

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.11.2020

+ **CRL.A. 283/2017**

JAGDISH

.....Appellant

Versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Kanhaiya Singhal, Advocate.

For the Respondent : Mr. Amit Gupta, APP for State.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 16.09.2016, passed by the Special Judge-2, NDPS Act (Central District), Tis Hazari Courts, whereby the appellant was convicted for committing the offences punishable under Sections 326A and 326B of the Indian Penal Code, 1860 (hereinafter 'IPC').

2. The appellant also seeks to challenge an order on sentence dated 17.09.2016, whereby he was sentenced to undergo rigorous imprisonment for a period of ten years along with a fine of ₹10,000 for committing the offence punishable under Section 326A of the IPC

and in default of payment of fine, to undergo simple imprisonment for a further period of one month. The appellant was also sentenced to undergo rigorous imprisonment for a period of five years along with a fine of ₹10,000 for committing the offence punishable under Section 326B of the IPC and in default of payment of fine, to undergo simple imprisonment for a further period of one month. Both sentences were directed to run concurrently.

3. The case of the prosecution is that on 09.09.2014, at about 06:45 a.m., in front of Street no. 42, Beadon Pura, Karol Bagh, New Delhi, the accused (the appellant herein) threw acid, which he was carrying in a bottle wrapped with newspaper, on his wife (Smt. Bimla). At the material time, she was accompanied by her sister-in-law (*bhabhi*), who was carrying her minor son (Sunny) aged about three years, in her arms. The acid also fell on Sunny and he suffered acid burns. Smt. Bimla suffered grievous hurt, while Sunny suffered simple injuries. The offence was committed when the petitioner's wife and her sister-in-law were returning from a public lavatory (*sulabh sauchalaya*).

4. Information regarding the injured Bimla who was admitted at Lady Hardinge Hospital with acid burn injuries (MLC No. 47598/14) and a child named Sunny who was admitted at Kalawati Saran Children's Hospital (MLC No. 192/14) was received at PS Karol Bagh, at about 8.15 am, on 09.09.2014. The said information was entered as DD No. 8A. The same was marked to SI Naresh Kumar. He along with Ct. Anand Kumar reached Lady Hardinge Medical College

and recorded the statement of the injured Bimla (Ex PW2/A). He sent the *rukka* through Ct. Anand to the police station on the basis of which the FIR in question (FIR no. 623/14, under Sections 326A and 326B of the IPC) was registered with PS Karol Bagh. According to the prosecution, the accused ran away after the incident. Efforts were made to locate him but he could not be found. He was arrested on 28.09.2015 by SI Rajpal when he was produced near Liquor Vend, Ravi Raj Chowk, Karol Bagh, by his father-in-law Sh. Cheeku and brother-in-law Sh. Praveen.

5. The accused was charged with offences punishable under Sections 326A and 326B of the IPC. He pleaded not guilty and the matter was set down for trial. During the course of the trial, the prosecution examined twelve witnesses. The defence did not lead any evidence.

Evidence

6. W/SI Suman, PS Karol Bagh, was examined as PW1. She stated that on 09.09.2014, she was working as a Duty Officer from 08:00 a.m. to 04:00 p.m. At about 08:15 a.m., she received telephonic information from Lady Hardinge Hospital regarding burn injuries suffered by a lady Bimla and a child who had been admitted to the hospital by her brother Praveen. She entered the said information as DD No. 8A (Ex PW1/X) and handed over a copy of the same to SI Naresh. At about 09:50 a.m., Ct. Anand came to PS K. Gate along

with the original *rukka*. She got FIR No. 623/14 registered. PW1 was not cross-examined.

7. Smt. Bimla, the wife of the accused (the appellant), was examined as PW2 on 11.03.2016. She stated that she married Jagdish four years ago. She stated that her husband is a drug addict and would even consume beer etc. and would beat her. She could not recall the date of the incident, however, she stated that it was two years ago and at the time, she was residing at her paternal house. She stated that on that day, at about 06:00 a.m., she along with her *bhabhi* Santosh were going to a *sauchalaya* and at that time, Santosh had her son, Sunny, aged about five years with her. On their way back, she saw her husband. He had a bottle wrapped in a newspaper in his hand. The bottle contained *tejab* (acid) and suddenly, her husband threw acid on her, which caused injuries to the left side of her face, right shoulder and her back. The accused also threw acid on the neck and back of Sunny who, at that time, was in the lap of her sister-in-law (Santosh), and fled from the spot. PW2 stated that she, her sister-in-law and the child Sunny went to Lady Hardinge Hospital for treatment. PW2's brother also reached the hospital. The police officials also reached the hospital. PW2 correctly identified the accused in court. She stated that the police officials searched for the bottle but the same could not be recovered.

8. In her cross-examination, PW2 affirmed that her husband was married to some other woman prior to his marriage with her. He had divorced his previous wife through *panch*. She affirmed having signed

her statement in the hospital and that she did not sign any documents, when she had shown the place of occurrence to the police officials. She affirmed that when the accused threw acid on her, many persons had gathered at the spot, including local residents. She could not say whether the police had asked any public persons to join the investigation. She affirmed that when her husband threw acid on her, some droplets of the same were also sprinkled on the wall, however, she was unaware as to whether police officials had scratched the wall to take a sample of the same. She stated that after she received the acid injury, she first went to her residence and thereafter, reached the hospital at about 07:00 a.m.

9. Praveen, the brother of Smt. Bimla (PW2), was examined as PW4. He stated that his sister was married to Jagdish. He correctly identified the accused in court. He stated that on 09.09.2014, his sister was residing at his residence, and had been doing so for two months prior to that date. She had done so because her husband would consume liquor and beat her up. He stated that on 09.09.2014, at about 07-07:30 a.m., he was present at his residence when Bimla and his sister-in-law Smt. Santosh came there and he noticed an acid (*tejab*) injury on the left side of Bimla's face. There were also acid injuries on the head and other parts of Sunny's body (Smt. Santosh's son). Upon inquiring, he was informed by both that when they were returning from the *sulabh sauchalaya* and when they reached in front of Shop no. 2952, Jagdish (the appellant) had thrown acid on them. At that time, Smt. Santosh had Sunny in her lap.

10. In his cross-examination, he stated that no other public person came to their residence along with his sister and sister-in-law. He affirmed that there were three acid stains on the clothes of his sister. They reached Lady Hardinge Hospital at about 08-08:30 a.m. and his sister was treated and discharged. His statement was recorded at the hospital. He stated that the police officials did not record the statement of any other person at the hospital. He affirmed that his sister wanted to divorce the accused. He affirmed that the police officials did not seize any clothes of his sister in his presence.

11. Smt. Santosh, the sister-in-law of Smt. Bimla (PW-2), deposed as PW5. She stated that on 09.09.2014 at about 06-06:30 a.m., she and her *nanad* (sister-in-law), Bimla were returning to their residence from the *sulabh sauchalaya*. At that time, her son Sunny, aged about three years, was in her lap. At some distance from the toilet, Bimla's husband appeared and he had something wrapped in a newspaper in his hand. Suddenly, he threw *tejab*, from a bottle and the same fell on the head and near the shoulder of her son. He again threw acid which fell under the right eye of Bimla (corrected herself to left eye – PW5 could not recall as to which eye the acid fell on) and thereafter, Jagdish ran away from the spot. She along with Smt. Bimla came to her husband, where PW5 informed her *devar* (brother-in-law) Praveen, who took them to Lady Hardinge Hospital. PW5 correctly identified the accused in court. In her cross-examination, she affirmed that she and Smt. Bimla reached their house after the occurrence of the incident at about 06/07:00 a.m. At that time, her mother-in-law, father-

in-law, *nanad* and brother-in-law were present at the house. She did not know if the police officials had recorded the statement of anyone at her house. Her statement was recorded by the police officials at Kalawati Hospital (where she was directed to take her son by the doctors at Lady Hardinge Hospital). She affirmed that Smt. Bimla had been residing at her house for about two and a half months prior to the said incident. PW5 did not know whether Smt. Bimla wanted to divorce Jagdish. She stated that no public persons had gathered at the spot during the occurrence of the alleged offence. She affirmed that the police officials had visited her residence two-three times. She affirmed that the clothes worn by Smt. Bimla, which had acid stains, were not produced before the police officials.

12. SI Naresh Kumar, PS Karol Bagh, deposed as PW10. He stated that on 09.09.2014, he was serving at PS Karol Bagh. On that day, he received a copy of DD No. 8A and thereafter, he reached Lady Hardinge Medical College Hospital along with Ct. Anant Kumar. At the hospital, he came to know that Smt. Bimla was admitted in Lady Hardinge Medical College and a child namely Sunny, aged about three years, was admitted in Kalawati Saran Hospital. She was declared fit by the doctor to give a statement. Sunny's MLC mentioned the nature of the injury suffered by him as "*simple*". He recorded the statement of Smt. Bimla. He stated that Santosh (PW5) produced a t-shirt of the victim Sunny, which had some holes. The same was kept in a white cloth, which was sealed with the seal of NK. He stated that he along with Ct. Anant Kumar, Santosh and Praveen returned to the spot.

While he was conducting investigation, Smt. Bimla also reached the spot. At her instance, PW10 prepared the site plan (Ex. PW10/B). PW10 stated that he made efforts to arrest the accused from Kota, Rajasthan and Gurgaon, Haryana but he could not be arrested.

13. In his cross-examination, PW10 affirmed that he reached Lady Hardinge Hospital at about 08:40 a.m. along with Ct. Anand and at about 09:00 a.m., they reached Kalawati Saran Hospital where the child was admitted. At about 09:10 a.m., he recorded the statement of Smt. Bimla at Lady Hardinge Hospital. He affirmed that he had sealed Sunny's t-shirt at the hospital when it was shown to him. He stated that despite search, neither the bottle was traceable during the spot investigation nor any stains of acid were traceable at the spot.

14. HC Vikas was examined as PW3. He testified that on 28.09.2015, he was posted at PS Karol Bagh. He stated that on that date, at about 07:14 p.m., he had received information regarding a quarrel at Gaffar Market in front of Ravi Raj Kulfi Wala. He stated that he recorded the said information as DD No.30A (Ex.PW3/A).

15. Ct. Nahar Singh was examined as PW7. He testified that on 28.09.2015, he was serving at PS Karol Bagh and on that evening, he had accompanied HC Ramesh to Ravi Chowk on receipt of a call regarding a quarrel. He stated that he found Cheeku Ram and Praveen present there. Both of them had apprehended Jagdish and they represented that he had thrown acid (*tejab*) on Smt. Bimla. Accordingly, HC Ramesh arrested the appellant. Ct. Nahar Singh also

identified the appellant in court. He further identified his signatures on the arrest memo (Ex.PW7/A) and the appellant's personal search memo (Ex.PW7/B). He stated that thereafter, they brought the accused (the appellant) to the PS and he was sent to the hospital for his medical examination. He further stated that HC Ramesh Chand recorded his statement.

16. HC Ramesh Chand was examined as PW12. He testified that on 28.09.2015, he was serving at PS Karol Bagh. While he and Ct. Nahar Singh were patrolling in the area, they received a call from the Control Room regarding a quarrel near a liquor vend at Ravi Raj Chowk. This information was received at about 07:15 p.m. He stated that he and Ct. Nahar Singh reached the spot. On reaching there, Praveen and his father Cheeku produced the accused Jagdish, whom they had apprehended. He stated that they had recorded their statements and arrested the accused Jagdish. He deposed that he prepared the arrest memo and also conducted the personal search of the accused. Subsequently, the accused was medically examined at Lady Hardinge Hospital and thereafter, he was lodged in the lock-up.

17. Dr. Ramya Pemula was examined as PW9. She stated that she was working as a Senior Resident at RML Hospital. She testified that she had examined the record of Bimla but did not remember the date on which she had done so. She confirmed that she had opined that the injury suffered by Bimla was grievous in nature. She testified that the said medical opinion (Ex.PW9/A) bears her signature. She testified that there was a facial scar with ectropion on the left upper eyelid of

Bimla which was a result of an acid / chemical burn and consequently, she was unable to close her left eye completely. PW9 was not cross-examined.

18. Dr. Amit Modi was examined as PW11. He testified that on 09.09.2014, he was serving at Kalawati Saran Hospital and, that he had medically examined Sunny, who was about three years old. He identified his signatures on the MLC (Ex.PW11/A). He further testified that on examination he had found the following injuries on the child: *“(1) simple burn injuries over left side of neck” and “(2) simple burn injuries over left side of skull”*. He stated that both the aforesaid injuries were due to acid burns. He testified that after examining the child, he had referred him to Pediatric Surgery Department for further evaluation and treatment.

19. The statement of the accused (the appellant) was recorded under Section 313 of the Cr.PC. He affirmed that his wife Bimla had been residing at her paternal house since July, 2014 and the remaining allegations against him by his wife were wrong. He denied having visited the spot of the occurrence on the date of the incident and denied all other allegations of throwing acid, as well. He stated that all the prosecution witnesses had deposed falsely and this was a false case against him.

Submissions

20. Mr. Kanhaiya Singhal, learned counsel appearing for the appellant challenged the impugned judgment dated 16.09.2016 and

order on sentence dated 17.09.2016, essentially, on the following fronts. He contended that that entire case of the prosecution rests on the uncorroborated testimonies of Smt. Bimla and Smt. Santosh and the testimony of Praveen (PW4) ought to be considered as hearsay evidence. He submitted there are six aspects, which the prosecution failed to prove and are fatal to the prosecution's case. First, that the IO did not ask the doctor treating the injured persons to seize/preserve body tissue of the injured persons to prove that their injuries were caused by acid. Second, that no traces of acid were found on the crime scene and that the crime team was not summoned to the spot. Third, that sincere efforts were not made to recover either the bottle which allegedly contained the acid nor the newspaper allegedly wrapped around the said bottle. Fourth, no FSL report was furnished to show that the injuries caused to the victims were caused by a corrosive substance/acid. Fifth, the clothes of Smt. Bimla were not seized; even though the minor victim's t-shirt was seized, the same was not sent to FSL for examination. And, sixth, that no independent witnesses were examined even though PW2, in her examination, deposed that public persons were present at the spot of the occurrence.

21. Further, Mr. Singhal submitted that there are inconsistencies, contradictions and improvements in the testimonies of the witnesses and thus, the impugned judgment and order on sentence ought to be set aside. He stated that PW2 had stated that her statement was recorded and signed at the hospital, while PW4 stated that only he gave a statement at the hospital and no one else did. He pointed out

that PW5 had testified that public persons had not gathered where the offence had taken place but PW2 stated that a lot of public persons had gathered at the spot.

22. Mr. Singhal further stated that PW2, PW4 and PW5 all stated that PW2 and PW5 had come home after the attack. He contended that this conduct does not inspire confidence as someone who has suffered an acid attack would not be in a position to even walk due to severe pain and suffering. He also states that there is absence of a scaled site plan and the rough site plan shows that place of the alleged incident to be near Gaffar Market/Beadon Pura, which are densely populated areas, however, no independent witnesses had joined in the proceedings. He further contended that the MLC of the minor victim (Ex. PW11/A) records the history as ‘Acid Attack’ and that it would appear as if in the first blush, a person had narrated the incident as acid burns and modified the same to reflect an acid attack.

23. Another aspect which Mr. Singhal put forth before the Court was that the appellant was not afforded a fair trial and an effective opportunity to defend himself. He argued that the testimony of PW11 went unchallenged as there was no cross-examination. PW11’s evidence was recorded on 16.08.2016 and on that date, the counsel for the accused was not present. However, the Trial Court recorded “Nil. Opportunity Given.” and proceeded with the case. Further, PW1, PW9, PW11 and PW12 were not cross-examined and that the cross-examination of other witnesses was done very poorly.

Reasons and Conclusion

24. The first and foremost question to be addressed is whether the prosecution has established that the injuries suffered by the victims (Bimla and Sunny) were due to acid thrown at them as alleged. Mr. Singhal had contended that the prosecution had not collected any corroborative evidence to establish the same and the prosecution's case rested entirely on the testimony of the victim, Bimla and her sister-in-law, Santosh. He had emphasized that the treating doctors had not preserved the body tissue of the injured persons to establish that the injuries were caused by acid and no traces of acid were found at the scene of the crime. He further stated that neither the bottle which contained the acid nor the newspaper in which the bottle was wrapped, had been recovered. Further, he also stated that the clothes of the victim Bimla were not seized and the clothes worn by the child (Sunny) were also not sent to FSL for examination.

25. The aforesaid contentions are unpersuasive. In this case, there is no doubt whatsoever, that the injuries suffered by victims (Bimla and Sunny) were caused due to acid burns. Bimla (PW2) had testified that the appellant had thrown acid on her and the child Sunny, while they were returning back from the public lavatory. Dr. Ramya Pemula (PW9) had testified that the injuries suffered by Bimla were a result of acid/chemical burns.

26. Dr. Amit Modi (PW11) had unequivocally testified that the injuries suffered by Sunny were due to acid. The MLC of Smt. Bimla

(PW8/A) also indicates that she had reported that acid was thrown. The MLC also indicates that she reported a burning pain over her face and back and that she had injuries over the left side and multiple small injuries over her back due to chemical burns. The MLC of the victim Sunny (Ex.PW11/A) also records history of acid attack. The evidence of the medical doctors (PW9 and PW11) leaves no room to doubt that the victims had suffered acid/chemical burns. PW2, who is the victim also stated in unambiguous terms that she and Sunny were injured as a result of the accused throwing acid on them. Her testimony regarding the incident is wholly consistent with the testimony of PW5 (Santosh), who was accompanying her at the material time. Thus, the contention that the prosecution's case rested only on the uncorroborated testimonies of PW2 and PW5, is erroneous.

27. Having stated the above, this Court is also of the view that the testimony of PW2 did not require any corroboration. It is seen that her testimony is wholly consistent with her statements recorded earlier. She is an injured witness and it is well settled that the testimony of an injured witness is required to be believed unless there are reasons to doubt the same. This Court is of the view that PW2 is a wholly reliable witness and the appellant could be convicted solely on her testimony. However, it is seen that her testimony is also corroborated by other evidence as obtained in this case. The testimony of PW5 is wholly consistent with her testimony. The MLC as well as the testimony of the treating doctors also supports the case of the prosecution.

28. It is also relevant to keep the timelines in mind. The incident is stated to have occurred in the early hours (around 6:45 a.m.) on 09.09.2014. The victims had proceeded to their home and thereafter, immediately to the hospital. The information from the hospital was received at PS Karol Bagh at about 08:15 a.m. The concerned police officials had proceeded to the hospital and the statement of the victim Bimla was recorded. The *rukka* was sent back immediately and the FIR was registered at 09:50 a.m. The entire timelines are consistent with the allegation that the acid was thrown on the victims at about 06:45 a.m.

29. The contention that the conduct of the victims in going back to their residence after the attack and not going to the hospital immediately raises doubts as to the case set up by the prosecution, is wholly unmerited. It is relevant to note that the victim Bimla along with her sister-in-law and her child were returning back to their residence from a public lavatory. It would be natural for them to rush to their residence to try and address the injuries. In the present case, they had done so and had immediately proceeded to the hospital. The contention that PW2 would not be able to walk after the acid attack is without any substance or basis.

30. The contention that the MLC of Sunny had recorded the injury as acid burns, which was scored of and noted as an acid attack raises doubts as to the prosecution's case, is also, unpersuasive. PW5 (Santosh) who was the victim's mother had obviously reported the said injuries as acid burns caused by an attack and therefore, the MLC

records the same as an acid attack. The scoring off of the word ‘burns’ in the MLC does not raise any doubt as to the case whatsoever, given the evidence obtained in the matter.

31. The contention that there are material inconsistencies in the testimonies of the witnesses is also unpersuasive. The statement of PW2 was recorded at the hospital. PW2 as well as PW10 had testified to the aforesaid effect. PW4 had also stated that he had given his statement in the hospital. In his cross-examination, PW4 had clarified that the statement of her sister (Bimla) was also recorded at the hospital. The inconsistency in the statement of PW2 and PW5, as to the number of public persons that had gathered at the spot, is also not material and does not to raise any doubts as to whether the appellant had committed the crime, for which he has been convicted.

32. Lastly, it was submitted by Mr. Singhal that the appellant was not afforded a fair trial inasmuch as the testimony of most of the witnesses remained unchallenged, as they were not cross-examined. The fact that the witnesses had not been cross-examined does not render the trial unfair. Undisputedly, the appellant was given full opportunity to cross-examine all the witnesses and to test the veracity of their testimonies.

33. Mr. Singhal had stated that the testimony of PW11 went unchallenged as the appellant’s counsel was not present there. This contention is also unmerited as the record shows that opportunity to cross-examine PW11 was given, however, he was not cross-examined.

If the appellant's counsel was of the view that PW11 was required to be cross-examined, it was always open for the appellant to move an appropriate application before the Trial Court but no such application was moved. Even if it is accepted that the appellant's counsel was not present on the particular date (assuming that he wasn't), the same did not vitiate the trial. It is obvious that the appellant found no reason to challenge the testimony of PW11. This Court does not find any reason to discount the testimony of PW11.

34. As pointed out by Mr. Singhal, it was apposite for the investigation agency to have sent the clothes worn by the victim to FSL and also to have conclusively ascertained the acid/chemical thrown on the victims. However, their failure to do so in the given facts of this case, does not raise any doubt that the appellant is guilty of the crime for which he has been convicted.

35. In view of the above, the appeal is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

**NOVEMBER 12, 2020
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