

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Mr. Justice Joymalya Bagchi

And

The Hon'ble Mr. Justice Bivas Pattanayak

CRA 640 of 2018
With
CRAN 1 of 2018(Old CRAN 3682 of 2018)

Gourab Mondal

Vs.

The State of West Bengal & Anr.

For the Appellant : Mr. Debasish Roy, Adv.
Ms. Sonali Das, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 06.05.2022

Judgment on : 06.05.2022

Joymalya Bagchi, J. :-

Appellant has assailed the impugned judgment and order dated 03.10.2018 and 04.10.2018 passed by learned Additional Sessions Judge, Kalna, Burdwan in Sessions Trial No. 21 of 2017 arising out of Sessions Case No. 49 of 2017, convicting the appellant for commission of offence punishable under Sections 448/326A of the Indian Penal Code

and sentencing him to suffer simple imprisonment for one year and to pay a fine of Rs. 1,000/-, in default, to suffer simple imprisonment for one month for the offence punishable under section 448 IPC and to suffer imprisonment for life, till death and to pay fine of Rs. 5,00,000/-, in default, to suffer rigorous imprisonment for two years more for the offence punishable under section 326 A IPC.

Prosecution case, as alleged, is to the effect that the appellant used to tease the victim girl for some time. Victim complained about the harassment to her parents. Matter was brought up with the parents of the appellant. They assured they would punish their son. However, appellant continued to tease the victim. Two months ago appellant came to the house of the victim and burnt down the television set. A 'salish' was held and he was forced to pay Rs. 5000/-. He threatened the victim he would punish her. On 12.12.2016 at 1 a.m. in the night, appellant entered the house of the victim by breaking the door and threw acid on her face and whole body. Her mother Malati Mahato (PW 1) also suffered acid burn injuries. Victim was initially admitted at Kalna hospital and thereafter treated at Burdwan Medical College and Hospital and then in Kolkata. Her mother Malati (PW 1) lodged written complaint resulting in registration of Purbasthali Police Station Case No. 553 dated 12.12.2016 under Sections 448/323/326A/307/509/427/436 of the Indian Penal Code against the appellant. On the showing of the appellant, a bottle was recovered from a spot near the place of occurrence. Finger prints of the

appellant were found on the bottle as per opinion of Finger Print Expert, PW 20. In conclusion of investigation, charge-sheet was filed against the appellant, his father Gouranga Mondal and one Sukanto Bagchi. Charges were framed against the appellant and co-accuseds under section 448/326A/307/120B of the Indian Penal Code. Accused persons pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 21 witnesses and exhibited a number of documents. Defence of the accused persons were one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 03.10.2018 and 04.10.2018 convicted and sentenced the appellant, as aforesaid. Appellant, however, acquitted of the charge under section 307 IPC. Co-accuseds were acquitted of all the charges.

Mr. Roy with Mrs. Das, appearing for the appellant argues name of the appellant had not transpired at the earliest opportunity when the victim was admitted at Kalna SD Hospital. I.O (PW 21) stated he had interrogated the victim at Kalna Hospital but her statement has not been produced. It is unclear when the solar lights were installed in the house of the victim. Whether the lights were functioning on the fateful night is also not proved. Identification of the appellant by PWs 1 and 3 is, thus, improbable. Referring to the evidence of the doctor PW 15, Mr. Roy argues victim may not have suffered acid burn injuries. He further submits motive of crime has not been proved. While in FIR it is stated no steps were taken with regard to appellant burning the television set, in

Court witnesses deposed he had threatened the victim with punishment as he was compelled to pay money on such score. Under such circumstance, it is prayed appellant may be acquitted.

Mr. Das for the State argues P.W.s 1 and 3 have categorically deposed the appellant threw acid on the face of the victim. Medical evidence shows victim suffered acid burn injuries on her face and upper limbs. She was treated for a protracted period of time and ingredients of offence punishable under sections 498/326 A IPC are fully established.

P.W. 1 is the mother of the victim. She deposed appellant used to disturb the victim, a 13 years old girl. The victim complained to her. She had been to the house of the parents of the appellant and informed them about his conduct. They assured the appellant would not disturb the victim. 8½ months prior to the incident, appellant set fire on the T. V. set of the victim. A salish was held and Netai Mondal, paternal uncle of the appellant gave Rs. 5000/- as compensation. Thereafter, appellant again disturbed the victim while she was going to school. On the fateful night, appellant entered their house breaking a chitkini in the bed room door. He threw acid on the face of the victim. Hearing hue and cry, P.W. 1 came out from the bed room and saw the appellant and one Sukanta Bagchi fleeing away. She called local people who shifted the victim initially to Kalna Hospital. She lodged complaint which was scribed by one Sujit Ghosh. She made statement before Magistrate.

P.W.3 is the victim herself. She deposed appellant used to disturb her while she would go to school. 8 ½ months ago appellant set fire on a T. V. set in her house. In a salish appellant's father paid Rs. 5,000/- as compensation. Few days prior to the incident, appellant had threatened her with dire consequences. On the fateful night, appellant entered their bed room and threw acid on her face. Her mother chased the appellant and one Sukanta. Her mother had identified the appellant with the help of solar light. She was taken to Kalna Hospital and thereafter to Burdwan Hospital and referred to Kolkata for better treatment. She was interrogated at Kalna as well as Burdwan. She made statement before police at Burdwan Hospital in presence of the doctor. She made statement to Magistrate.

P.W.2 is the father of the victim. He is not an eyewitness. He, however, corroborated P.Ws.1 and 3 in material particulars.

P.W.4, Shibupada Dutta is a neighbour of P.W.1. He stated victim had been brought to his house. He called Bablu Biswas, a quack doctor (P.W.6) to examine the victim. Thereafter, he along with P.W.1 and one Netai Mondal (uncle of the appellant) took the victim to Kalna S. D. Hospital where she was admitted. He heard about the incident from P.W.1.

P.W.6, Bablu Biswas is the quack who treated the victim first. He found the victim as well as P.W.1 with burn injuries. He advised them to be taken to hospital.

P.W.9, Samiran @ Pintu Roy is a driver who carried the victim in his vehicle to the hospital.

P.W.8, Rabin Mahato is a boatman who ferried the victim over the river enroute to Kalna hospital.

P.W.10, Amit Bagchi is a solar electrician. He deposed he had installed solar lamps in the house of P.W.2 one year prior to the incident.

In cross-examination he stated two days after the incident he had gone to the house of P.W.2 to repair a lamp.

P.Ws.15 and 17 are medical officers who were attached to Kalna S. D. Hospital at the relevant point of time.

P.W.17, Angshuman Bag was posted at Kalna S. D. Hospital as Medical Officer. On that day, he examined the victim at the Emergency Department of the Hospital. He found victim had sustained acid burn injuries. He prepared the bed head ticket, Exhibit 11. He also prescribed some medicines on the emergency ticket. He proved the emergency ticket. He advised the patient to be admitted in the female surgical ward.

Victim was admitted under P.W.15, Dr. Nimai Biswas in the female surgical ward. He started treating the victim. He found her conscious and alert. He recorded her statement in presence of staff nurse viz., Chitrlekha Dey. He proved the treatment sheet-cum-statement of the patient, Ext.9. He found chemical likely acid burn on the face, neck upper part of chest, left upper limb and part of upper limb of the victim.

Victim had suffered 20% burn injuries. Both eyes of the patient were injured.

P.W.16, Iti Biswas, a staff nurse attached to Kalna S. D. Hospital proved the signature of Chitralkha Dey on the treatment sheet.

P.W.19, Dr. Nilendu Das @ Dr. Nilanshu Das is a Doctor attached to Burdwan Medical College and Hospital who was present when the victim made a statement to the Investigating Officer (P.W.21) in the said hospital. He proved his signature on the said statement. He deposed the patient was under the treatment of one Dr. Naren Mukherjee, Surgeon. He found acid burn injuries on the patient.

P.W.14, Gouri Mukherje, a staff nurse was present at the time when the statement of the victim was recorded in the hospital. She proved her signature on the statement.

P.W.18, Rampada Ghosh received the written complaint lodged by P.W.1 and filled up formal FIR. Case was investigated by P.W.21.

P.W.21, Goutam Haldar deposed he went to the place of occurrence. He drew rough sketch map. He seized the acid burnt wearing apparels of the victim, acid burnt cotton from the quilt and damaged chitkini from the place of occurrence under a seizure list. He met the victim at Kalna S.D. Hospital and interrogated her. He collected injury report. He recorded the statement of the victim at Burdwan hospital. He forwarded witnesses for recording their statement under 164 of the Code of Criminal Procedure. He interrogated the appellant and recovered one

glass made bottle with cork containing some liquid from a bamboo bush under a seizure list. He obtained finger prints of the appellant. The finger prints of the appellant matched the finger prints in the glass bottle recovered adjacent to the place of occurrence as per opinion of the finger print expert. He submitted charge sheet against the appellant.

Mr. Roy argues prosecution case against the appellant is an afterthought as the treatment sheets at Kalna S.D. Hospital show that acid was thrown by unknown person. Although victim was interrogated by Investigating Officer at Kalna hospital, her statement has not been produced in Court. It is also doubtful whether FIR was lodged by P.W.1 as she claimed she was at Kalna hospital throughout the day.

I have given anxious consideration to the aforesaid contentions raised on behalf of the appellant. Victim was a 13 years old girl who had suffered the brutal trauma of acid being thrown on her face. P.W.17 examined her in the Emergency Department at Kalna S. D. Hospital and advised admission in the female surgical ward. She was admitted under P.W.15 in the hospital. He noted acid burn injuries on her face, neck, upper part of chest, left upper limb and part of upper limb. Owing to the extensive injuries suffered by her and the ensuing trauma, it is likely that the victim was unable to give a full account including the identity of the person who had thrown acid on her to the doctor at the time of admission. However, her mother (P.W.1) who was present in the house and upon hearing hue and cry had rushed out and seen the appellant

fleeing away from the spot, caused written complaint scribed by one Sujit Ghosh as per her instruction to be lodged at Purbasthali Police Station disclosing the identity of the appellant. P.W.18 received the written complaint and drew up the FIR.

From the evidence on record it is clear the written complaint disclosing the identity of the appellant came to be lodged at the police station on the very day of the incident. It is nobody's case P.W.1 physically went to P.S. to present the written complaint to P.W.18. Hence, her statement that she was with her daughter in the hospital for the whole day does not improbabilise the lodging of such complaint.

In view of the fact that identity of the appellant had transpired immediately after the incident in the F.I.R. lodged by P.W. 1, I am of the opinion failure of the victim (P.W.3) to disclose his name in the medical records does not affect the credibility of the prosecution case.

It is argued identification of the appellant by P.W. 1 is improbable. It is unclear when the solar lights had been set up in the house and if so, whether they were functioning on that fateful night. P.W. 10, a solar electrician, deposed a year prior to the incident solar lamps had been put up in the house of the victim. Both P.Ws. 1 and 3 claimed from the light of the solar lamps P.W. 1 had identified the appellant. Referring to cross-examination of P.W. 10, Mr. Roy argues the said witness had been called to the residence of the victim two days after the incident to repair the lamp. Thus, it is unclear whether the lamps were

functioning on the fateful night. Such submission is of little substance. Reading the evidence of P.W. 10 as a whole, it does not give an impression all the lamps was not functioning on the fateful night. He had been called to repair one of the lamps. It may not be out of place to refer to the evidence of P.W. 3 who stated there were six solar lamps in the house. Thus, I am of the opinion ample light in and around the house from the solar lamps on the fateful night has been established and the prosecution case of identification of the appellant by P.W. 1 is proved beyond doubt.

It is further contended on behalf of the appellant motive has not been proved. Both in the F.I.R. as well as from the deposition of witnesses, it appears appellant had been harassing the victim for long. Couple of months ago, he had burnt a television set in their house. Though in the F.I.R. P.W. 1 claimed no steps were taken in that regard, deposition of witnesses including that of an independent witness (P.W. 4) shows a salish was held over the incident and the family of the appellant was compelled to pay compensation. This further enraged the appellant and prompted him to brutally attack the victim with acid. Under such circumstances, it is clear appellant was hostile towards the victim and such hostility (irrespective of whether he had paid compensation or not for burning television set) was the trigger to commit the crime.

It is also argued appellant entered the room by breaking the door but broken door leaves had not been produced in Court. From the

evidence of P.Ws. 1 and 3 it appears that the appellant had entered the room by dashing the closed door. As a result, *chitkini* of the door had come out. Investigating officer had seized the *chitkini* from the place of occurrence under a seizure list. It is contended *chitkini* which was produced in court is made of wood and not a broken one. I have examined the seizure list prepared by investigating officer being "Exhibit-3" wherein seizure of *chitkini* has been noted. There is no reference in the seizure list whether *chitkini* is made of iron or wood. Thus, *chitkini* produced in Court cannot be said to be wholly incompatible with the one described in the seizure list.

Evidence on record along with contemporaneous documents, namely, seizure list clearly establishes the manner in which the appellant had forcibly made his entry in the room by forcing the door open. No inconsistency in this regard appears from the materials on record so as to render the prosecution case incredible or unreliable.

Finally, it is argued the victim did not suffer acid burn injuries. Consistent evidence of all the doctors namely P.Ws. 15, 17 and 19 show victim suffered acid burn injuries on her face, neck and body. Reference to the cross-examination of P.W. 15 with regard to possibility of such injuries being caused by other chemicals cannot rule out clear and consistent opinion of the medical personnel in the present case.

From the aforesaid evidence on record, I am of the opinion conviction of the appellant has been proved beyond reasonable doubt.

Coming to the issue of sentence, I have no doubt in my mind, offence is a very grave one which has left an undeniable mark not only on the face of the victim but on her psyche. However, while awarding sentence, the Court must not only be cognizant to the gravity of the offence but also to attending circumstances relating to the criminal. The appellant is a young person. He does not have criminal antecedents. He conducted himself in an impulsive manner in a fit of rage.

Under such circumstances, it may not be advisable to condemn the appellant to an indeterminate sentence of life imprisonment. Thus, balancing the aggravating and mitigating factors, I consider it prudent to modify the maximum sentence of life imprisonment imposed on the appellant and I direct he shall suffer rigorous imprisonment for twelve years and pay a fine of Rs. 5,00,000/-, in default, to suffer rigorous imprisonment for another two years.

Before parting, I note trial court had awarded the sentence of 'life imprisonment till death'. Section 53 of the Indian Penal Code prescribes 'imprisonment for life' as one of punishments which may be imposed by a criminal code. In view of section 45 of the Indian Penal Code, 'imprisonment for life' means 'till the end of life' as held in the case of **Gopal Vinayak Godse Vs. State of Maharashtra And Others**¹. However, to award 'life imprisonment till death' as done by the trial Court would lead to an irresistible inference that the appropriate

¹ AIR 1961 SC 600

Government is denude of its power to grant remission/ commutation of sentence under Section 432 read with section 433-A of the Code of Criminal Procedure. Such category of punishment i.e., life imprisonment without remission cannot be awarded by the trial Courts but may be awarded by the High Courts or Supreme Court in appropriate cases while converting a sentence of 'death' to 'life imprisonment' as held in the case of ***Union of India Vs. V. Sriharan Alias Murugan And Others***². In the case of ***Gauri Shankar Vs. State of Punjab***³, the Apex Court clarified this proposition and held trial Courts do not have power to impose life imprisonment without remission. It appears the trial court in the present case had fallen in error and awarded such category of imprisonment which was not within its power to do so.

A copy of this judgment and order be sent down to the trial Judge for his consideration and proper appreciation of the law.

The appeal is disposed of.

In view of disposal of the appeal, connected application being CRAN 1 of 2018 (Old No. CRAN 3682 of 2018) is also disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

² (2016) 7 SCC 1

³ (2021) 3 SCC 380

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

tkm/as/arup/sdas/PA