

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

CRA 416 of 2014
With
CRAN 2 of 2017 (Old CRAN 5147 of 2017).

Palash Ghosh & Anr.
-Vs-
The State of West Bengal

For the Appellant	:	Mr. Sagar Saha, Adv. Mr. Subir Debnath, Adv. Ms. Roma Roy, Adv.
For the State	:	Mr. Partha Pratim Das, Adv. Mrs. Manasi Roy, Adv.
Heard on	:	05.06.2023
Judgment on	:	05.06.2023

Joymalya Bagchi, J. :-

1. Appellants have assailed judgment and order dated 29.04.2014 and 30.04.2014 passed by the learned Additional Sessions Judge, Fast Track Court-III, Krishnagar, Nadia in Sessions Trial No.V (February), 2012 arising out of Sessions Case No.61(1) of 2012 convicting the appellants for commission of offence punishable under

Sections 326/307/34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for ten years and to pay fine of Rs.20,000/- each, in default, to suffer rigorous imprisonment one year each for the offence punishable under Section 326/34 of the Indian Penal Code and to suffer rigorous imprisonment for life for the offence punishable under Sections 307/34 of the Indian Penal Code 50% of the fine amount, if recovered, was directed to be paid to the victim.

2. Prosecution case as alleged against the appellants is as follows:-

3. In the night between 20.07.2011 and 21.07.2011 the victim was sleeping with her mother in the verandah. At about 3.00 a.m. appellants threw acid on the victim resulting in severe acid burn injuries on her hands and lower part of the body from the waist. Victim cried out in pain. Her family members i.e. her brothers PWs.6 and 7 saw the appellants run away from the spot. Victim was initially shifted to Dhubulia BPHC where she was treated by PW4. Therefrom, she was taken to Saktinagar Hospital. On 28.07.2011 in view of seriousness of her injuries PW5 referred her to NRS Medical College and Hospital for plastic surgery. PW13 conducted the surgery of the victim at NRS Medical College and Hospital. She was admitted in the hospital for three months. Thereafter, she continued under the treatment of PW13.

4. On 21.07.2011, her mother PW1 lodged written complaint at police station against the appellants resulting in registration of

Dhubulia P.S. Case No.343 of 2011 dated 21.07.2011 under Sections 326/307/34 of the Indian Penal Code. In course of investigation, appellants were arrested and charge sheet was filed. Subsequently, supplementary charge sheets were filed enclosing CFSL report Charges were framed under Sections 326/34 and under Sections 307/34 of the Indian Penal Code. Appellants pleaded not guilty and claimed to be tried.

5. In conclusion of trial, trial Judge by the impugned judgment and order dated 29.04.2014 and 30.04.2014 convicted and sentenced the appellants, as aforesaid.

6. Mr. Sagar Saha, learned Advocate for the appellants submits that the motive of the crime has not been proved. PW1 stated they had no enmity with the appellants. PW2 was sleeping at the time of occurrence. Her identification of the appellants is doubtful. Identification by PWs.6 and 7 is to be taken with a pinch of salt. Hence, prosecution case has not been proved.

7. Mr. Das with Mrs. Roy, learned Advocates for the State submit PW2 is the injured witness. She saw the appellants in the light of the electric bulb in the verandah. She cried out in pain. Her brothers PWs.6 and 7 rushed to the spot and saw the appellants running away. PWs.4, 5 and 13 treated the victim. Their reports show the victim PW2 suffered deep burn injuries and was under treatment for three months. Injuries were life threatening. Even during deposition the victim had

not fully recovered and gave evidence while on a stretcher. Prosecution case is proved beyond doubt.

8. PW2 is the injured witness. She deposed on the fateful night she was sleeping with her mother in the verandah. At 3.00 a.m. she felt burning sensation in her body. In the light of electric bulb in the verandah she saw the appellants. She cried out with pain. Her brothers and mother rushed to the verandah. She was taken to Dhubulia BPHC. Thereafter, she was taken to Saktinagar Hospital. From Saktinagar Hospital, she was shifted to NRS Medical College and Hospital for better treatment. At the time of deposition she had not fully recovered and gave evidence while lying on a stretcher. She was cross-examined but she remained unshaken.

9. Her deposition is corroborated by her mother, PW1 (Manamala Ghosh) and her brothers viz., Manab Ghosh and Amit Ghosh, PWs.6 and 7 respectively. PW1 was sleeping with her daughter in the verandah. She suddenly heard her daughter cried out "*Ma, Palash mama amar gaye ki jeno diye diyeche, amar sarir jole pure jachche*" (Mother, Palash mama poured something on my body due to which I am burning too much). She saw Palash and Babulal run away. Her saree and petticoat were also burnt due to acid. In a motor van her daughter was shifted to Dhubulia BPHC. PW1 was given first aid and released. She lodged written complaint which was scribed by PW3. She put her left thumb impression i.e. LTI on the complaint.

10. PW6 (Manab Ghosh) and PW7 (Amit Ghosh) are the brothers. They were sleeping inside the house. Hearing hue and cry, they went to the verandah and saw their sister writhing in pain. They also saw the appellants run away. Their sister was shifted to Dhubulia BPHC. Therefrom to Saktinagar Hospital. After six days, she was shifted to NRS Medical College and Hospital. Her sister was to join police service on the next date but due to the incident could not join.

11. PW9 (Goutam Ghosh) is the owner of the motor van rickshaw who shifted the victim to Dhubulia BPHC.

12. PW10 (Bipad Ghosh) is a neighbour who corroborated the prosecution case.

13. Medical Witnesses in the case are as follows:-

PW4 (Dr. Soumen Das) deposed the victim was brought to Dhubulia BPHC at 4.00 a.m on 21.07.2011. On examination he found acid burn injuries on both legs. After giving first aid, victim was shifted to Saktinagar Hospital. He proved the medical report, Ext.2.

14. At Saktinagar Hospital victim was treated by PW5 (Dr. Joydeep Roy). He deposed the victim was referred from Dhubulia BPHC with history of physical assault by pouring acid by the appellants. He found 20% burn injuries over lower limbs and left arm. He treated the victim on 28.07.2011 he referred her to undergo plastic surgery at NRS Medical College and Hospital. He proved his report, marked Ext.3 series.

15. PW13 (Dr. Collin Roy) performed plastic surgery on the victim. He stated that victim had suffered deep acid burn injuries over both legs. He grafted good skin over the burnt areas of the body. Her condition was extremely precarious. She was unable to walk. She remained under his treatment for over three months and was in a critical condition. Presently, she is able to walk with assistance.

16. PW14 (Dr. Asim Kr. Roy) attended the victim at NRS Medical College and Hospital. He deposed that victim was admitted under Dr. Collin Roy for advance treatment. She was discharged on 17.11.2011.

17. PW15 (Dr. S. K. Dey) admitted the victim in the hospital. He proved the admission report, Ext.8.

18. PW16 (SI Abul Fazal) is the investigating officer. He deposed he went to the spot, prepared rough sketch map with index. He recorded statements under Section 161 of the Code of Criminal Procedure. During investigation he seized various articles from the place of occurrence. He seized a glass bottle which was produced in court. He arrested the accused persons. He collected injury reports and submitted charge sheet. Subsequently, he submitted supplementary charge sheet with CFSL report.

19. Evidence of PW2 is criticized on the ground that she was sleeping in the verandah and could not have seen the appellants. I have considered her evidence in the backdrop of the factual matrix of the case. PW2 was sleeping with her mother in the verandah. There was an

electric bulb in the verandah. As soon as she felt a burning sensation she woke up and saw the appellants in the light of the electric bulb. Though prior to the assault, victim may have been sleeping but as soon as she suffered burning sensation due to acid, she opened her eyes and saw the appellants.

20. It is nobody's case that eyes of the victim had been affected by the acid attack. Hence, her ability to see the appellants in the light of the electric bulb cannot be said to be improbable. She cried out in pain and her mother who was sleeping beside her woke up and saw the appellants at the spot. Her brothers PWs6 and 7 rushed to the verandah and saw the appellants run away. Names of the appellants transpired at the earliest opportunity in the first information report as well as in the medical reports at Saktinagar Hospital.

21. In view of the aforesaid circumstances, I am of the opinion the version of PW2, the injured witness is corroborated by other witnesses and clearly prove that the appellants were the authors of the acid burn injuries. It is also argued that the victim suffered 20% burn injuries and they were not life threatening. Extent of the surface area of the body which was burnt is not the sole determining factor to assess the gravity of the injury. PW13 the Plastic Surgeon deposed the burn injuries were deep and the victim was in a critical condition. She required plastic surgery and was under treatment for three months. In fact, she deposed from a stretcher during trial.

22. In the light of the aforesaid evidence on record and the state of the victim at the time of trial, I am of the view the injuries were life threatening and the ingredients of the offence punishable under Sections 326/307 of the Indian Penal Code are fully satisfied.

23. Conviction of the appellants under Sections 326/307/34 of the Indian Penal Code are upheld.

24. Coming to the issue of sentence, it is argued that the motive to commit the crime has not been established. PW1 stated that they had good relation with the appellants. Moreover, the appellants do not have any prior criminal antecedents. These circumstances, though not relevant to adjudicate their culpability, may be treated as mitigating in nature.

25. Balancing the aggravating circumstances involving throwing of acid on a young girl with the aforesaid mitigating circumstances, we consider it prudent to modify the maximum sentence of life imprisonment imposed on the appellants for the offence punishable under Section 307 of the Indian Penal Code and direct that they shall suffer imprisonment for ten years each and to pay a fine of Rs.50,000/- each, in default to suffer rigorous imprisonment for three years more.

26. Sentence imposed under Section 326 of the Indian Penal Code shall remain unaltered. Both the sentences shall run concurrently.

27. The entire fine amount imposed on both counts, if realised, shall be paid to the victim.

28. The appeal is accordingly disposed of.
29. Connected application being CRAN 2 of 2017 (Old CRAN 5147 of 2017) is also disposed of.
30. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of Section 428 of the Code of Criminal Procedure.
31. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.
32. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)