

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1189 of 2016

Arising Out of PS. Case No.-202 Year-2007 Thana- BALIYA District- Begusarai

Md. Imteyaz Alam @ Munna son of Md. Kalim @ Kalo, Resident of
Pachchim Tola, Lakhminia, P.S. Ballia, District Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abul Kalam, Adv. Mr. Serajul Arfin, Adv.
For the State	:	Mr. Binod Bihari Singh, APP
For the Informant	:	Mr. Rajeev Ranjan Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-05-2023

We have heard Sri Abul Kalam for the appellant,
Mr. Binod Bihari Singh for the State and Mr. Rajiv Ranjan
Sinha for the Informant.

2. The appellant, a jilted lover, has been
convicted under Sections 324, 326 and 307 of the I.P.C.
vide judgment dated 21.09.2016, passed by the learned
3rd Additional District and Sessions Judge, Begusarai in
Sessions Trial No. 596 of 2008 and by order dated
27.09.2016, he has been sentenced to undergo RI for
three years, rigorous imprisonment for seven years and



fine of Rs. 25,000/- and rigorous imprisonment for life with fine of Rs. 25,000/- for non-payment of which the appellant is to suffer simple imprisonment of six months against offences under Sections 324, 307 and 326 respectively. The sentences have been directed to run concurrently. The amount of fine for both the offences viz. 307 and 326 of the IPC has been directed to be distributed amongst the two victims viz. P.W. 3 and P.W.4 in the ratio of 75%.

3. The Informant / one of the victims namely 'X' (we have eschewed from naming the Informant (P.W.4) and another victim 'Y'/P.W.3 for the reason that they are girls still in their adolescence) has lodged FIR on 14.10.2007 at about 4 O'clock in the morning at Primary Health Center, Balia in the district of Begusarai that in the previous night while she and 'Y' had been sleeping on a cot in a room of her house, through the window of the room, the appellant and another threw acid as a result of which both 'X' and 'Y' were injured. This happened at around



quarter to twelve in the night. Both the Informant and her sister cried out in pain when their mother (P.W.5) came. In the light of the torch, the mother and the Informant could identify the appellant and his father running away. Many persons of the neighborhood had arrived by that time. The cause behind throwing acid by the appellant was that about two months ago, the appellant had scaled over the wall of the house of the Informant but was caught and assaulted. The grudge that he had been harbouring made him commit the crime.

4. On the basis of the aforementioned Fardbeyan statement of P.W.4, a case vide Balia P.S. Case No. 202 of 2007 dated 14.09.2007 was registered for investigation for offences under Section 307, 324, 326 and 34 of the I.P.C.

5. During the course of investigation, it came to light that the appellant was not accompanied by his father/an old man and that his name had transpired in the Fardebyan and the statement of the mother of the victims



out of mistake for no proper means of identification. In fact, the appellant was accompanied by one Md. Ashif, who is facing trial, at present, for the same offence.

6. The police submitted charge-sheet against the appellant whereafter cognizance was taken and the case was committed to the court of sessions for trial.

7. The trial court, after examining eight witnesses on behalf of prosecution including the Investigating Officer (P.W.7) and the Doctor (P.W.8), convicted and sentenced the appellant as noted above.

8. Mr. Abul Kalam, learned advocate for the appellant has strenuously argued that only because of some past occurrence, the appellant has been framed in this case by the two victims and her mother. He asserts that nobody had seen the appellant fleeing away from the place of occurrence and that the evidence with respect to throwing of acid leading to the scalding injuries on the two victims could not be proved beyond reasonable doubts.



9. The first statement about the occurrence of 14.09.2007 was made by the father of the victims which has never seen the light of the day.

10. It is necessary to be noted here that the father of the victims had died within a year of the occurrence.

11. Nonetheless, Mr. Kalam has argued that not bringing forth the first statement by the father of the victims regarding the occurrence clearly establishes that the prosecution has not come with the correct version and the implication of the appellant is only an afterthought after consultation and confabulation by the family members, in retaliation against an event which has taken place about two months ago when the appellant was found to have come inside the house of the victims and was assaulted by the family members.

12. Though Mr. Kalam asserts that no evidence has been brought on record from his side also regarding



the aforementioned earlier occurrence as a result of which he has been falsely implicated in this case.

13. Lastly, it has been submitted that even if it was found that the appellant had committed the crime, the trial court did not at all consider the circumstances for awarding the sentence against him. For the offence under Section 307 of the I.P.C., he has been awarded a sentence of seven years but, for the offence under Section 326 of the I.P.C., the appellant has been awarded with a sentence for life which is way too excessive.

14. The learned counsel for the State as also the Informant have, on the other hand, submitted that there is nothing on record to discredit the testimony of the two victims who woke up with a burning sensation on their skin all over the body because of acid and both of them had identified the appellant running away from the place of occurrence.

15. There could be some inconsistency here and there in their deposition but, that would not entitle the



appellant to argue for acquittal or lessening of the sentence awarded against him as the ocular and the medical testimony support the prosecution version and there was no way in which the trial court could have awarded any lesser sentence on the appellant.

16. The father of the victims, because of the shock, did not survive for long and therefore he was not cited as a witness. This aspect cannot be looked in favour of the appellant only for the reason that P.W.3, one of the victims, P.W.4 / the Informant had made a statement at the trial that at the Balia police station, the father of the victims had made a statement implicating the appellant for the first time, which statement incidentally has not been brought on record.

17. On a careful examination of the records, we find that out of the eight witnesses, P.Ws.1, 2 & 6 are independent witnesses, residing in the locality where the victims resided. However, P.W.6 did not support the prosecution version and has been declared hostile.



18. Abdullah (P.W.1) is only a hearsay witness who claims to have reached the house of the victims only after they were injured in the acid attack. It was there only that the P.W.1 learnt that such an occurrence had taken place. However, he has very fairly stated before the court that his statement was never recorded by the I.O. before the trial.

19. Md. Tanvir (P.W.2) gave a statement to the police after five days of the occurrence. Though he claims to have come to the house of the victims in the night of the occurrence but, only in the next morning he could learn that the appellant and one Ashif (initially not named in the F.I.R.) had thrown acid through the window which injured the victims. He also is a next door neighbour of the victims. In his cross-examination, he has disclosed that he did not find the late father of the victims crying at the time of the occurrence but, learnt that the victims were still in the house. The police had come to the house of the victims only on the next day at 9 O'clock in the morning. He had



no information regarding the unconsciousness of the victims. In fact, he has stated that while the victims were being taken to the hospital, they were crying in pain.

20. The other sister (P.W.3) who was more severely injured in the occurrence, claims to have got up on the noise. The moment she saw the appellant and Ashif, she intended to shout but, in the meantime, acid was thrown inside the room which injured both the sisters.

21. The reason for the appellant to have done this was that he was a one-sided lover who wanted to marry her, to which she was not agreeable. This was the cause of the grievance of the appellant.

22. The occurrence had taken place in the night of the festival of Eid. Both the sisters had got inside the room by around 10.30 in the night. The acid is said to have been lobbed inside the room at about 12.30 in the night. On *Hulla* raised by the P.W.3, her parents came. Later, others also arrived. With the help of the other villagers, the victims were taken to hospital.



23. However, P.W.3 noticeably has stated that first the victims were taken to Ballia police station where the father of the victims made a statement before the police and also signed such statement. The police had actually advised for taking the victims to Begusarai for better treatment.

24. P.W.3 claims to have reached Begusarai Sadar Hospital by around 2.30 in the night where both the sisters were treated for two days whereafter they were referred to Patna for still further treatment. In the same breath, P.W.3 says that about 9 O'clock in the morning, the police had recorded her statement. After coming back from the hospital, P.W.3 disclosed that there was consultation between the father, mother and her sister and only thereafter, the case was lodged, arraigning the appellant and his father. Of her own, she further discloses before the trial court that her mother had wrongly named the father of the appellant. She had never responded favourably to the amorous advances of the appellant but,



the appellants of himself had taken a decision that he would marry her. Her parents were not at all agreeable for such a liaison.

25. Though similar statement has been made by the Informant/P.W.4 but, she has not been injured as grievously as her sister. The same reason has been narrated by her also for the occurrence viz. the appellant's desire to marry 'Y'/P.W.3. The burnt mosquito-net and bed-sheets were not seized by the police. Neither the clothes worn by the victims which also had been burnt because of the acid, was asked for by the police.

26. Ishrat Khatoon, the mother of the victims/P.W.5 also claims to have identified the appellant and another in the torch light. The reason for the appellant having resorted to such repulsive and vindictive act was also reiterated by her during trial.

27. The Investigating Officer (P.W.7) had taken up the investigation on 14.10.2007 at about 5 O' clock in



the morning. He had the occasion to read the Fardbeyan of P.W. 4 only thereafter.

28. In the aforementioned Fardbeyan, there was a reference of torch but, during the course of investigation, the same was neither produced nor seized by him. He has also confirmed the fact that out of mistake, the father of the appellant was named by the Informant as also by her mother. In fact, they intended to name Ashif and not the father of the appellant who was an old person by that time. When he had reached the Primary Health Centre, Balia, both the injured sisters were in a position to give their statements and therefore their statements were recorded. No further statement was taken by the victims thereafter.

29. Sheela Gupta (P.W.8), the Doctor, who was posted as Medical Officer, Primary Health Centre, Balia, claims to have examined both the injured sisters at about 2.30 A.M. in the night of 14.10.2007. P.W. 4 was found to have received simple injuries in the nature of a shiny, soft,



but inflammatory patch of 1/4" x 1/4" over her hands, which was also surrounded by blisters. P.W.3 but was found to have been injured all over her body i.e. her face, neck, upper part of chest and frontal surface of hands. There were shiny soft inflammatory patches of various sizes including blisters. The eyes of P.W.3 were found to be closed. The lips also were found to be swollen and excoriated. There was no doubt that corrosive substance was used for injuring the victims. The age of the injury was assessed at three hours before their medical examination. However, P.W. 8 has agreed that she did not preserve any sample of skin or clothes for ascertaining the nature of the corrosive substance to be identified as acid for specific prosecution of the appellant for having used acid for hurting the victims.

30. On being questioned, she has also stated that such injuries could have been caused with hot boiling water as well.



31. After having read the deposition of witnesses, two things appear to be very striking. No effort has been made by the Investigating Officer to seize the burnt mosquito-net or bed-sheets or the wearing apparel of the victims as also the fact that the first statement of the father of the victims was never made known to anybody as to who had been accused by him of having thrown the acid. This remains unknown till date. The deposition regarding identification of the appellants in the torch light also appears to be somewhat doubtful for the reason that after receiving the injury and the burning sensation, the victims could wake-up from their sleep. It was only on their cries that P.W.5 arrived in the room with a torch and in the flash light of the torch, all three of them namely victims and the mother identified the appellant and another running away from the place of occurrence.

32. If this be the entire sequence of the events, then it becomes doubtful as to how all of them saw the container of the acid. No incriminating material was



collected which could be referable to the assault i.e. the burnt bed-sheets, mosquito-net or the container of acid itself.

33. This creates serious doubt in our minds whether the implication of the appellant was genuine or motivated. However, in order to reach the truth, we have delved deeper and have found that there was no reason for the eye witnesses to have wrongly framed the appellant.

34. The appellant had not ceased to behave in inappropriately. The appellant was on an earlier occasion, caught having unauthorizedly entered the house of the victim when he was caught and punished. One of the witnesses has also stated that sometimes prior to this occurrence, the appellant had filed a case against the father of the victims in which the father of the victims had to secure bail.

35. We do recognize enmity as a double-edged weapon, but in the present case, specially when both the



victims have received burn injuries, it appears to us to be improbable that only because of this past enmity, the appellant would be framed in the present case. The appellant had every reason to retaliate and motive for 'Y'/(P.W.3) not having agreed to the marriage proposal and his having been assaulted by the family members when he had tried on earlier occasion to enter the house of the victims under the stealth of night.

36. Once we have come to the conclusion that the appellant was identified by the victims and their mother, we embarked to find out whether the appellant had lobbed the container holding acid inside the room through the window.

37. The only culprit for lack of any evidence on this score appears to Investigating Officer who did not consider it necessary or important to seize such articles which would have lent certainty to the accusation against the appellant. A faulty investigation by the Investigating



Officer but would not be good enough reason for discarding the case altogether.

38. For the aforementioned reasons, we find that the trial court has rightly convicted the appellant under Sections 324, 326 and 307 of the Indian Penal Code. For Sections 324 and 307 of the Indian Penal Code, the appellant has been sentenced for three years and seven years rigorous imprisonment respectively, but for the offence under Section 326 of the Indian Penal Code, he has been sentenced to undergo rigorous imprisonment for life. Though the trial court gave opportunity to the appellant to argue on sentence, but we do not find any meaningful consideration which ought to have gone into the consideration as mandated under Section 235 of the Code of Criminal Procedure, 1973.

39. Why we say so is for the following reasons.

40. There is no gainsaying that an offence of burning a victim by acid definitely displays a depraved mind and a serious offence not only against the



individuals/victims but also against society but, the proposed criminal also cannot just be ignored.

41. At the relevant time, the appellant was in his twenties and had been spurned by one of the victims. He was also humiliated when he wanted to meet P.W.3 in the dead of the night without the approval of her parents or P.W.3 herself. He has an old father and he is the only one to take care of the financial needs of the family. That apart, the occurrence had taken place in the year 2007 when 326(A) of the Indian Penal Code with minimum of 10 years imprisonment has not been incorporated in the Indian Penal Code. Section 326 of the Indian Penal Code as it stood then provided that except in cases provided for by section 335, voluntarily causing grievous hurt by means of any instrument of shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, deleterious to human body to inhale, to swallow, or to



receive into blood, or by means of any animal, is to be punished with imprisonment for life (which was only introduced since 01.01.1956), or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

42. There was no minimum sentence provided under Section 326 of the Indian Penal Code as it stood before 2013 when Section 326(A) was inserted in the Penal Code, which created a special class of offence of voluntarily causing grievous hurt by use of acid etc., in which case, the minimum sentence is of ten years, which could be extended to imprisonment of life and with fine. The quantum of fine also is required to pass the test of just and reasonable quantum to meet the medical expenses in the treatment of the victims and that such fine is payable to the victims only.

43. The offence of causing voluntary grievous hurt by means of acid was included in the offence classified under Section 326 of the Indian Penal Code also but in



that case no minimum sentence was provided. An accused could be given life imprisonment as well, but lesser punishment also could be awarded depending upon the assessment of the guilt by the court trying the offence.

44. In this background, we find that the sentence awarded to the appellant for the offence under Section 326 of the Indian Penal Code is more excessive than it deserves to be.

45. We, therefore, are of the considered opinion that the period undergone by the appellant in custody, which in this case is more than seven years, would be sufficient so far as the guilt of the appellant is concerned.

46. Thus, upholding the conviction of the appellant under Sections 324, 307 and 326 of the Indian Penal Code, we only reduce the sentence imposed against the appellant under Section 326 of the Indian Penal Code to the period of imprisonment which the appellant has already undergone.



47. The appellant shall however be required to pay to the victims the fine imposed on him, which shall be distributed amongst the victims P.W.3 and P.W.4.

48. The appellant, thus, is directed to be released from custody, if the fine is paid and he is not required to be detained in any other case.

49. The appeal stands dismissed with partial modification in the sentence.

(Ashutosh Kumar, J)

(Harish Kumar, J)

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CAV DATE	NA
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