

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.427 of 2014**

Arising Out of PS. Case No.-15 Year-2012 Thana- AAYAR District- Bhojpur

1. Futehari Ram, Son of Late Lal Mohar Ram.
2. Makuni Ram, Son of Late Lal Mohar Ram.
3. Ramjeet Ram, Son of Sapan Ram.

All are Resident of Village - Sripur, P.S.- Ayar, District – Bhojpur.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

with
CRIMINAL APPEAL (DB) No. 511 of 2014

Arising Out of PS. Case No.-15 Year-2012 Thana- AAYAR District- Bhojpur

Suresh Ram, Son of Late Butan Ram Resident of Village - Sripur, P.S. Ayar [Jagdishpur], District – Bhojpur.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In CRIMINAL APPEAL (DB) No. 427 of 2014)

For the Appellants : Mr. Sarvadeo Singh, Advocate.
Mr. Sanjay Kumar, Advocate.

For the State : Dr. Mayanand Jha, A.P.P.

(In CRIMINAL APPEAL (DB) No. 511 of 2014)

For the Appellant : Mr. Vikram Deo Singh, Advocate.
Mr. Shankar Kumar, Advocate.

For the State : Dr. Mayanand Jha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 13-07-2022

Criminal Appeal (DB) No.427 of 2014 has been filed
by original accused nos.1 to 3, namely, Futehari Ram, Makuni



Ram and Ramjeet Ram respectively whereas the Criminal Appeal (DB) No.511 of 2014 has been filed by original accused no.4 Suresh Ram. By these appeals, they are challenging the Judgment and Order dated 22nd April, 2014 and 25th April, 2014 respectively passed by the learned Adhoc Additional Sessions Judge-I, Bhojpur, Ara, in Sessions Trial No.126 of 2013, whereby they all came to be convicted of the offences punishable under Sections 326 read with 34 and 307 read with 34 of the Indian Penal Code. They all are sentenced to suffer rigorous imprisonment for life apart from a direction to pay fine of Rs.50000/- each for the offence punishable under Section 307 read with 34 of the Indian Penal Code and in default of payment of fine, further simple imprisonment for six months. They all are awarded rigorous imprisonment for life for the offence punishable under Section 326 read with 34 of the Indian Penal Code with a direction to pay fine of Rs.50000/- each and in default, to undergo simple imprisonment for six months. Substantive sentences are directed to run concurrently by the learned trial court. As both these appeals are challenging the same Judgment and Order passed by the learned Adhoc Additional Sessions Judge-I, Bhojpur, Ara, they are being disposed of by this common Judgment. For the sake of



convenience, the appellants/accused shall be referred to in their original capacity as “an accused”.

2. Facts in brief projected from the police report leading to the prosecution of the accused can be summarized thus:

(a). The victim of the crime in question is first informant/ P.W.6 Awadhesh Ram resident of village-Sripur in Bhojpur District of Bihar. All accused persons are his co-villagers. The first informant was having dispute with them regarding land.

(b). According to the prosecution case, the incident took place at 07.00 P.M. of 26.03.2012 near the field of Sup Dayal Mahto at the outskirts of village-Sripur. First informant/ P.W.6 Awadhesh Ram, after easing himself was returning to his house. When he was about 400 yards away from the village the accused persons accosted him near the field of Sup Dayal Mahto. He was surrounded and the accused persons started abusing and scuffling with him. Accused Ramjeet Ram and Makuni Ram held him by his hands. Accused Futehari Ram then exhorted and directed other accused persons to pour acid in the mouth of P.W.6 Awadhesh Ram. Thereupon accused Suresh Ram started pouring acid in the mouth of P.W.6 Awadhesh Ram from the steel glass. P.W.6 Awadhesh Ram shut his mouth. The



acid splashed by accused Suresh fall on his eye, lips, neck, chest and stomach. Because of pain, P.W.6 Awadhesh Ram made hue and cry. Many people from the village started gathering there and the accused persons, therefore, ran away. The incident of this acid attack on P.W.6 Awadhesh Ram came to be witnessed by the villagers including P.W.1 Shyam Bihari Ram and P.W.4 Sonapati Devi, who happens to be wife of the victim. The victim was then taken to the Sadar Hospital where he was admitted for indoor treatment. During the course of his medical treatment on the next date, i.e. 27.03.2012 at 02.00 P.M., he lodged report of the incident with A.S.I. S.N. Mishra of the Ara City Police Station.

(c). Routine investigation followed after registration of Crime No.15 of 2012 with the Police Station- Nath Nagar in pursuant to the F.I.R. lodged by P.W.6 Awadhesh Ram. Statements of the witnesses came to be recorded and after completing the investigation, the accused persons came to be chargesheeted.

(d). The learned trial court framed and explained charges for the offences punishable under Sections 341, 324, 326 and 307 of the Indian Penal Code to the accused persons. They pleaded not guilty and claimed trial.



(e). In order to bring home the guilt to the accused, the prosecution has examined in all eight witnesses. Co-villager Shyam Bihari Ram is examined as P.W.1. Another co-villager Rajendra Ram is examined as P.W.2. P.W.3 Shambhu Kumar is also the co-villager. Wife of victim Awadhesh Ram, namely, Sonapati Devi, is examined as P.W.4. Raj Bhuwan Ram, another co-villager is examined as P.W.5. Injured-first informant Awadhesh Ram is examined as P.W.6. Dr. Praveen Kumar Sinha, the Medical Officer of the Sadar Hospital, Ara, is examined as P.W.7. A.S.I. Sarju Pandey is examined as P.W.8.

(f). The defence of the accused was that of total denial and false implication. However, they did not enter into the defence.

(g). After hearing the parties, the learned trial court, by the impugned Judgment and Order was pleased to convict the accused persons and to sentence them as indicated in the opening paragraphs of this Judgment.

3. We heard the learned Advocates appearing for the appellants in both appeals. It is argued on behalf of the appellants in Criminal Appeal (DB) No.427 of 2014 that the role attributed to these three accused was limited to that of scuffling and holding P.W.6 Awadhesh Ram. None of them had suffered



any injury from the acid and, therefore, their presence on the spot of the incident is having doubtful. It is further argued that considering the role attributed to these three accused persons, the learned trial court was not justified in imposing the sentence of life imprisonment on them. According to the prosecution case, the motive attributed to these accused persons was that of land dispute with the victim. Hence, according to the learned Advocate, these three accused persons are falsely implicated in the crime in question. It is further argued that identification of the accused by the victim is highly doubtful as the incident allegedly took place at 07.00 P.M. and there is no evidence regarding the source of light on the spot of the incident. On behalf of appellant Suresh Ram {in Criminal Appeal (DB) No.511 of 2014}, it is argued that no offence punishable under Section 307 of the Indian Penal Code is made out. Considering the wound suffered by the victim, it cannot be said that the accused persons intended to kill him. It is further argued that there is no evidence of further medical treatment, if any, given to the victim and the burns sustained by him seems to be superficial and not deep burn wounds. Hence, the evidence regarding intention to kill is absent and, therefore, the offence cannot travel beyond the one punishable under Section 324 of



the Indian Penal Code. It is argued that even there is no evidence of suffering grievous hurt by the victim. The learned counsel for the appellants in Criminal Appeal (DB) No.427 of 2014 also argued that the offence can be at the most the one punishable under Section 326(B) of the Indian Penal Code. Reliance is placed on the Judgments of the Supreme Court in **Suryakant Baburao alias Ramrao Phad Versus State of Maharashtra** reported in AIR 2019 Supreme Court 3629 and the **State of Madhya Pradesh Versus Harjeet Singh and Another** reported in (2019) 20 SCC 524 and it is contended that sentence imposed upon the appellants is not proper and the offence punishable under Section 307 of the Indian Penal Code is not made out.

4. As against this, the learned Prosecutor opposed the appeals by arguing that the circumstances in which the crime is committed and the manner in which the victim suffered the injuries at the hands of the accused makes out the offence punishable under Section 307 of the Indian Penal Code. It is further argued that evidence on record clearly shows that the accused persons had attempted to thrust the acid into the mouth of P.W.6 Awadhesh Ram and this act reflects their intention to commit murder of Awadhesh Ram.



5. We have considered the submissions so advanced and we have also perused the records and proceedings including oral as well as the documentary evidence.

6. According to the prosecution case, by wrongfully restraining P.W.6 Awadhesh Ram, the accused persons attempted to commit his murder by forcefully administering the acid to him. Considering the allegations against the accused persons, fate of the prosecution case hinges, to a large extent on testimony of P.W.6 Awadhesh Ram, who is an injured witness in the case in hand. After sustaining acid attack at 07.00 P.M. of 26.03.2012, as deposed by him, he was taken to the Sadar Hospital, Ara, where he took treatment as indoor patient. It would be apposite to place on record the medical evidence regarding the injuries suffered by him in the acid attack sustained by him because the nature of injuries actually sustained by him can be of a great assistance in finding out the intention of the accused.

7. P.W.7 Dr. Praveen Kumar Sinha, C.M.O. of the Sadar Hospital, Ara, has stated in his evidence that he had examined P.W.6 Awadhesh Ram at 09.55 P.M. of 26th March, 2012, i.e., on the date of the incident itself at the Sadar Hospital, Ara. As per version of this witness, he noted burn injury on



right side of his head and right side of his chest caused by acid. The face including forehead, eyes, right side of nose, cheek including mandibular region, right ear, whole right side of neck and right side of the chest of the victim were having burn injuries as stated by this witness. This Medical Officer deposed that nature of injuries sustained by P.W.6 Awadhesh Ram were serious in nature and were caused by the acid. He proved the injury report (Ext.1) during the course of his evidence. In cross-examination, this Medical Officer clarified that the term face includes head, forehead, eyes, right side of nose, cheek including mandibular region. He admitted that the injury report is on the plain paper and it does not bear his official seal. He denied the suggestion that such injuries can be caused by the boiling water. He denied that his injury report is incorrect. We see no reason to disbelieve this official witness.

8. From perusal of this medical evidence adduced by the prosecution it becomes clear that during the course of his medical examination within three hours of the incident, P.W.6 Awadhesh Ram was found to have suffered grievous burn wounds caused by acid on the vital part of his body, i.e., the entire right side of his head, face and the chest including injuries to his both eyes. There is nothing to disbelieve the version of



this disinterested Medical Officer on the aspect of sustaining acid burns on the vital part of the body by P.W.6 Awadhesh Ram.

9. Now, let us examine the version of P.W.6 Awadhesh Ram in order to decide whether the accused persons by acid attack attempted to commit his murder. As according to the prosecution case, the injured was having dispute with the accused persons, evidence of the injured will have to be examined critically and cautiously for inferring the role played by the accused persons in the crime in question.

10. The Medical evidence on record makes it clear that P.W.6 Awadhesh Ram had suffered injuries in the incident of the acid attack in question at that time and in the same occurrence. He is, therefore, the most natural witness to the incident and there is inbuilt guarantee that a person injured in the occurrence is an eye witness to the incident. In the matter of **Bonkaya Versus State of Maharashtra reported in (1995)2 SCC 447**, the Supreme Court has held that injured witnesses are stamped witnesses whose presence on the spot admit no doubt. As being themselves victims, they would not leave the real assailants and substitute them with innocent persons. Evidence of injured eye witness cannot be discarded in toto on the ground of inimical



disposition towards the accused or because of improbabilities of narrating the details of actual attack. Evidence of such victim is required to be scrutinized with caution taking into account the factum of previous enmity and tendency to exaggerate and to implicate as many as possible. In the matter of **Shivalingappa Kallayanappa Versus State of Karnataka reported in 1994 Supp (3) SCC 235**, the Supreme Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case and it is proved that he suffered the injury during the said incident. In **State of U.P. Versus Kishan Chand, reported in (2004) 7 SCC 629**, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide **Krishan Versus State of Haryana, (2006) 12 SCC 459**).

11. Keeping in mind these principles of appreciation,



evidence of an injured witness, let us see what P.W.6 Awadhesh Ram is stating about the incident of murderous assault on him.

12. It is in evidence of P.W.6 Awadhesh Ram that at 07.00 P.M. of 26.03.2012, after easing himself, from the canal, he was going to his house. When he reached near the electric pole at the field of Sup Dayal Mahto, the accused came. Accused Ramjeet Ram started abusing him. Similarly accused Futehari Ram and Makuni Ram started abusing and scuffling with him. Accused Futehari then exhorted and directed others for forceful ingestion of the acid to him. Thereupon, as per version of P.W.6 Awadhesh Ram, accused Ramjeet and accused Makuni held him by hands. He shut his mouth to resist forceful administration of the acid. Then accused Futehari shouted to pour acid on him. As deposed by P.W.6 Awadhesh Ram then accused Suresh poured acid from the steel glass on him because of which his forehead, nose, mouth, ear, shoulders, chest and left palm were burnt. While in the dock, P.W.6 Awadhesh Ram has stated that he is unable to see by his both eyes. He testified that after this incident of the acid attack, he shouted and others including Raj Bhuwan Ram (P.W.5), Shyam Bihari Ram (P.W.1) and his wife Sonapati Devi (P.W.4) gathered on the spot. He then disclosed the incident to his wife Sonapati Devi and has



stated that the accused persons had committed this act of acid attack on him. P.W.6 Awadhesh Ram has stated that while admitted at the Sadar Hospital, Ara, he lodged the F.I.R. at 02.00 P.M. of the next day. As per his evidence, the police recorded it as per his say, it was read over to him and he found it to be correct. P.W.6 Awadhesh Ram made it clear that he was unable to see his recorded F.I.R. for putting his signature and, therefore, the place on that page was pointed out to him by putting his finger and, thereafter, he put his signature on the F.I.R. He stated that he knows all accused persons as they are his co-villagers. As per his version, he had land dispute with accused Makuni, Ramjeet and Futehari. So far as accused Suresh Ram is concerned, P.W.6 Awadhesh Ram has stated that Suresh Ram is indulging in illicit liquor and is aggrieved because he is preventing Suresh Ram in doing that work. As per version of P.W.6 Awadhesh Ram, in the incident in question, accused Suresh had also suffered burns by acid and those marks are still there on person of accused Suresh.

13. P.W.6 Awadhesh Ram was subjected to the searching cross-examination by the defence. Several questions were put to him regarding directions of various places from the spot of the incident. It was suggested to him that he was doing



work of some political party. He was also suggested that he had taken money from one Ramashish. However, the answers given by this witnesses to those questions are not affecting his version so far as the incident of sustaining acid attack by him is concerned. It is brought on record from his cross-examination that P.W.6 Awadhesh Ram was admitted as indoor patient in the hospital for treatment for more than 20 days and was then referred to the Hospital at Patna. In fact, this material elicited from the cross-examination of the injured is cementing the prosecution case of acid attack on him by the accused. So far as identification of the accused is concerned, this injured witness has clarified that the incident had not taken place in the fraction of a second. Initially, he was abused, then the accused scuffled with him and, thereafter, he was subjected to the acid attack. Therefore, identification of the accused persons by this witness cannot be doubted as ultimately the accused persons were his co-villagers and he was acquainted with them, may be because of disputes with them. Hence, stray sentence in cross-examination of P.W.6 Awadhesh Ram that the accused persons had worn the scarf on their faces is not sufficient to doubt the identification of the accused by this witness.

14. True it is that, the incident took place at 07.00 P.M.



but it was the month of March. As stated earlier, the accused were known to the victim and as such he was in a position to identify them by their voice, gate and appearance. Moreover, P.W.6 Awadhesh Ram has candidly stated in his cross-examination that though total assailants were six in numbers, he could not identify two of them. With this material, we are unable to accept the contention of the appellants that evidence regarding identification of the accused persons is unbelievable and is unreliable. There is no reason to disbelieve version of P.W.6 Awadhesh Ram regarding the manner in which he was subjected to the acid attack so also regarding his identification of the accused persons. Moreover, as stated in foregoing paragraphs, version of P.W.6 Awadhesh Ram is fully corroborated by the medical evidence coming on record through the mouth of P.W.7 Dr. Praveen Kumar Sinha, who found P.W.6 Awadhesh Ram with acid burns within three hours of the incident. There is nothing in his cross-examination to infer that this victim is falsely implicating any of the accused. Such possibility is not probalised in his cross-examination.

15. Let us examine whether other evidence adduced by the prosecution is corroborating the version of the injured P.W.6 Awadhesh Ram . P.W.1 Shyam Bihari Ram, who is even



named in the F.I.R. by the victim as a person who rushed on the spot, was at the canal when he heard shouts of P.W.6 Awadhesh Ram. This witness has stated that he had reached on the spot of the incident after 10 minutes of hearing the shouts and saw injured P.W.6 Awadhesh Ram writhing in pain while lying on the ground. He along with others took the injured to the hospital at Ara. His cross-examination shows that he is not an eye witness to the incident but his version makes it clear that he had seen injured P.W.6 Awadhesh Ram lying on the ground after sustaining acid attack with burn injuries. This witness categorically deposed that P.W.6 Awadhesh is still unable to see by his eyes. This version of P.W.1 Shyam Bihari regarding loss of vision of both eyes in the acid attack by P.W.6 Awadhesh remained unchallenged in the cross-examination. To that extent, version of this witness corroborates the version of the injured witness.

16. Similar is version of P.W.2 Rajendra Ram. On reaching the spot of the incident, after hearing shouts, he saw P.W.6 Awadhesh Ram suffering from pain because of burns due acid attack. He has spoken about the former statement of the injured but it was made to him after two days from the incident.

17. P.W.3 Shambhu Kumar, the co-villager, has deposed



that at about 07.00 P.M. of 26.03.2012 while going back to his house, P.W.6 Awadhesh Ram had purchased 'Khaini' from his Bidi shop and thereafter proceeded further. He deposed that then he heard shouts of Awadhesh Ram and, therefore, he rushed on the spot. As per version of P.W.3 Shambhu Kumar, he saw that Awadhesh Ram had suffered burns because of the acid attack on face, eyes, neck, nose and chest. P.W.3 Shambhu Kumar, who reached on the spot of the incident immediately, had testified that upon being asked, P.W.6 Awadhesh Ram told him that the accused persons sprinkled acid on him. This version of P.W.3 Shambhu Kumar went unchallenged in the cross-examination. On the contrary, it is elicited from his cross-examination that when he reached on the spot of the incident, P.W.6 Awadhesh Ram was suffering from pain and was lying on the ground. P.W.6 Awadhesh Ram was conscious at that time. Though it was attempted to bring contradictions from the police statement of this witness, attention of this witness was not drawn to his police statement and, as such, such attempt went futile. Suffice to state that soon after the incident, P.W.3 Shambhu Kumar heard statement of P.W.6 Awadhesh Ram regarding the involvement of the accused persons in the acid attack suffered by him. This former statement of injured P.W.6



Awadhesh Ram proved by this witness is admissible in evidence under Section 157 of the Evidence Act and corroborates the version of the injured.

18. P.W.4 Sonapati Devi is wife of injured P.W.6 Awadhesh Ram. Though she claimed to be an eye witness to the incident, her cross-examination shows that she reached on the spot of the incident after 10 minutes of hearing the shouts and by that time, her husband was lying on the ground surrounded by several villagers. Thus, she had reached on the spot of the occurrence subsequently. However, P.W.4 Sonapati Devi also proved previous statement of injured Awadhesh Ram made to her on the spot of the incident itself, immediately after the incident. She stated that her husband told her that the accused persons, namely, Makuni, Futehari and Ramjeet caught hold of him and accused Suresh poured acid on his person. This previous statement of the injured disclosed by his wife corroborates the version of the injured and is admissible under Section 157 of the Evidence Act.

19. P.W.5 Raj Bhuwan Ram is also not an eye witness to the incident but he had seen injured P.W.6 Awadhesh Ram lying on the spot with burns caused by acid.

20. Though the defence has sought to make out a case



of false implication because of previous enmity, there is nothing in evidence of the injured as well as other prosecution witness to infer that by exaggerating the incident, the injured has attempted to implicate as many persons as possible. On the contrary, his version is consistent with the prosecution case and he has candidly stated that though two more persons were involved in the acid attack, he could not identify them. Thus, we are unable to hold that the evidence of the injured is not trustworthy and reliable. His version deserves to be accepted and there is no ground for rejection of his evidence, which is not suffering from any discrepancies or contradictions. With this evidence, the prosecution has established that injured P.W.6 Awadhesh Ram had sustained acid attack at the hands of the accused persons.

21. Now, let us examine whether the prosecution has proved that the accused persons had shared common intention to commit this offence. Evidence on record shows that the injured was accosted by the accused persons near the field of one Mahto, 400 yards away from the village. At that time, they were carrying acid with them. The injured was wrongfully restrained by them and, thereafter, by holding him, the accused persons attempted to thrust the acid into his mouth. Because of stiff resistance by injured P.W.6 Awadhesh Ram, the accused



persons could not forcibly administered acid to him. However, the incident as reflected from the version of injured makes it clear that the accused persons had attempted to administer acid through his mouth to P.W.6 Awadhesh Ram. Each accused person has played an active role in this final act which was compose of more than one act. The fact that acid was carried by one of them in the steel glass makes it clear that there was premeditation between the accused persons.

22. To attract Section 34 of the Indian Penal Code, two postulates are indispensable (a) the criminal act consisting of a series of act should have been done by more than one person (b) doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of common intention of all such person. Widening the scope of Section 34 of the Indian Penal Code further, in the matter of **Suresh and another Versus State of U.P.**, reported in **(2001)3 SCC 673**, the Supreme Court has held thus in paragraphs-37 to 40:

“37. However, in view of the importance of the matter, in so far as the interpretation of Section 34 of the Indian Penal Code is concerned, we have chosen to express our view in the light of consistent legal approach on the subject throughout the period of judicial pronouncements. For the



applicability of Section 34 to a co-accused, who is proved to have common intention, it is not the requirement of law that he should have actually done something to incur the criminal liability with the aid of this section. It is now well settled that no overt act is necessary to attract the applicability of Section 34 for a co-accused who is otherwise proved to be sharing common intention with the ultimate act done by any one of the accused sharing such intention.

38. Section 34 of the Indian Penal Code recognises the principle of vicarious liability in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by another person with whom he shared the common intention. It is a rule of evidence and does not create a substantive offence. The section gives statutory recognition to the commonsense principle that if more than two persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of the offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of moment. The existence of a



common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case.

39. The dominant feature for attracting Section 34 of the Indian Penal Code (hereinafter referred to as “the Code”) is the element of participation in absence resulting in the ultimate “criminal act”. The “act” referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the common intention of all. The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous.

40. Participation in the crime in furtherance of the common intention cannot conceive of some independent criminal act by all accused persons, besides the ultimate criminal act because for that individual act law takes care of making such accused responsible under the other provisions of the Code. The word “act” used in Section 34 denotes a series of acts as a single act. What is required under law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown not to have dissuaded themselves from the



intended criminal act for which they shared the common intention. Culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the court can, with judicial servitude, hold that the accused must have preconceived the result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in *Satrughan Patar v. Emperor* held that it is only when a court with some certainty holds that a particular accused must have preconceived or premeditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied.”

23. In the case in hand, evidence on record clearly suggests that the final act of pouring acid on the victim was done by all accused persons in furtherance of their common intention as they were acting in concert pursuant to the prearranged plan as the acid came to be procured by them, one of them was carrying the same to the relatively far off place from the village and that too in a steel glass. All accused played their role in the final act of pouring the acid on the victim. Therefore, each of them is liable for the act of pouring of acid on the victim in the same manner as if it was done by each of



them.

24. Whether this was an attempt to murder P.W.6 Awadhesh Ram or whether this act of the appellant/accused constitutes some other offence will have to be examined from proved circumstances. It is well settled that in the offence punishable under Section 307 of Indian Penal Code all the ingredients of offence of murder are present except the death of the victim. As such where all ingredients of Section 300 of the Indian Penal Code are lacking, the accused cannot be convicted under Section 307 of the Indian Penal Code. Section 307 of Indian Penal Code does not take into consideration the effect of the act of the accused except as a measure of punishment to be imposed on him. In order to constitute the offence under Section 307 of Indian Penal Code actus reus and the requisite mens rea both must concur and the intention precedes the act attributed to the accused. The prosecution in such offence is required to establish existence of the intention to commit murder as well as taking up few steps by the accused in execution of such intention, after completion of preparation. Such steps taken by the accused must be apparent with designed purpose. Thereafter, it is required to be shown that the accused came dangerously nearer to success in execution of his designed but



the efforts of the accused fall short of ultimate design.

25. We may note here that the culpable homicide is a genus and murder is its species. The Indian Penal Code practically recognizes three degrees of culpable homicide. Culpable homicide of the first degree is the gravest form which is defined as 'murder' and is made punishable under Section 302 of the IPC. The second may be termed as 'culpable homicide of second degree', which is made punishable under first part of Section 304 of the IPC. The last degree of culpable homicide is 'culpable homicide of third degree' which is made punishable under second part of Section 304 of the IPC. Barring the cases covered by an exception to Section 300 of Indian Penal Code, culpable homicide is murder if an act by which the death is caused is done with the intention of causing death. Otherwise, for making out the offence of murder punishable under Section 302 of the IPC, the prosecution is firstly required to establish that a bodily injury is present on the victim. Secondly, the prosecution is required to establish nature and size of the injury on the victim. Then the prosecution is enjoined to prove that there was intention to inflict the particular injury, by adducing clear and cogent evidence for clarifying that such an injury was not accidental or unintentional. Possibility of injury of other



kind intended by the appellant/accused is required to be ruled out. Lastly, the prosecution has to establish that the injury so caused was sufficient to cause death in the ordinary course of nature. If all these factors are established, then only the offence defined under Section 300 of the IPC and punishable under Section 302 of IPC is made out. The offence punishable under Section 307 of the IPC is made out when the accused had intended to commit murder and in pursuance of that intention does any overt act towards commission of murder. In order to establish the offence punishable under Section 307 of the IPC, the prosecution is required to establish the intention or knowledge of committing murder and doing of an act towards it. Thus, Section 307 of the IPC contemplates intention or knowledge and not the consequence of the actual act done for the purpose of carrying out the intention.

26. The learned counsel for the appellants relied on Judgment in the matter of **Harjeet Singh and Another** (supra), the relevant paragraphs 5.5.1 to 5.7 of the said Judgment reads as under:

“5.5.1. The weapon of offence was a 4-inch long knife which is a dangerous weapon. Respondent 1-accused had assaulted the complainant with the said knife, and inflicted multiple injuries on his



chest, scapula, back, and buttocks. The multiple blows inflicted by Respondent 1-accused would prove the intention of causing bodily injury likely to cause the death of the victim. Stabbing a person with a knife, near his vital organs would in most circumstances lead to the death of the victim, thereby falling squarely within the meaning of Section 307.

5.6. Section 307 uses the term “hurt” which has been explained in Section 319 IPC; and not “grievous hurt” within the meaning of Section 320 IPC.

5.6.1. If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307.

5.6.2. This Court in R. Prakash v. State of Karnataka held that:(SCC p.30, paras 8-9)

“8.... The first blow was on a vital part, that is, on the temporal region. Even though other blows were on non-vital parts, that does not take away the rigour of Section 307 IPC....

9. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury



capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section”.

(emphasis supplied).

5.6.3. If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 IPC would be applicable. There is no requirement for the injury to be on a “vital part” of the body, merely causing “hurt” is sufficient to attract Section 307 IPC.

5.6.4. This Court in *Jage Ram v. State of Haryana* held that: (SCC p.370, para 12)

“12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder; and (ii)



the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

(emphasis supplied)

5.6.5. This Court in the recent decision of State of M.P. v. Kanha held that: (SCC p. 609, para 13)

“ 13. The above judgments of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal



Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.”

(emphasis supplied)

5.7. In view of the abovementioned findings, it is evident that the ingredients of Section 307 have been made out, as the intention of Respondent 1-accused can be ascertained clearly from his conduct, and the circumstances surrounding the offence.”

27. In the case in hand, the attack on the victim was unprovoked attack. The accused persons surrounded P.W.6 Awadhesh Ram and poured acid on him. Evidence of P.W.6 Awadhesh Ram shows that he lost vision of his both eye in this acid attack. This evidence of the injured is not at all challenged by the defence. Similar is the version of P.W.1 Shyam Bihari Ram, who is the co-villager having opportunity to see the victim daily. This witness has also testified that P.W.6 Awadhesh Ram is unable to see by his eyes after the acid attack. This evidence remained unchallenged. The learned trial court after recording the deposition of the injured had noted that there are scars of



wounds on head, nose, face, neck, shoulder and chest of P.W.6 Awadhesh Ram. This implies that the quantity of acid poured on the person of P.W.6 Awadhesh Ram was not scanty. In fact, it is seen that he was drenched in the acid by the accused persons, who must have procured the same prior to the incident for carrying out the intention harbored by them. The quantity of the acid used in the incident as reflected from the burn injury sustained by the victim makes out their intention to cause death of Awadhesh Ram. Moreover, as seen from the evidence of victim, the accused persons intended to administer the acid to P.W.6 Awadhesh Ram, forcefully through his mouth. Consequences of ingestion of acid by a human being are not difficult to fathom. Acid causes skin tissues to melt, often exposing the bones below the flesh. Such attacks cause permanent damage to organs such as nose, ears and eyes. There is high risk of the victim becoming blind. Chances of the victim surviving such attack are very less. Such an act of acid attack is also covered by clause-fourthly of Section 300 of the Indian Penal Code which defines the term 'Murder'. The accused persons were certainly knowing that forceful administration of the acid to the victim orally is so imminently dangerous that it must, in all probability cause death of the victim or the bodily



injury caused by such act, in all probability, is likely to cause death of the victim. The accused persons ran the risk of committing this act without any excuse for incurring the risk of causing death of the victim. Ultimately, because of this act, injured suffered permanent scar physically as well as psychologically apart from loosing vision of his both eyes. Therefore, we have no hesitation to hold that the prosecution has proved commission of the offence punishable under Section 307 of the Indian Penal Code by the accused persons, who acted in concert in doing this act of drenching P.W.6 Awadhesh Ram by acid.

28. Contention of the appellant that the offence, if any, proved against the accused persons falls under the provisions of Section 326(B) of the Indian Penal Code is noted for rejection because the said Section came in the Statute Book with effect from 03.02.2013 whereas the incident in question took place on 26.03.2012.

29. So far as quantum of sentence is concerned, in the matter of **Suryakant Baburao alias Ramrao Phad** (supra) relied by the learned Advocates for the appellants, it is observed that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public



confidence in the efficacy of law. The duty of every court is to award proper sentence having regard to the nature of offence and the manner in which it is executed or committed.

Paragraphs 12 to 15 of the said Judgment reads thus:

“12. While considering the quantum of sentence, the courts are expected to consider all relevant facts and circumstances of the case, in particular, nature of injuries caused in the occurrence and the weapon used which will have bearing on the question of sentence and the Courts are bound to impose sentence commensurate with the gravity of the offence. Considering the nature of injuries caused to PW-6-Chandrakant, i.e. gun shot wounds in the chest and the opinion of Doctor that the injuries caused to PW-6 are capable of causing death, in our view, the High Court was not right in reducing the sentence of first accused-Devraj.

13. The question of awarding sentence is a matter of discretion for the courts and has to be exercised on consideration of facts and circumstances of the case. Though the court has discretion in awarding the sentence, it should be commensurate with the gravity of the offence. The court has to record brief reasons to explain the choice of sentence. In *State of Punjab v. Bawa Singh* (2015) 3 SCC 441 : (2015 AIR SCW 922), the Supreme Court in para (16) held as under:



“16.....undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.”

14. In *Ravinder Singh v. State of Haryana* (2015)

11 SCC 588: (2015) AIR SCW 4241, para 9), it was

held as under:

“11. The question of sentence is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual



cases. The law courts have been consistent in the approach that a reasonable proportion has to be maintained between the seriousness of the crime and the punishment. While it is true that a sentence disproportionately severe should not be passed that does not clothe the court with an option to award the sentence manifestly inadequate. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.”

15. In *Sevaka Perumal and another v. State of Tamil Nadu* (1991) 3 SCC 471: AIR 1991 SC 1463, para 9), it was held as under:

“10.....undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc....”

30. The accused persons are proved to have attempted to commit murder of P.W.6 Awadhesh Ram by pouring acid on



him and the result of the said acid attack is elaborately dealt with by us in the foregoing paragraphs. Hence, we are unable to accept the contention of the learned Advocates for the appellants that the sentence is undue harsh. Awarding life imprisonment to the accused by the learned trial court is a perfectly justified sentence commensurate with the offence held to be proved against the accused persons.

31. In the result, these appeals are devoid of merit and the same are, accordingly, dismissed.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	06.07.2022.
Uploading Date	13.07.2022.
Transmission Date	13.07.2022

