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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 2nd February, 2022Decided on: 4th July, 2022

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CRL.A. 723/2017 & CRL.M.B. 969/2021**BHARAT**

..... Appellant

Represented by: Ms. Neha Kapoor, Advocate.
versus**STATE OF NCT OF DELHI**

..... Respondent

Represented by: Mr. Ravi Nayak, APP for State with
SI Kiran Pal & SI Ashish Dahima, PS
GTB Enclave.

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CRL.A. 731/2017**MOHINDER**

..... Appellant

Represented by: Mr. Sidharth Sunil, Advocate.
versus**STATE OF NCT OF DELHI**

..... Respondent

Represented by: Mr. Ravi Nayak, APP for State with
SI Kiran Pal & SI Ashish Dahima, PS
GTB Enclave.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By these two appeals, the appellants challenge the common impugned judgment dated 5th May, 2017 whereby the appellants have been convicted for offence punishable under Section 326-A/34 IPC and the order on sentence dated 26th May, 2017 whereby they have been directed to undergo rigorous imprisonment for a period of 11 years and to pay a fine of ₹2 lakhs each, in default whereof to undergo 1 year simple imprisonment. The fine



so imposed is to be given to the victim as compensation.

2. Learned counsel for the appellant Bharat submits that the impugned judgment has been passed by the learned Trial Court by shifting the burden of proof on the accused, though it was the prosecution which was required to prove its case beyond reasonable doubt. There is no evidence on record to show that the appellant Bharat had asked for the number of the complainant at the time of marriage of Deepak or that Bharat used to call the complainant to enquire about the well-being of his sister, or that on 25th June, 2013 Bharat came to her home and proposed her for marriage, or that on the refusal of the complainant, Bharat slapped her and took the SIM card of her mobile phone, to establish the motive behind the commission of the alleged offence. The SIM card of the mobile phone allegedly taken by the appellant Bharat was not recovered from his possession, as is evident from the personal search memo Ex.9/C. The prosecution did not even recover the container which was allegedly used by the appellants to throw acid on the complainant to prove the version of the prosecution.

3. Learned counsel states that Bharat has been implicated despite the fact in the FIR the complainant stated that unknown persons had thrown acid over her and she could not see the faces of the two people on the bike, as both of them had tied handkerchief on their faces and the person driving the bike was wearing a helmet also. However, later she changed her stand and improved in her statement recorded under Section 164 Cr.P.C. and her testimony before the Court. The two eye-witness PW-4 and PW-5 have not supported the case of the prosecution and have stated that they could not see the faces of the two boys or even the number of the bike. Testimonies of PWs-4 and 5 further fortify the fact that the complainant could not have



identified the accused persons. Conduct of the alleged eye-witnesses is also unnatural; though they claim to be good friends of the complainant, however they left her after knowing that somebody had thrown acid on her and she was grievously injured. Thus the two alleged eye-witnesses, have been planted as eye-witnesses. There are material contradictions in the testimony of PW-1/ complainant and the investigating officer who appeared as PW-24. As per the testimony of the complainant, Bharat was driving the bike and he threw the acid on her after stopping the bike. However, as per PW-24 the second (IO) it was informed to him that Bharat who was the pillion rider threw acid on the complainant. The learned Trial Court overlooked the material improvements made by the complainant in her statement recorded under Section 164 Cr.P.C. i.e. EX.PW-1/DX and the supplementary statement Ex.PW-24/K, both recorded on 16th August, 2013 i.e. after 8 days of the alleged incident. There are other material contradictions and improvements in the deposition of the complainant.

4. Further, the fact that after the registration of FIR threats were given to withdraw the case is also not reflected in the supplementary statements recorded. Statement of the complainant is further required to be discarded for the reason she signed her statement Ex.PW-1/A and if as per her version her hand was hurt due to throwing of acid she could not have signed her statement. There are improvements in the statements of the other witnesses also i.e. PW-3 and PW-8. Statements of alleged eye-witnesses PW-4 and PW-5 were recorded by the Police only on 12th August, 2013 after 5 days of the incident. There is no explanation that how the clothes of the victim got torn within one week. Further, the prosecution has not been able to prove the recovery of the alleged bike as well. Reliance is placed on the decisions



in Harbeer Singh Vs. Sheshpal & Ors. CrI.A.No. 1624-1625 of 2013; Sachin Vs. State of Maharashtra CrI.A. 248/2016; Sonu Arora Vs. State (2010) 173 DLT 326 (DB); Parvat Singh & Ors. Vs. State of Madhya Pradesh CrI.A. 374/2020; Sampath Kumar Vs. Inspector of Police Krishnagiri (2012) 4 SCC 124; Chunthuram Vs. State of Chattisgarh CrI.A. 1392/2011; The State of Karnataka Vs. S. Nagaratna CrI.A. 384/2006 and Devi Prasad Sharma Vs. State 61 (1996) DLT 678.

5. Learned counsel for the Mohinder further contends that no Test Identification Parade of Mohinder was got conducted, thereby his identification in the Court is meaningless. As per the case of the prosecution Mohinder received injury on the left arm, however the shirt which was recovered was found to be intact. Reliance is placed on the decisions in (1971) 2 SCC 715 Rameshwar Singh Vs. State of Jammu and Kashmir and (1983) 1 SCC 143 Mohd. Abdul Hafeez Vs. State of Andhra Pradesh. The complainant clearly admitted that she had seen Mohinder at the Police Station after the incident and thus the accused was deliberately shown to the victim. Hence, the identification in Court be not relied upon. The two public witnesses did not identify the appellants as the assailants, as they clarified that the two boys fled away at a fast speed. CDRs of the appellants were also not collected to rule out their presence at the time of the incident. Though the complainant claims that she could not see as to who out of the two boys was driving the vehicle, however in her deposition she states that accused Bharat was driving the motorcycle and thus Mohinder was the pillion rider. Seizure of clothes in itself is suspicious, as no public witness was made to participate. Dr. Sober Chaturvedi who has prepared the MLC Ex.PW-18/A has not been produced. While the investigating officer (PW-



25) admitted that the acid marks were present at the front portion of the T-Shirt and the left and right legs of the pant, there are no corresponding acid injuries on the appellant Mohinder. The only old injury was on the right forearm where there was no corresponding acid mark on the shirt.

6. Refuting the arguments of learned counsel for the appellants, learned APP for the State contends that the victim suffered grievous injuries, inflicted with acid burns over right forearm, neck, right cheek, left arm and left forearm as per the MLC Ex.PW-13/A. Thus, the victim who suffered the acidly attack and was admittedly present at the spot would have also tried to save herself and would not be in a position to find the number of the bike, or to chase the culprits who were on the motor-bike. Initial statement of the victim was recorded on 7th August, 2013 in the hospital itself vide Ex.PW-1/A wherein she briefly stated what happened to her and sought action. Thus she gave the details in her subsequent statement recorded under Section 164 Cr.P.C. on 16th August, 2013 vide Ex.PW-1/DX and the supplementary statement recorded on the same date vide Ex.PW-24/K wherein she clearly ascribed role to Bharat. The victim has clearly deposed about the conduct of Bharat when he proposed her, which she refused and on which he slapped her and removed the SIM from her mobile phone. She further deposed that even on the date of incident, in the morning Bharat spoke to her on the mobile phone of her friend Rakhi and asked her to meet in the evening and upon refusal, threatened to spoil her face. Merely because the victim did not inform these facts to her parents as she did not want to spoil the relationship of her cousin with his wife, as Bharat was the brother-in-law of her cousin, would not lead to the conclusion that version of the victim was concocted.



7. Learned APP further states that version of the victim is duly supported by PW-8 to whom she had confided about the harassment caused by Bharat. Further, the call detail records of Bharat corroborate the version that he called up on the mobile phone of Rakhi, the friend of the victim on the morning of the day of incident and at the time of incident the location of Bharat was near the place of incident. Further, Bharat had even called on the mobile phone of the mother of the victim Smt. Kamlesh who appeared as PW-16 which showed the desperation Bharat had towards the victim. Merely because Laxmi and Rakhi did not identify the accused person would not belie the version of the victim. Even though the victim could not give the complete number of the bike, however she stated that it was of black colour and the last three digits were 601 and that the other person was of medium built and wearing blue T-Shirt. Motorcycle of black colour bearing registration No. DL-8SM-6601 was seized from Bharat vide Ex.PW-9/A corroborating the version of the victim. The defence set up of false implication due to property dispute between the father of the complainant and the complainant's cousin Deepak is without any basis, as nothing has been placed on record to show that there was any joint property between the parties. Since Bharat was arrested after 15 days of the incident, the possibility of recovery of the container was bleak. In the first statement itself, the complainant stated that there were two persons. Mohinder is the cousin of Bharat and after his arrest, his clothes with acid stains were recovered at his instance. Mere delay in sending the exhibits to FSL is not fatal when the chain of custody has been duly proved. Since the incident belongs to the year 2013, despite efforts no recording of the CCTV cameras in the vicinity could be traced. In view of the overwhelming evidence



proved by the prosecution, the appeals be dismissed.

8. Heard learned counsels and perused the record.

9. Prosecution case stems from a call received at PS GTB Enclave on 7th August, 2013 recorded vide DD No. 80-B informing that one girl 'S' has been admitted at GTB Hospital with acid burns. Investigating officer collected the MLC of the victim and also recorded her statement wherein she stated that on that date while she was coming back walking after finishing her duty, around 7.30 PM she reached at gate No.11 GTB hospital. In the meantime two boys came from the backside on a motorcycle. The boy who was driving the motorcycle had a helmet and the boy who was the pillion rider had put handkerchief on his face. The boy who was sitting at the back threw acid on her and thereafter ran away. She could not note the number of the motorcycle and the Police Officers admitted her in the hospital. As per the MLC Ex.PW-13/A acid burn wounds were found over right arm, forearm, neck, right cheek and mandible region, as also left hand and lower forearm. Clothes and the bag of the victim were seized which also had acid burns.

10. Subsequently, statement of the victim was recorded under Section 164 Cr.P.C. on 16th August, 2013 wherein she stated that she was working in a small factory. On 13th January, 2013 her paternal uncle's son Deepak got married. Since then Bharat, the brother-in-law of Deepak was troubling her. Bharat was torturing her for marrying him. She refused to marry him stating that he was like her brother. On 25th June, 2013 at around 5.00 to 5.30 PM Bharat came to her house and misbehaved with her. Thereafter, he also slapped her. At that time nobody else was present at the house. On 7th August, 2013 in the morning Bharat called up on the phone of her friend



Rakhi and spoke to her and asked her to meet in the evening and also threatened her that if she did not meet it will not be good and that he will spoil her face. On 7th August, 2013 in the evening at about 7.30 PM while she was coming back from the factory and had reached near gate No.11 of GTB hospital, Bharat along with his friend came on a motorcycle and threw acid on her. Bharat's friend was driving the motorcycle and Bharat was sitting as a pillion-rider. After throwing acid they ran away from the place and the Police which was posted over there got her admitted in the hospital and called her family members.

11. Statement of the victim was also recorded under Section 161 Cr.P.C. wherein she stated that though she did not note the number of the motorcycle, however it was 601 at the end and it was of black colour. Thereafter, Bharat was arrested on 22nd August, 2013 and Mohinder on 23rd August, 2013. At the instance of Bharat, motorcycle number as noted i.e. 601 was recovered. Mohinder got his clothes recovered which had burn marks and as per the FSL report the clothes and bag of Sapna and clothes of Mohinder had acid marks of 'Hydrochloric acid' and 'Sulphuric acid'.

12. The reason for the presence of acid burn marks on the clothes of Mohinder being especially in his knowledge are required to be explained by him in terms of Section 106 Evidence Act and failure of any explanation for the same acid marks on the clothes is an incriminating evidence in the chain of circumstances against him. In the decision reported as (2021) 11 SCC 1 Arvind Singh Vs. State of Maharashtra, Hon'ble Supreme Court reiterating the principle of presumption provided under Section 106 Evidence Act noted:



“79. The most important aspect in the present appeals is presumption under Section 106 of the Evidence Act. This Court has examined the scope of Section 106 of the Evidence Act in Shambu Nath Mehra v. State of Ajmer [Shambu Nath Mehra v. State of Ajmer, AIR 1956 SC 404 : 1956 Cri LJ 794] , State of W.B. v. Mir Mohammad Omar [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] , Sucha Singh v. State of Punjab [Sucha Singh v. State of Punjab, (2001) 4 SCC 375 : 2001 SCC (Cri) 717] , Rajender v. State (NCT of Delhi) [Rajender v. State (NCT of Delhi), (2019) 10 SCC 623 : (2020) 1 SCC (Cri) 63] . In Shambu Nath Mehra [Shambu Nath Mehra v. State of Ajmer, AIR 1956 SC 404 : 1956 Cri LJ 794] , this Court held that Section 106 must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the ease with which the accused could prove them, are all matters that must be taken into consideration. The section cannot be used to undermine the well-established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts. This Court held as under :

“11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot



be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. King [Attygalle v. King, 1936 SCC OnLine PC 20 : AIR 1936 PC 169] and Seneviratne v. R. [Seneviratne v. R., (1936) 3 All ER 36] , All ER at p. 49.”

(emphasis supplied)”

13. As noted above, the call details of Bharat also show his presence at the spot at the time of the alleged incident and Bharat having made call to the mother and friend of ‘S’ on the date of incident in the morning. As per Bharat and Mohinder, they were falsely implicated because of property dispute between Deepak and father of victim, however there is no explanation whatsoever as to why phone call was made from the phone of Bharat to that of the mother and friend of the victim in the morning of the date of alleged incident. Answer of Bharat to this incriminating evidence is that he did not remember his mobile phone number and that he did not make any call which is, *per se*, a false explanation and thus can be used as an additional link in the chain of circumstances.

14. Bharat and Mohinder also produced Deepak, the cousin of the victim as DW-1. Deepak stated that he had filed complaints in regard to the dispute between him and the father of the victim; however it may be noted that the said complaint filed in Court is dated 21st August, 2015 after the alleged incident. Merely because in the first statement the victim did not state the name of the assailants, or there was a minor contradiction as to who was driving the motorcycle and who was the pillion rider, in view of the



circumstantial evidence of recovery of the motorcycle at the instance of Bharat and the clothes with acid burns from Mohinder, which acid was the same as on the clothes of the victim, and the call details showing the presence of Bharat at the relevant time near the place of incident as also Bharat calling up the mother and friend of the victim in the morning thereby asking her to meet in the evening failing which consequences will follow; this Court is of the considered opinion that the version of the victim is duly supported by the chain of circumstances, which prove beyond reasonable doubt the offence committed by the two appellants. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence.

15. Appeals are accordingly dismissed.

16. Copy of this order be uploaded on the website of this Court and be also sent to Superintendent Jail for intimation to the appellants and updation of records.

CRL.M.B. 969/2021 in CRL.A. 723/2017

Application is disposed of as infructuous.

न्यायमेव जयते

(MUKTA GUPTA)
JUDGE

JULY 04, 2022
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