the time of incident from the mobile phone of co-accused Rajendra to the telephone No. 5032566 of the girls hostel. No witness has stated that appellant attended any of the calls made by the accused Rajendra. The allegations made by Rajeev Singh PW/39 and other witnesses against appellant, are baseless because applicant Rajeev Singh had a grievance against appellant because she refused to renew and continue the love affair with him after the change of circumstances. Under these circumstances, the conviction of appellant is not based on any legally admissible evidence, which needs to be set aside.
7. Learned counsel for the applicant submits that a very heinous crime was committed against the applicant spoiling his whole prospects in life. Because of this acid attack, applicant's face

was disfigured and he got blinded in one eye. He had to undergo a long trauma, during the treatment by various doctors. This kind of incident also has an impact on society by raising feeling of insecurity to the citizens, hence, for these reasons, appellant and co-accused persons were needed to be punished with the severest punishment without any mercy. The prosecution has proved its case beyond reasonable doubt, involvement of appellant Dhanya Soman in the incident is supported by the call details and statement about the circumstances by Rajeev Singh PW/39 himself. Hence, there is no room for any doubt that appellant was very much involved in this offence and was a conspirator.

8. Learned counsel for the State has duly assisted the Court.
9. The co-accused persons have withdrawn the appeal preferred against their conviction in the impugned judgment. The only question for determination in this appeal is, "whether prosecution has successfully brought evidence against appellant to establish that she was a conspirator in this case ?
10. The conviction against the appellant is based firstly on the allegation, made by applicant Rajeev Singh PW/39 and other witnesses. Prosecution has secondly relied upon the evidence of phone calls made from the mobile No.98271-45660 in possession of co-accused Rajendra Sahu to the land line number of college and hostel, where appellant Dhanya Soman studied and resided. The evidence of prosecution in this respect is needed to be scrutinized.
11. Rajeev Kumar Singh PW/39 has stated that when he studied in Jyoti School at Kumhari, he and appellant Dhanya Soman loved each other. After passing 10th standard in that school he left for Hyderabad and came back after 3 years, he wanted to take admission in the same college, where appellant was studying,

but appellant tried to avoid him and also threatened to dissuade him. On his asking, appellant told him that she no longer loves him but she loves Rajendra Sahu (co-accused), hence, she does not want to meet him.

He went to meet appellant on 23.9.2003 in her hostel then she told him again that she is in love with Rajendra (co-accused), hence, he should not meet her and, if, he continues to meet her then this would not be good for him. Thereafter, after some time on the same day he met with an accident and had to undergo treatment in the hospital for four days. He received blank calls at his residence for the purpose of threatening him to keep away from appellant Dhanya Soman. Such phone calls continued for one month. He went to meet appellant in her hostel on 4.11.2003 and complained that she was behind the threatening phone calls. Appellant then gave him the phone number of her hostel and asked him to call her after some time. He, later on, made a call from one STD booth in Sector-10, Bhilai and talked with the appellant. On her asking, he told her that he is talking from Sector-10, Bhilai, he is with his friend Sumit Chaudhari PW/31 and going to home, then appellant told him that she will talk on the next day. After some time of this telephonic conversation the incident took place.

In his cross-examination, he denied about not having any love affair with appellant and stated that his friends had knowledge of this fact. He denied that when he made a call from STD booth, the girl, who picked up the phone was other than the appellant.

12. Other relevant witness is Sumit Choudhary PW/31 who has stated about the love affair between applicant Rajeev Singh and appellant. He was in company with applicant on the date of incident and was present outside the St. Thomas college, when applicant came out of the hostel and told him that he has met

with appellant and appellant has given phone number of her hostel. Thereafter, both of them left for their residence, they stopped in Sector-10, where Rajeev Singh PW/39 told him that he has to talk with appellant, he waited outside, when Rajeev Singh PW/39 came out from STD booth then they both again proceeded towards his residence. He was told by applicant that appellant has asked him to come early on the next day, after passing of some time the incident took place and the acid was thrown on applicant and this witness. There is no statement in his cross-examination contradicting his statement in examination-in-chief. Other witnesses knowing about the affair between applicant and appellant have also been examined.

13. Sandeep Chandrakar (PW/20) has stated about the love affair of appellant and the applicant. He has stated that when applicant came back from Hyderabad, he did not have any conversation with the applicant. No other statement has been made by him regarding his knowledge about the incident and involvement of appellant in the case, this witness has been declared hostile by the prosecution.
14. Anurag Gupta PW/21 has stated that he went to visit applicant when he was admitted in the hospital after the incident, then he was told by the applicant that it was the deed of appellant. In cross-examination, he cannot state that on what basis applicant made allegation against the appellant. Kajal Makan PW/27 was also student of St. Thomas college, Bhilai and was the room mate of the hostel in which, appellant used to reside. She has not made any statement against the appellant or about having any knowledge of the affair between appellant and applicant and also about incident. She has been declared hostile by the prosecution and has not supported the case of prosecution.
15. Surendra Singh (PW/29) is the father of applicant, he has stated that his son met with an accident on 22nd September, when he

was told by the friends of his son that applicant had some dispute and hot talks with appellant on the same day. He has also stated that he came to know that appellant was threatening his son to dissuade him from taking admission in St. Thomas college, he had knowledge that his son Rajeev Singh (PW/39) and appellant had a love affair when he was studying at school, that was the reason for sending his son to Hyderabad for further studies. He has further stated that phone calls were received on the phone of his land line number giving threat about beating the applicant along with use of abusive words. He has not made any statement about the events of date of incident.

16. Ranjeeta Singh (PW/40) is the sister of the applicant, she has stated that applicant told him after the incident that appellant had with the help of co-accused persons organized this offence. This is an improved statement compared to her previous statement ExD/2.
17. Neelam Singh (PW/41) is the mother of applicant, she has stated that when she met with applicant in the hospital, applicant told her that he had been to meet appellant in her hostel to ask that why she is behind the making of threatening phone calls to him. On his saying so, she quarreled with appellant, later on, the incident took place. In cross-examination, she was confronted with her previous statement vide Ex. D/3, compared to which, her statement before the Court seems to be improved.
18. Sunil Thakur (PW/42) has stated that applicant told him in the hospital that appellant was behind the incident of acid attack, this statement is also improved version compared to his previous statement before the police.
19. Jaglal Yadav (PW/43) is well acquainted with the applicant, he has stated that when applicant met with appellant on 23rd September he met with an accident. He received a phone call

asking him not to continue in company of applicant and abusive words were used for him. He has stated that applicant met with appellant on 4.11.2003 to discuss about the phone calls received by him, when appellant gave him the phone number of her hostel to call back and when applicant called her from Sector-10 appellant asked about the whereabouts then incident took place.

20. On closely scrutinizing, the evidence of prosecution regarding involvement of appellant in the incident of acid attack, it is found that the sole author of this information is Rajeev Singh (PW/39), rest of the witnesses have given statement before the Court upon the information received from Rajeev Singh (PW/39). On examining the statement of PW/39, it is apparent that when he met with appellant on 4.11.2003 which is the date of incident and complained to her about blank threatening calls, in reaction appellant simply gave him a phone number to call her back after some time. No other statement is made as to any threatening given by appellant to the applicant regarding any dire consequences.

Later on, when applicant made a phone call from STD booth, appellant asked him about his whereabouts and told him to call her on the next day, applicant left the place of Sector-10 and went to a petrol pump in power house, where he purchased petrol and then had some snacks and it was only after that he and his friend Sumit Choudhary (PW/31) were proceeding towards their residence when incident took place near Janjgiri turn. The information of whereabouts of applicant taken by appellant if has any relevance or connection with the incident, it cannot be made out from this evidence, because applicant did not remain stationary on the spot after the phone call made to the appellant. There is a possibility that applicant told the appellant that he was proceeding towards his residence and appellant or the person involved in this incident had the knowledge about the route to be taken by the applicant for

proceeding towards his residence, but this is a remote possibility and can be considered only as a doubt.

Statement of Sumit Choudhary (PW/31), is limited to this information received by him from applicant, Rajeev Singh (PW/39) told him that appellant has asked him to come on the next day. He was not told about the inquiry made by appellant of the whereabouts of the applicant at the time when he called from STD Booth. Rest of the witnesses to whom applicant himself has said that it was appellant, who was behind the incident of acid attack, is a simple hearsay statement which cannot be given any importance as compared to direct evidence. Thus, on scrutinizing and analyzing the evidence on this point, it appears that the statement of Rajeev Singh PW/39 that appellant is behind this incident is simply an allegation and not supported by any information that appellant was actively engaged and interested to see that incident takes place.

21. The another evidence brought by the prosecution and relied upon by the trial Court is the evidence to the telephonic calls made to the land line phone of St. Thomas College, Bhilai and the hostel where appellant resided. Khoyam Kuriyakus (PW/5) is the Principal of St. Thomas College, Bhilai, has stated that the telephone number of college is-227597, any student can make a call from this telephone, for which, a register is maintained. As per the register of calls, one call was made by student Kajal Makan (PW/27) to telephone No.98271-45660 as a personal call. Baiji Thomas (PW/6) is the clerk, who maintained the register and that register was seized from his possession vide Ex.P/14. Raichal Joi (PW/8) has stated that as per the call register, Kajal Makan (PW/27) made a call to phone No.9827145660. The statement of these witnesses is unrebutted.
22. J.K. Kinekar (PW/10) is Sub-divisional Officer in telephone department, has stated that on the request of Investigating

Officer, details of phone No.07821-276030 was given vide Ex.P/19, according to which the telephone was registered in the name of D.S. Savitri, R/o Kumhari.

23. Dilip Jain (PW/12) is the proprietor of STD PCO in Sector-10, he has stated that telephone number in his STD booth is 2250090, no call details were found from the memory of the telephone in his booth. This witness was declared hostile and cross-examined by the prosecutor. He has not supported the prosecution in any manner.
24. Ranjeet Chouhan (PW/26) is the Manager of Reliance telephone company, he has stated that on request of P.S.-Bhilai, the call details of telephone No.98271-45660 from 1.10.2003 to 6.11.2003 were given vide Ex.P/37. This mobile was registered under the name of Rajendra Sahu(co-accused). This statement is not challenged in his cross-examination, it is though argued on behalf of the appellant that the call details vide Ex.P/37 has not been proved in accordance with Section 65(b) of Evidence Act.
25. As per the statement of Ranjit Chouhan (PW/26) phone calls were made from the No.98271-45660 to a land line No.07885032566, including the phone calls made on the date of incident i.e. 4.11.2003 from between 8 a.m. and 16.23 p.m., nothing has been stated about phone number 07885032566 by witnesses from St. Thomas College Khoyam Kurinyakus (PW/5), S. Thomas (PW/6) and Raichal Joi (PW/8).

ASI J.K. Sahu (PW/44) has stated that he obtained the call details of telephone No.5032566 but has not made any statement, as to the location of this land line number, pertaining to which register of calls was maintained and the register so seized has not been exhibited in the evidence by the prosecution. Hence, in this manner, there is no evidence to establish that the land line number of Bhilai-07885032566 was located in the hostel

where appellant resided. Further, there is no evidence based on record that a phone call was made from the STD booth of Dilip Jain (PW/12) by applicant on 4.11.2003, as no memory details could be collected from the telephone No.2250090 of the STD booth by the Investigating Officer. Rajeev Singh (PW/39) and other witnesses to who were informed about the incident have neither stated about telephone number installed in the hostel, where appellant resided. Thus, there is proof that co-accused Rajendra Sahu made certain phone calls to a telephone No.07885032566, but there is no evidence that this phone was located in the hostel, where appellant resided and, further, there is altogether no evidence that the phone calls made by co-accused Rajendra Sahu was received by appellant Dhanya Soman. Further there is altogether no evidence regarding registration and location of land line phone no. 07885032566.

26. Looking to these state of things, the investigation made in this case regarding the phone calls made by co-accused Rajendra Sahu, is of no consequence, and it cannot be held that appellant was connected in any manner with these phone calls. There is no admission by Kajal Makan (PW/27) that she made a phone call to the mobile number of co-accused Rajendra Sahu and neither she has stated that appellant made any such calls, even then her statement has been relied upon by the trial Court to give a finding of conviction.

27. Appellant has placed reliance on the judgment of Apex Court in **Firozuddin Bashheerudding and others Vs. State of Kelara**, reported in **(2001)7 SCC 596** and **Babu Singh Vs. State of Punjab**, reported in **(1996) 8 SCC 699**.

28. On the point of requirement of proof in case of conspiracy to commit an offence, it was held in the case of **Kehar Singh Vs. State of (Delhi Administration)** reported in **AIR 1988 SC 1883 :-**

275. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition:

'Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties "actually came together and agreed in terms" to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done".'

29. In view of the observation made by the Apex Court, there is a requirement of proof by way of some physical manifestation of agreement. Such agreement has to be deduced from the circumstances present in the prosecution evidence. Prosecution has taken support of some stray circumstances to connect the appellant in this case with the offence as a conspirator. After scrutinizing and analyzing the evidence of prosecution, it has been found that there is no such evidence in this case on the basis of which, it can be held that appellant and co-accused persons had some agreement between them for commission of this offence. Statement of love affair of appellant and applicant and the allegation made by the applicant in this respect, is not sufficient evidence. The evidence brought on the basis on

telephonic records also do not establish that appellant had been in contact with the accused persons at the time, when offence was committed. Thus, the prosecution evidence in this case does not inspire confidence and on the basis of such evidence conviction against the appellant could not have been held.

30. Hence, the finding of conviction recorded by the trial Court against the appellant is not based on legally admissible evidence which is liable to be set aside in this appeal.

31. While considering the grounds in revision, it was brought to the notice that the convicted accused respondents No.2 and 3 though preferred appeal but have withdrawn the same which implies that they have undergone their sentences and may have deposited fine or either served the sentences in default.

32. Almost 14 years have passed since the date of incident 04-11-2003. As per the provision of Acid attack was brought by Criminal Law Amendment Act, 2013 i.e. 326-A of the IPC according to which causing injury by use of acid shall be punishable with minimum punishment of 10 years which may extend to imprisonment of life and with fine provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim and further provided that any finer imposed under this Section shall be paid to the victim.

33. The applicant has placed reliance on the judgment of Patna High Court in the matter of **Upendra Paswan vs. State of Bihar**; Cr.A. No.51 of 2005 decided on 25-11-2016. In para 16 of the Judgment it was held:

“16. We are of the view that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate

financial relief. On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.”

34. In **Laxmi vs. Union of India**, reported in **(2014) 4 SCC 427**, Hon'ble the Supreme Court has held in para 14 as under : --

“14. We, accordingly, direct that the acid attack victims shall be paid compensation of at least Rs. 3 lakhs by the State Government/ Union Territory concerned as the aftercare 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 with the above direction.

35. It has been further held in the matter of **Parivartan Kendra Vs. Union Of India And Others**; reported in **2016 (3) SCC 571** that :

“12. The abovementioned direction given by this Court in *Laxmi case* is a general mandate to the States and Union Territories and is the minimum amount which the State shall make available to each victim of acid attack. The State and Union Territory concerned can give even more amount of

compensation than Rs.3,00,000/- as directed by this Court. It is pertinent to mention here that the mandate given by this Court in *Laxmi* case nowhere restricts the Court from giving more compensation to the victim of acid attack, especially when the victim has suffered serious injuries on her body which is required to be taken into consideration by this court. In peculiar facts, this court can grant even more compensation to the victim than Rs. 3,00,000/-".

36. These guidelines laid down by the Apex Court are for providing adequate compensation to the victims of acid attack. In this particular case, the victim of acid attack Rajeev Kumar Singh (PW-39) has expired during pendency of this revision petition and his parents have been permitted to prosecute this revision petition. The consideration on the point of compensation is very much alive in this case. Rs.75,000/- was ordered to be paid to deceased applicant Rajeev Singh out of the fine deposited in this case as compensation. Section 357 (1)(d) of the Cr.P.C. was invoked to pass this order. Considering the fact that applicant (deceased) needed to undergo series of treatment even then, he had to suffer disfiguration and loss of sight in one eye. The compensation awarded by the trial Court seems to be meager which needs enhancement. In present state of things it does not appear to be fit to enhance the sentence of imprisonment awarded to the convicted respondents No.2 & 3, but to meet the requirement of expenses made by the applicant (deceased) and his parents, the fine amount can be sufficiently enhanced.

37. After due consideration in view of the findings arrived at in the appeal, the appeal is allowed. The conviction and sentence in the impugned judgment against the appellant Dhanya Soman is hereby set aside. She is on bail. Her bail bonds are discharged. The fine amount, if paid shall be recoverable by the appellant.

38. After due consideration in the revision petition, we are inclined to allow the revision in part. The revision is allowed in part. The sentence of imprisonment awarded to the convicted respondents No.2 & 3 is affirmed but the fine amount as ordered in the impugned judgment is enhanced in view of the guidelines of Apex Court in *Laxmi case (supra)* and *Parivartan Kendra case (supra)*.

39. For conviction under Sections 307/34, 307/34 and 120-B of the IPC, respondent No.2 Rajendra Kumar Sahu is directed to pay additional fine of Rs.1,50,000/-, Rs.1,50,000/- and Rs.50,000/- respectively apart from the substantive sentence of imprisonment as affirmed in this judgment. For conviction under Section 307, 307 and 120-B of the IPC, respondent No.3 Ram Bhagwan is also directed to pay additional fine of Rs.1,50,000/-, Rs.1,50,000/- and Rs.50,000/- respectively apart from the substantive sentence of imprisonment as affirmed in this judgment.

On non-payment of fine, respondents No.2 & 3 shall be required to undergo rigorous imprisonment of two years, two years and one year respectively for each default with respect to fine as awarded in aforementioned paragraph.

From the amount deposited as fine Rs.5,00,000/- shall be paid by way of compensation to the applicants for the expenses incurred for the treatment of the deceased Rajeev Singh and remaining Rs.2,00,000/- shall be paid to another victim of acid attack in this case Sumit Choudhary (PW/31). If the compensation as ordered in the impugned judgment has been received by the victims then the same shall be adjusted with the compensation awarded in this appeal.

40. The relevant fact in this case is this that the victim Rajeev Singh has expired during pendency of this revision and now his

parents, the applicants are prosecuting this revision. Hence, in the particular circumstance of this case, it is found suitable that the compensation of Rs.5,00,000/- be paid by the State Government to the applicants in compliance with the law laid down by Hon'ble Supreme Court. If the compensation is not paid by the State within 3 months from the date of this judgment, the Member Secretary, State Legal Services Authority shall have liberty to do the needful to ensure compliance.

41. The appeal and revision are thus disposed of.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.C.S. Samant)
Judge