

IN THE HIGH COURT AT CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 227 of 2020

Jamat Sk

Versus

The State of West Bengal

For the appellant : Mr. Manas Kr. Das, Adv.

For the State : Mr. Partha Pratim Das, Adv.

: Ms. Manasi Roy, Adv.

Hearing concluded on : 08th December, 2022

Judgment on : 21st December, 2022

Md. Shabbar Rashidi, J.:

1. The Appeal is directed against the judgment of conviction and order of sentence dated July 14, 2020, passed by Learned Additional Sessions Judge, Kandi, Murshidabad in connection with Sessions Trial No. 02 (10) of 2019 arising out of Sessions Case No. 151 of 2019, convicting the appellant for the offence punishable under Section 326A of the Indian Penal Code, 1860.
2. The facts giving rise to the instant appeal in a nutshell is that on July 07, 2019 at about 6.00 pm one Mila Khatun aged about 18 years, the daughter of the de-facto complainant was cooking in her kitchen. At the relevant time, the appellant Jamat Sk. called her and threw acid on her face through the window. Upon hearing the screams of Mila Khatun, her mother Selina Bibi rushed to her and found her daughter crying. She was taken to Bharatpur Hospital with the help of local people from where she was referred to Kandi SD Hospital. Mila

Khatun sustained acid burn injuries on her face and throat.

- 3.** Over the incident, Dalim Sk. the father of the Victim Mila Khatun lodged a written complaint with Bharatpur Police Station on July 07, 2019 at 22.40 hrs. On the basis of such written complaint, Bharatpur Police Station Case No. 175/19 dated 07.07.2019 under section 326A of the Indian Penal Code was started against the appellant.
- 4.** The police took up investigation and on completion of investigation, submitted charge sheet under the aforesaid section against the appellant.
- 5.** Subsequently, on the basis of materials in the case diary, charge under section 326A of the Indian Penal Code was framed against the appellant, which was duly read over and explained to him to which, he pleaded not guilty and claimed to be tried. Accordingly, the appellant was put on trial.

6. In order to substantiate the charge, prosecution examined nine witnesses. In addition, prosecution also adduced documentary evidences as well.

7. The de-facto complainant himself deposed as **PW 1**. He has stated that on 07.07.2019 at about 6.00/6.30 pm, his daughter Mila went inside the kitchen to keep the jackfruit given by Sonai Bibi. The accused Jamat Sk. threw acid upon her, through the window of the kitchen, causing acid burn injuries. He came to know about the incident from his daughter and others. PW 1 also stated that he lodged a written complaint over the incident which was scribed as per his instructions and the same was read over and explained to him. He further stated that his daughter was first treated at Bharatpur BPHC and thereafter, she was moved to Kandi SD Hospital. The police visited his house and seized acid soaked soil and brick in his presence and he put his thumb impression on the seizure list. He also put his left thumb impression (LTI) on the Zimmanama through which the Admit Card issued

by West Bengal Board of Madrasah Education of his daughter supplied by him was returned to him. Nothing favorable could be wrested by the defense upon cross examination of PW 1.

- 8.** The victim deposed as **PW 2.** She stated that on 07.07.2019 at about 6.30 pm, she went inside her kitchen to keep the jajackfruit given by her aunt Sonai Bibi. The accused threw acid upon her through the hole of the kitchen causing burn injuries on her face and frontal side upper portion of her chest. She shouted and reported the incident to her mother whereupon on the screams raised by her mother, local people assembled. She was taken to Bharatpur BPHC wherefrom she was referred to Kandi SD Hospital for better treatment. She also informed the incident to her father, local people and the police. She was interrogated by police in connection with the case and also recorded her statement under section 164 of the Code of Criminal Procedure before learned Magistrate which she tendered in her examination (Exhibit 1). She also proved

photograph of the walls of her kitchen (Exhibit 2). In her cross examination, PW 2 stated that she remained admitted in the Hospital for 22 days. She sustained acid burn injuries on her right eye due to which her eyesight went blurred.

9. The Medical Officer of Bharatpur BPHC was examined as **PW 3**. He stated that on 07.07.2019 one patient Mila Khatun was brought to the Hospital by her father Dalim Sk. with a history of physical assault by throwing corrosive or acid on her face at 6.30 pm on the said date as reported by the victim and her father. On medical examination, he found that the patient was conscious but in respiratory distress. He also found acid/corrosive burn on the patient's facial region and some parts of neck region. She was in blurred vision in both her eyes. PW 3 provided primary treatment and as there was no burn unit in the Hospital, the patient was referred to Kandi SD Hospital for treatment by surgeon

and ophthalmologist. He tendered and proved the injury report prepared in his pen (Exhibit 3).

- 10.** Mother of the victim deposed as **PW 4**. She stated that about 4 months ago (from 26.11.19) at about 6/6.30 pm Mila went inside the verandah used as kitchen to keep jackfruit provided by the sister of PW4, namely Sonai Bibi. She was outside feeding hens and ducks. Suddenly, PW4 heard shouting of her daughter and rushed inside. She was reported by her daughter that Jamat Sk. threw acid through the holes of kitchen wall due to which her daughter sustained severe burn injuries on right side of her face and neck and scattered injuries on the right side. She took her daughter to Bharatpur Hospital wherefrom she was transferred to Kandi SD Hospital. She also stated that police seized acid stained soil and some portion of brick from her house in her presence. She proved her signature on the seizure list (Exhibit 4/1). In her cross examination, she stated that she was interrogated by

police in connection with the incident on the date of occurrence itself.

11. PW5 is the aunt of the victim. She stated that at about 6/6.30 p.m. about four months ago (From 26.11.2019) she handed over jackfruit to the victim Mila. She went to keep the jackfruit in the Veranda used as kitchen. Suddenly, PW5 heard shouting of Mila and rushed inside. She was reported by the victim that she was called by the person who threw acid through the holes of the kitchen wall due to which she sustained injuries on her face and neck. She identified the appellant. This witness was declared hostile by the prosecution and she admitted in her cross-examination by the prosecution that she did not make a statement before the police that Mila came out of her kitchen shouting that Jamat fled away after throwing acid upon her or that Jamat Sk wanted to marry Mila but she did not agree for which he threw acid.

12. Eye surgeon of Kandi SD Hospital deposed as **PW6**. He stated that on 07.07.2019, he examined one Mila

Khatun in the hospital as indoor patient. She was admitted in the hospital with the history of acid burn over the face and upper chest. On examination, he found that right eye conjunctiva was congested i.e. red. PW6 also observed that her eye sight in the right eye diminished. The patient was referred to Murshidabad Medical College and Hospital on 11.07.2019. He proved the report (Exhibit 5).

13. PW7 is the scribe of the written complaint. He scribed the written complaint as per the instructions of the complainant. It was read over and explained to the complainant. Being satisfied, the complainant put his LTI on the complaint. PW7 also signed on the complaint as scribe. He proved the written complaint (Exhibit 6).

14. Investigating officer deposed as **PW8**. He stated that on 07.07.2019, ASI B. Bhadra received a complaint from the informant of endorsing as receipt on the complaint itself (Exhibit 6/1) and started Bharatpur Police Station Case No. 175 of 2019 dated 07.07.2019 under section 326

of the Indian Penal Code. ASI B. Bhadra filled up the formal FIR (Exhibit 7).

15. Being entrusted with the investigation by the officer-in-charge, PW8 took up the investigation. He visited the place of occurrence and prepared rough sketch map with index (Exhibit 8). He also recorded the statement of witnesses under section 161 Cr. PC in course of investigation. He also seized some acid on 07.07.2019 at about 23.55 hour from the house of the complainant i.e. the place of occurrence in presence of witnesses. PW8 proved the said seizure list (Exhibit 4). He also seized some photocopies of the victim having acid burns on her face and that of the kitchen wall. The seizure was made on 18.08.2019 at Bharatpur Police Station and was produced by the photographer Sanjay Saha. Such seizure list was proved by PW8 under exhibit 9. The investigating officer also arrested the accused and sought for his police custody. During such custody period, one empty bottle of acid was recovered as the leading statement of the accused. The said seizure list was tendered and proved by

PW8 (Exhibit 10). The investigating officer also seized the wearing apparels of the victim stained with acid under a seizure list on 17.07.2019(Exhibit 11). By separate seizure list, the admit card of the victim issued by West Bengal Board, Madrasa Education was seized on 15.07.2019 (exhibit-12). The said admit card was handed over to the father of the victim on a zimma bond (Exhibit 13). The medical report issued by Murshidabad Medical College and Hospital was collected and tendered by PW8 (exhibit 14). PW8 also collected the FSL report with regard to the seized soil, wearing apparels of the victim and acid bottle. He tendered such report during trial (Exhibit 15). The seized articles received back from the Forensic Science Laboratory, Kolkata under sealed packets were identified by PW8 as MAT Exhibit-I, I/I, II, II/I, III, III/I and IV respectively). On completion of investigation, PW8 submitted charge sheet being no. 240 of 2019 dated 27.08.2019 under section 326A of the Indian Penal Code against the appellant. In his cross-examination, PW8 stated that the eastern side of the Veranda was used as

kitchen which contained window made of bricks with gaps.

16. PW9 is the Senior Scientific Officer of Forensic Science Laboratory, Belgachia. He stated that on 04.08.2019, the laboratory received four covers marked Exhibit A,B,C, and D in connection with Bharatpur Police Station case no. 175 of 2019 dated 07.07.2019 through the Additional Chief Judicial Magistrate. He further stated that the packet marked 'A' contained approximate fifty grams reddish coloured dusty and sandy substance 'said to contain some soil with acid stains'. The cover marked 'B' contained a portion of a brick bearing blackish stains 'said to contain acid stains'. The cover marked 'c' contained a glass phial of capacity on approximate 100ml (One hundred Ml.) fitted with a metallic cap with holes. A paper label stating PHENOL (CARBOLIC ACID) I.P. pasted on it and the glass phial was found empty. The cover marked 'D' contained a multi coloured printed short sleeved kamiz/frock. The upper black portion bore greyish stains at places bearing smell like of phenol. It was said to

contain 'one printed churidar with acid stains'. On examination, it was opined that the presence of any acid substance could not be detected in the contents of Exhibit marked 'c'. Presence of coercive carbolic acid (phenol) was detected in the contents of Exhibits 'A', 'B' and 'D'. PW 9 also stated that it was further opined that collection of carbolic acid (phenol) on human body could be a danger for life. PW9 proved the report prepared under his instructions and signature (Exhibit 15).

17. Upon closure of the evidence adduced on behalf of the prosecution, the appellant was examined under section 313 of the Code of Criminal Procedure. The evidence and circumstances against the appellant as evident from the evidence adduced on behalf of the prosecution were explained to the appellant during such examination. The accused claimed the allegations against him as false and pleaded his innocence. He however declined to adduce any defence witness.

18. At the conclusion of trial upon consideration of the evidence on record and the examination of accused under

section 313 of the Code of Criminal Procedure, by the impugned judgment of conviction, the appellant was convicted. By the impugned order of sentence, the appellant was sentenced to suffer imprisonment for ten years and to pay a fine of Rs. 10,000/-(Rupees Ten Thousand Only) for the offence punishable under section 326A of the Indian Penal Code. In default of payment of fine, the appellant was directed to undergo further imprisonment for six months.

- 19.** The aforesaid judgment of conviction and order of sentence has been challenged in the present appeal. The appellant seeks to assail the impugned judgment and order on the ground that as the appellant threw acid using the Khupris (Holes of any wall) of the kitchen, it was not possible to identify the perpetrator. It was also contended that the occurrence took place in the evening and there were houses beside the kitchen or the place of occurrence, it was not possible on the part of the victim to identify the appellant. It has further been argued that none of the witnesses examined on behalf of the prosecution for

having seen the occurrence and none of them have claimed having seen the appellant fleeing away.

20. The appellant has also assailed the impugned judgment on the ground that the prosecution has not proved that there was sufficient daylight at the relevant time i.e. 6.30 pm enough to identify the appellant. None of the witnesses saw the accused fleeing away from the place of occurrence. No independent witness has been examined by the prosecution. As such, according to the appellant, the prosecution has not been able to prove the case beyond all reasonable doubts and therefore, the appellant is entitled to be acquitted.

21. On the other hand, it is contended on behalf of learned Advocate for the State that the testimonies of the ocular evidence together with that of the supporting documentary and other evidence, the prosecution has proved that the appellant and appellant alone threw the acid causing acid burn injuries on the person of the victim. Hence, the impugned judgment and order does not

warrant any interference and the same is liable to be affirmed.

22. The appellant is charged with voluntarily causing hurt to the victim with acid. It is the case of the prosecution that on the relevant date and time i.e. on 07.07.2019 at about 6/6.30 pm, when the victim went inside her kitchen, the appellant threw acid causing injuries on her face and chest.

23. It is fact, none of the witnesses examined on behalf of the prosecution, except the victim (PW2), claimed having seen the appellant throwing acid upon the victim or fleeing away just after the incident. However, the victim herself (PW 2), without any kind of ambiguity has named the appellant as the perpetrator. She clearly stated that when she went inside the kitchen to keep the jackfruit, the appellant threw acid through the 'Khupris' (perforations) in the wall of kitchen. Such story has been adequately supported by other witnesses. The de-facto complainant i.e. the father of the victim, though, not present at the relevant time, has narrated the self same story derived

from PW1 and his wife PW4. PW5 has further stated that she was reported by the victim that when the victim inside to keep the jackfruit, she was called by the appellant.

24. PW4, the mother of the victim narrated the same story by stating that her daughter went inside the verandah used as kitchen to keep the jackfruit given by her sister Sonai Bibi. Suddenly, she heard shouting and going inside, she was informed by her victim daughter that Jamat Sk. the appellant threw acid upon her. The said Sonai Bibi (PW5) also supported the case of the prosecution. She testified that she gave a jackfruit to the victim which she went inside to keep it in the 'varandah' used as kitchen. She suddenly heard the shouting of the victim. Going there, she was informed that the appellant Jamat Sk. called the victim and threw acid through the holes of the kitchen wall.

25. PW2 has also stated in her examination that the incident took place in the evening when it was about to become dark meaning thereby that there was sufficient daylight to things. Therefore, in view of such evidence on

record, the contention on the part of the appellant that the witnesses could not have identified the appellant due to insufficient light cannot sustain. On the contrary, there is overwhelming evidence that the appellant was in fact, sufficiently and unerringly identified at the time of commission of the offence.

26. There appears no divergence in the story of the prosecution in so far as all of them have supported the versions outspread by the victim PW 2 to the effect that the victim went inside the kitchen to keep the jackfruit given by her aunt PW5 and the appellant threw acid upon her through the perforated wall of the kitchen. The case of the prosecution that the victim sustained acid burn injuries on her face and neck is also not shaken. All the witnesses have narrated the self same story monotonously. Therefore, there appears nothing to disbelieve such conjoint narration of the prosecution witnesses.

27. Moreover, the incident is consistently said to have taken place in the evening of 07.07.2019 at about 6/6.30 pm. It is unswerving statement of all the witnesses that the victim was taken to Bharatpur BPHC after the incident. PW 3, one of the doctors of Bharatpur BPHC has stated that he examined the victim at 6.50 pm on 07.07.2019. The victim was referred by Bharatpur BPHC to Kandi SD Hospital and she was examined by one of the doctors, of Kandi SD Hospital, PW 6, on that very day i.e. 07.07.2019. The incident was then reported to Bharatpur Police Station on 07.07.2019 itself at about 22.40 pm. The time gap between these incidents and the expected time taken in the medical treatment of the victim apparently rules out any possibility of deliberation and afterthoughts to implicate the appellant.

28. It has come out from the evidence on record that victim sustained acid burn injuries on the face, neck and chest. PW2, the victim stated that she sustained injuries on her face and upper portion of her chest. PW 4, the

mother of the victim and PW 5, her aunt, stated in their deposition that the victim sustained injuries by the acid on her face and neck. The doctor who first examined the victim in Bharatpur BPHC has stated, with reference to the injury report prepared by him (Exhibit 3) that on examination, he found acid/corrosive burn on the facial region and some parts of neck region. According to him the patient was in respiratory distress and blurred vision. One of the doctors of Kandi SD Hospital who treated the victim as ophthalmologist (PW 6) has stated that the victim was admitted in Kandi SD Hospital with history of acid burn over face and upper chest which were taken care of by general surgeon. She was referred to him for eye complains and on examination, he found the eyesight in the right eye of the victim diminished with reference to the injury report prepared by him (Exhibit 5). She was referred to Murshidabad Medical College & Hospital.

29. Therefore, as it transpires, the account of injuries evident from the medical evidence seems to be in quite

consonance with the testimony of ocular evidence led at the trial.

30. It is well settled principle of law that where oral evidence is convincing, reliable and trustworthy motive behind the occurrence loses its relevance.

31. In the light of afore-gone discussions, we do feel that the impugned judgment of conviction and order of sentence are well founded on the basis of unshaken testimony of ocular as well as documentary evidence and deserve no interference. As such, the impugned judgment of conviction and order of sentence dated July 14, 2020, passed by Learned Additional Sessions Judge, Kandi, Murshidabad in connection with Sessions Trial No. 02 (10) of 2019 is hereby affirmed.

32. Accordingly, the instant appeal being Criminal Appeal No. 227 of 2020 stands dismissed.

33. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the

substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

34. Connected applications, if any, shall stand disposed of.

35. Copy of the judgment along with Trial Court Records be sent down to the appropriate court at once for necessary compliance.

36. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying all necessary legal formalities.

[MD. SHABBAR RASHIDI, J.]

37. I agree.

[DEBANGSU BASAK, J.]