

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3947 of 2018

Arising Out of PS. Case No.-159 Year-1995 Thana- DALSINGHSARAI District- Samastipur

Hari Nandan Thakur S/O Late Chandrika Thakur R/O Village- Keota, P.S-
Dalsingsarai, Distt.- Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate
	:	Ms. Vaishnavi Singh, Advocate
	:	Mr. Ritwik Thakur, Advocate
For the Respondent/s	:	Mrs. Anita Kumari Singh, APP
For the Informant	:	Mr. Anil Singh, Advocate
	:	Mr. Paritosh Parimal, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT

Date : 20-09-2024

This appeal has been preferred by the appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the judgment of conviction and order of sentence dated 11.09.2018 passed by learned Presiding Officer, Fast Track Court, 1st Samastipur in Sessions Trial No. 326 of 2001/112 of 2017 (arising out of Dalsinghsarai P.S. Case No. 159 of 1995), whereby the concerned Trial Court has convicted the appellant/convict for the offences punishable under Section 326 of the IPC and he has been sentenced to



undergo rigorous imprisonment for ten years and fine of Rs. 10,000/- and in default of payment of fine, further to undergo rigorous imprisonment for one year.

2. Brief case of prosecution as it appears from the statement of Ram Bilash Thakur (P.W. 8), recorded on 14.11.1995 at about 5:30 PM at Dalsinghsarai, Sub-Divisional Hospital, Distt. Samastipur that at about 2:00 PM, while informant alongwith his wife Chunchun Devi (P.W. 4), brother Sahdeo Thakur (P.W. 3) and son Shivrath Thakur (P.W. 2) were sitting in his courtyard (verandah), in the meantime thirteen accused persons named in the FIR including appellant/convict came and asked to vacate the house upon which informant replied that he is not going to vacate the house as he had purchased this house through registered sale-deed from one Satni Devi. It is further alleged that on hearing the aforesaid reply of the informant, Hari Nandan Thakur (appellant/convict) ordered to pour acid and to kill the family members of the informant upon which the accused persons started abusing and assaulting him and his family members. It is alleged that during the occurrence,



other accused persons namely Chandrika Thakur, Brijnandan Thakur, Om Prakash Thakur and Shivjee Thakur started dismantling his house covered with tiled shed. It is further stated that when the informant protested, appellants poured acid upon him as well as upon his brother (P.W. 3) and son (P.W. 2). The brother of the informant namely Sahdeo Thakur (P.W. 3) received acid burn injuries on his right leg, face and hand, whereas his son, Shivnath Thakur (P.W. 2) received acid burn injuries on his left hand, forehead and left cheek. It is further alleged that women folk of his family were assaulted by the accused persons and they also looted household articles and dismantled the house during occurrence. The occurrence was said to be witnessed by Jageshwar Das (P.W. 1), Dhaneshwar Das (P.W. 5), Ramashish Das (P.W. 7) and Sitaram Thakur (P.W. 6) etc.

3. On the basis of aforesaid written information, the police registered a case, as Dalsinghsarai P.S. Case No. 159 of 1995 on 21.11.2001 for the offences punishable under Sections 147, 148, 323, 324, 307, 448, 447, 379 and 504 of the IPC, where after the investigation, the police



submitted charge-sheet on 29.02.1996 under Sections 147, 148, 324, 326, 323, 307 and 504 of the IPC.

4. The learned Jurisdictional Magistrate, after perusal of record and materials collected during the course of investigation, took cognizance and committed this case to the court of Sessions on 19.05.2001, in view of Section 209 of the Cr.P.C., after compliance of Section 207 of the Cr.P.C.

5. The learned trial court on the basis of materials collected during investigation, framed charges against appellant/convict for the offences punishable under Sections 147, 326, 307/34 and 504 of the IPC, which he pleaded “not guilty” and claimed trial.

6. To substantiate its case, the prosecution has examined altogether thirteen witnesses, who are:-

Prosecution Witnesses No(s).	Names
P.W. 1	Jageshwar Singh
P.W. 2	Shiv Nath Thakur (son of the informant)
P.W. 3	Sahdeo Thakur (brother of the informant)
P.W. 4	Chunchun Devi (wife of the informant)



P.W. 5	Dhaneshwar Das (hostile)
P.W. 6	Sita Ram Thakur (brother of the informant)
P.W. 7	Ramashish Das
P.W. 8	Rambilash Thakur (informant)
P.W. 9	Shiv Narain Singh (Advocate clerk examined as formal witness)
P.W. 10	Dr. Yogendra Mahto
P.W. 11	Dr. Arun Kumar Ojha
P.W. 12	Dr. Kapoorchan Tekriwal
P.W. 13	Gauri Shankar Pandey (Investigating Officer)

7. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Signature of informant on his <i>fardbeyan</i> to register case.
Exhibit-2	Injury Report of P.W. 4
Exhibit-2/A	Injury Report of P.W. 2
Exhibit-2/B	Injury Report of P.W. 3
Exhibit-3, 3/a & 4	Injury Report of P.W. 8/informant.
Exhibit-5	<i>Fardbeyan</i>
Exhibit-6	Endorsement by Officer-in-charge on the <i>fardbeyan</i> .
Exhibit-7	F.I.R.
Exhibit-8	C.S. Khatiyan in the name of Ram Pratap Thakur with



	regard to Khata No. 1095, Plot No. 764.
Exhibit-8/1	C.S. Khatiyani in the name of Ram Pratap Thakur with regard to Khata No. 1096, Plot No. 1374/1376.
Exhibit-9	Certified copy of sale deed dated 16.03.1995 executed by Santi Devi in favour of Chunchun Devi wife of Ram Bilash Thakur.
Exhibit-10	Certified copy of order dated 09.02.2023 passed in Case No. 263/08 u/s 106 B.T. Act.
Exhibit-11	Certified copy of order sheet dated 05.02.2018, with regard to filing of the Title Appeal No. 46 of 2017.

8. On the basis of evidence as surfaced during the trial, the learned trial court has examined the appellant/accused under Section 313 of the Code, where he completely denied his involvement in occurrence by denying all incriminating evidences as surfaced during the trial and stated that he was implicated with this case falsely and claimed his complete innocence also.

9. No witness in defence was examined by appellant/convict during the trial but certain documents were exhibited in support of his defence, which are:-



Exhibit No(s).	List of documents
Exhibit-A	Order Sheet of DCLR dated 12.09.2016 passed in case No. 3 of 96-97.
Exhibit-B	Certified copy of judgment passed in Title Suit No. 11 of 2003.
Exhibit-C	Certified copy of judgment passed in Complaint Case No. 369 of 2004.
Exhibit-D	Certified copy of FIR of Dalsingsarai P.S. Case No. 160 of 1995.

10. Considering the evidences and argument as advanced by the parties, learned trial court convicted appellant and passed order of sentence as aforesaid for the offence under Section 326 of the IPC, being aggrieved of which, the appellant/convict has preferred the present appeal.

11. Hence, the present appeal.

Argument on behalf of the appellant/convict:

12. Mr. Ajay Thakur, learned counsel appearing on behalf of appellant/convict submitted that present case was lodged in order to counter and also to make out a case in defence as lodged by the co-convict Chinta Devi (against whom this appeal stands abated as she died during the



pendency of the present appeal) which was registered as Dalsingsarai P.S. Case No. 160 of 1995 on the same very day i.e., on 14.11.1995 against informant/P.W. 8 and others. It is also submitted that in the aforesaid case learned trial court convicted informant. It is submitted that as occurrence was free fight in nature, therefore case under Section 307 of the IPC was not believed by learned trial court and appellant was therefore, acquitted from charges under Section 307 of the IPC. It is submitted as reason for throwing acid was alleged to cause death therefore, conviction recorded by learned trial court under Section 326 of the IPC also cannot be said proved, when prosecution failed to prove charge under Section 307 of the IPC.

13. It is further submitted by Mr. Thakur that no independent witnesses came forward to support the case of prosecution, rather only on the basis of interested witnesses, where most of them are relatives of the informant, judgment of conviction was recorded and for the said reason alone the judgment of conviction as recorded by learned trial court appears questionable. It is also submitted that when other



charges found not proved, which alleged to be committed during the course of occurrence, it can be said safely that the main charges were also not proved beyond reasonable doubt. It is also submitted that acid burn clothes were also not handed over to the police during the course of investigation, where none of the injuries as alleged to be received by injured/prosecution witnesses due to acid attack were found grievous except of one Shiv Nath Thakur. The length of acid injury as alleged to caused by corrosive substance (acid) was also not examined to ascertain the gravity of assault. It is also submitted that there is no specific evidence available on record out of the depositions of the prosecution witnesses which may suggest beyond doubt that acid was poured upon Shiv Nath Thakur during the course of occurrence by appellant. Therefore, the conviction of appellant namely Hari Nandan Thakur under Section 326 of IPC with available evidence appears bad in the eyes of law and therefore same is fit to be quashed and set aside.

14. It is further submitted by Mr. Thakur, that present occurrence took place at about 2:00 PM in noon on



14.11.1995 but *fardebayan* was recorded at about 5:50 PM i.e., with the delay of 3 hours and 50 minutes, where distance of police station from the hospital is of only one kilometer. Aforesaid delay of about 4 hours is unexplained by the prosecution. In support of his submission learned counsel relied upon the report of Hon'ble Supreme Court, as available through **Nand Lal and Others Vs. State of Chhattisgarh**, reported in [(2023) 10 SCC 470].

15. It is also submitted that all the prosecution witnesses suppressed during trial about counter case and they failed to explain the injury as received by appellant during the course of occurrence. In support of his submission learned counsel relied upon the legal reports of Hon'ble Supreme Court, as available through **Anand Ramachandra Chougule Vs. Sidarai Laxman Chougala and Others**, as reported in [(2019) 8 SCC 50] & **Balraje @ Trimbak Vs. State of Maharashtra**, as reported in [(2010) 6 SCC 673]. It is also submitted that in **Nand Lal Case (supra)** Hon'ble Apex Court laid down that non-explanation of injury suffered by accused is fatal to the prosecution. In this



context, learned counsel also relied upon the report of Hon'ble Supreme Court, as available through **Lakshmi Singh and Others Vs. State of Bihar**, as reported in **[(1976) 4 SCC 394]**.

16. It is further submitted that statement of appellant/convict as recorded under Section 313 of the Cr.P.C., appears very cryptic and was recorded in very mechanical manner, as incriminating circumstances as surfaced during the trial was not put before appellant to explain and therefore on this score alone, the conviction as recorded by learned trial court is fit to be quashed and set aside. In support of his submission learned counsel relied upon the report of Hon'ble Supreme Court, as available through **Sukhjit Singh Vs. State of Punjab**, as reported in **[(2014) 10 SCC 270]**. It is also submitted that occurrence took place in background of land dispute. In support of defence, appellant has exhibited a document as **Exhibit-A** which is the order of learned DCLR dated 12.06.1996 in Case No. 3/1996-97 to create revenue record right in the name of land holder of the accused side. **Exhibit-D** is the



certified copy of the counter case i.e., Dalsinghsarai P.S. Case No. 160 of 1995, wherein accused informant Chinta Devi stated while recording her *fardbeyan* that she was in her house when the present informant and others came and started assaulting them and demolished their house. It is submitted that title suit filed by informant's side *qua* disputed house/plot was dismissed by competent court and till date said judgment is not set aside by any appellate court. This fact is sufficient to suggest that appellant was enjoying peaceful possession of house, while prosecution side entered into the house variously armed with deadly weapons as an aggressors. It is submitted that no incriminating material as acid was seized from the place of occurrence, which may suggest upon chemical examination that it was acid or any other corrosive substance, which was used by appellant during the occurrence. It is submitted that I.O. did not find any mark of corrosive substance at the place of occurrence. No empty bottle of acid was also recovered from the place of occurrence and thus there are some material questions/doubts *qua* allegation, which



prosecution was otherwise duty bound to answer during the trial but failed and in absence of which it cannot be said safely that prosecution established its case beyond reasonable doubt. While concluding the argument, learned counsel relied upon the legal report of Hon'ble Supreme Court, as available through **Amar Singh Vs. Balwinder Singh and Others**, as reported in **[(2003) 2 SCC 518]**, where benefit of faulty investigation was extended to accused/appellant.

Argument on behalf of State:

17. Learned APP duly assisted by learned counsel appearing on behalf of the informant, while opposing the appeal submitted that in fact informant and his family members were under the occupancy of the house in issue and appellant was aggressor. It is submitted that injury as claimed to be received by appellant's side was not made available on record in defence like other exhibited documents, during trial, which straightaway suggest that there was no such injury received by the appellant's side during the course of occurrence as claimed and it is just an



afterthought to counter the present case, where case lodged by appellant's side is subsequent to this case just to make the occurrence as a free fight. It is submitted that status of appellant was of a trespasser. In support of his submission learned counsel relied upon the report of Hon'ble Supreme Court, as available through **Ram Rattan and Others Vs. State of Uttar Pradesh**, as reported in **[(1977) 1 SCC 188]**.

18. It is also submitted by learned counsel that appellant in his defence failed to contradict the statements of P.W. 1 & P.W. 2 as made earlier before I.O. during the course of investigation as recorded under Section 161 of the Cr.P.C. It is also submitted that defence also failed to contradicts the statement of P.W. 4 as well as P.W. 8/informant/injured *qua* occurrence in question or report of their injuries. It is further submitted that evidence of injured witnesses cannot be disbelieved in absence of any compelling circumstances. In support of his submission learned counsel relied upon the report of Hon'ble Supreme Court, as available through **Balu Sudam Khalde and Another Vs.**



State of Maharashtra, as reported in **[(2023) SCC Online SC 355]**. It is submitted that injury of P.W. 2 Shiv Nath Thakur and P.W. 8/informant Rambilash Thakur upon medical examination was found "grievous" caused by strong corrosive substance i.e., acid, whereas the injury found upon P.W. 3 Sahdeo Thakur is appearing "simple" in nature caused by strong corrosive substance and as such there is no reason to disbelieve that injuries were not caused by strong corrosive substance like acid. Hence there is no occasion to interfere with the impugned judgment, which is under appeal. While concluding the argument, learned counsel for the informant further relied upon the legal reports of Hon'ble Supreme Court, as available through **Ram Bihari Yadav Vs. State of Bihar and Others**, as reported in **[(1998) 4 SCC 517]**, **Karnel Singh Vs. State of M.P.**, as reported in **[(1995) 5 SCC 518]** & also **Omanakuttan Vs. State of Kerala**, as reported in **[(2019) 6 SCC 262]**.

19. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by



learned counsel appearing on behalf of the parties.

20. As to re-appreciate the evidences, while dealing with present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

21. **P.W. 1 Jageshwar Singh**, who is claiming to be an eye-witness of the occurrence and deposed that occurrence took place before ten years. It was deposed that on instigation of appellant Hari Nandan Thakur co-accused Chinta Devi poured/sprinkled acid. It was deposed by him that acid was thrown by Chinta Devi upon Rambilash Thakur (P.W. 8), Sahdeo Thakur (P.W. 3) and son of the informant namely Shiv Nath Thakur (P.W. 2).

21.1. Upon cross-examination he stated that at the time of occurrence he was eating, which he completed within five minutes and thereafter came out from his house on public alarm and slowly proceeded towards place of the occurrence. He did not saw any injury upon the body of any person, he only noticed that Rambilash Thakur (P.W. 8/informant) was suffering from pain. In view of his deposition it can be gathered on its face that he arrived at



the place of occurrence on public alarm and by that time injured had already received injury and therefore, he cannot be said to be an eye-witness of the actual occurrence of throwing/pouring acid. He appears to contradicting his own version in cross-examination as he deposed in his examination-in-chief making a doubt regarding his claim, to be an eye-witness of the occurrence.

22. **P.W. 2 is Shiv Nath Thakur** (son of the informant), who is one of the injured witness. He deposed in his examination-in-chief that it was appellant Hari Nandan Thakur, who asked to throw acid and saying this he took acid from the hand of co-accused Chinta Devi and thereafter appellant alongwith Chinta Devi threw acid. It was thrown upon him, his uncle (P.W. 3) and father (P.W. 8), where all three received acid burn injury out of said acid attack. Said acid caused burn injuries on his left arm and right thigh. It was stated by him that his father (P.W. 8) received burn injury on his eye, thigh and abdomen and his uncle received burn injury on his hand and both legs. They all were admitted in hospital for eight days. He remained in



Dalsinghsarai Hospital, whereas his father was referred to Civil Hospital, Samastipur. It was stated by him that appellant has no valid claim regarding his house, which was purchased by his father in his name.

22.1. Upon cross-examination, his attention was drawn regarding his earlier statement, where he said that he said to police that during the course of investigation Hari Nandan Thakur asked to throw acid, where he also stated before police that appellant took acid from the hand of co-accused Chinta Devi and thereafter they both poured/sprinkled acid. He also stated before police that it was thrown upon head, on eyes, thigh and abdomen of his father and his uncle received injuries on his right hand and both legs. He also stated to disclose before police that he remained in hospital for 8 days alongwith his uncle and his father was referred to Civil Hospital, Samastipur. He further stated that before lodging this case, seven more cases were pending with appellant side, including of both nature i.e., civil and criminal. He stated that he did not saw, who received injury during the occurrence from the side of



appellant. He denied suggestion that co-accused Chinta Devi, Meena Devi, Geeta Devi and Sabo Devi received injuries during the occurrence. He also stated that he became unconscious during occurrence and thereafter he was admitted to hospital and as such can't say anything in this regard. The duration of occurrence was of about 15-20 minutes.

23. **Sahdeo Thakur (brother of the informant)**, who is also an injured witness of the occurrence. He deposed that appellant asked to vacate the house, which was objected by his brother (P.W. 8) as it was purchased by him and on his protest Hari Nandan Thakur and co-accused Chinta Devi having acid in their hand, started pouring/sprinkling acid upon him, resultantly his brother Rambilash Thakur (P.W. 8) and Shiv Nath Thakur (P.W. 2) became injured out of said acid attack. Thereafter wife of Rambilash Thakur (P.W. 8/informant) came to rescue, where she was also assaulted by appellant with co-accused person by acid, where her left hand and both legs received acid burn injury during the occurrence. He claimed



that he remained in Dalsinghsarai hospital for one month, where his brother P.W. 8 received treatment in Civil Hospital, Samastipur. He stated that during the occurrence he saw bottles of acid but he could not recognize that same are containing acid.

24. **P.W. 4 is Chunchun Devi**, who is wife of informant/P.W. 8 and mother of P.W. 2 Shiv Nath Thakur. She deposed that occurrence took place sometime before 10 years. She deposed that appellant ordered to burn them by pouring/sprinkling acid, whereas Chandrika Thakur, Brij Nandan Thakur, Om Prakash Thakur and Shivji Thakur started dismantling her house during the occurrence, which was asked to stop by her husband (P.W. 8), thereafter appellant alongwith co-accused Chinta Devi started pouring/sprinkling acid, which caused burn injury on left eye, right thigh and abdomen of her husband. Injury was also caused to the left arm of his son/P.W. 2. She also deposed that acid burn was caused to her brother-in-law/P.W. 3 also on his thigh and right hand.

24.1. Upon cross-examination, she denied that



during course of occurrence Chinta Devi, Meena Devi, Geeta Devi and Sabo Devi were also assaulted, where Chinta Devi received a fracture injury in her hand. She also denied to suggestion that they all admitted to Sub-Divisional Hospital, Dalshingsarai. She also denied that they were arrested while under treatment at Dalsinghsarai Sub-divisional Hospital.

25. **P.W. 5 Dhanehwar Das**, stated in his examination-in-chief that he know nothing about the occurrence and did not made any statement before police during investigation. He was declared **hostile** by prosecution and upon cross-examination by State nothing relevant surfaced out of his deposition, which may be said relevant for contradicting or corroborating evidence of other prosecution witnesses, who supported the case of prosecution.

26. **P.W. 6 is Sita Ram Thakur (brother of the informant)**, who deposed in his examination-in-chief that he arrived at the place of occurrence after an hour and found that acid was poured/sprinkled upon Rambilash Thakur (P.W. 8), Sahdeo Thakur (P.W. 3) and Prem Nath Thakur



(not examined). He later on deposed that son of Rambilash Thakur (P.W. 8) i.e., Shiv Nath Thakur (P.W. 2) also received acid burn injury. Upon cross-examination he stated that P.W. 8/informant is his brother.

27. **P.W. 7 Ramashish Das**, deposed that occurrence took place before ten years. He claimed to be an eye-witness of the occurrence, where he saw acid was poured/sprinkled upon the body of P.W. 8/informant, P.W. 3 and P.W. 2.

27.1. Upon cross-examination, he deposed that he did not saw injury upon co-accused Chinta Devi and Geeta Devi. He further stated that injured were burnt by acid. It was stated that he saw about 40-50 persons during occurrence, where he did not find any injury upon Chinta Devi and Geeta Devi.

28. **P.W. 8 is Rambilash Thakur**, who is informant of this case and also one of the injured. It was deposed by him that occurrence took place on 14.11.1995 at about 2:00 PM, while he was in his house alongwith his family members, when several co-accused persons alongwith



appellant came over there and asked to vacate the house, otherwise they have to face dire consequences. Upon which, he replied that this house was purchased by him and thus refused to vacate the house. Thereafter, appellant ordered to kill him by pouring/sprinkling acid. They also started abusing them, whereafter occurrence took a shape of free fight. It was deposed that during the occurrence Chandrika Thakur, Brij Nandan Thakur, Om Prakash Thakur and Shivji Thakur started dismantling the house by using "*khanti*" which was asked to stop and upon that appellant having bottle of acid in his hand started pouring/sprinkling acid upon him, his brother (P.W. 3) and his son (P.W. 2). It was deposed by him that due to said acid attack he received injuries on his eyes, abdomen and thigh, P.W. 3 Sahdeo Thakur received burn injuries on his legs, chest and face, P.W. 2 Shiv Nath Thakur received burn injuries on his left leg and left cheek. He also deposed that his wife Chunchun Devi (P.W. 4) also received injuries. They all were admitted to Dalsinghsarai Hospital from where, he was referred to Civil Hospital, Samastipur for the reason that ophthalmologist (eye doctor)



was not available in the nearest hospital. He denied any claim of appellant and co-accused persons regarding house in issue.

28.1. Upon cross-examination, it was stated by him that a proceeding under Section 144 of the Cr.P.C. before Sub-Divisional Magistrate, Dalsinghsarai was pending with appellant. It was stated that at first instance they all went to police station from where they were sent to the hospital. He said to be admitted in the hospital for 5-7 days. He did not saw Meena Devi, Chinta Devi, Geeta Devi and Sabo Devi in said hospital. A case was also lodged to counter the present occurrence. He denied suggestion that they assaulted Chinta Devi and Meena Devi during the occurrence and both of them received several injuries. It was stated by him that occurrence took place for about 15-20 minutes. He stated that he produced his acid burn clothes before police, which was seized by police.

29. **P.W. 9 is Shiv Narain Singh**, an advocate clerk, who examined as formal witness, and therefore not required to be discussed.



30. **P.W. 10 is Dr. Yogendra Mahto**, who stated that on 14.11.95 he was posted at Sub-Divisional Hospital Dalsinghsarai as a Medical Officer. On that day he examined Chunchun Devi (P.W. 4) aged about 40 years Hindu female W/o Ram Bilash Thakur of village- Keata, Dalsinghsarai, Samastipur at about 3.30 PM and found following injuries.

I. Pain in right hypochondrium and back of chest.

II. Abrasion over the right side of forehead.
1/4"x1/4".

Age of injuries is within 3 hours. Caused by hard and blunt substance. Nature of injury is simple. M/I- Black mole over the front of chest. This injury report said to be under his pen and signature, which upon identification was marked as Ext -2.

On the same day at about 3:40 P.M., he examined Sheonath Prasad (P.W. 2) aged about 21 years Hindu Male S/o Ram Bilash Thakur of the same village and found the following injuries on his body.

1. The patient was restless due to pain and



burning sensation, scaled wound (acid burn), black patches over the front of forehead, left side of cheek in scattered manner. Treacle down wound having different size and shape also in right and left arm with big patches, below the left knee, Total area burnt approximately 24%.

2. Age of injury- within 3 hours, caused by strong corrosive acid.

3. Nature- Disfigurement on face was "grievous".

M/I- Post, wound scar.

This injury report was said be written by him and signed, which upon his identification was marked as Exhibit- 2/a.

He further stated that on same day at about 3.40 P.M., he examined Shahdeo Thakur (P.W. 3) aged about 35 years, S/o Ramsevak Thakur of the same village and found the following injuries on his body.

(i) The patient was restless due to pain and burning sensation, scaled wound (acid burn) over the left side and front of the upper lip (just tini drop).



(ii) Scaled wound acid burn on the left side and front of the chest, left forearm, a big portion on right forearm on dorsum and both thigh front tricle downward over both the leg and black color patches. Approximately burn area was about 30%, caused by strong corrosive acid. Age of injury reported within 3 hours. Nature of injury found "simple". M/o- Post burn scar. This report is written and signed by him and marked as Ext-2/b.

30.1. Upon cross-examination he stated that he had not mentioned the length and breadth of scaled wound. He did not mention the dimension of injuries. Such type of injuries are not possible by hot water. Acid burn injuries may be scientifically analyzed in forensic science laboratory. Injuries can be caused by diluting strong corrosive acid. He did not measure whether corrosive acid was diluted or not. He wrote the injury report on the day of examination, itself. He wrote the percentage of injury in approximate way. Complaint of pain is not the injury, abrasion may be caused by nail. Smell of acid was not coming out from the injuries. The burn injuries in arms and legs were scattered but he had



not mentioned whether it was on back side or front side.

31. **P.W. 11 is Dr. Arun Kumar Ojha**, who deposed that on 27.11.1995, he was posted at Civil Hospital Samastipur, where a case under reference of Indoor No. 1043 dated 14.11.1995 from Sub-Divisional Hospital, Dalsinghsarai was referred to Sadar Hospital Samastipur for examination of the patient. He stated that he examined Ram Bilas Thakur (P.W. 8) S/o Late Ram Sewak Thakur, village- Keota, P.S. Dalsinghsarai Distt- Samastipur and found the following injuries.

(I) Left eye conjunctiva, congestion ++ and corneal haziness+ vision 6"x24 chemical burn just like acid.

This injury report is written and signed by him and exhibited as Ext-3/A.

31.1. Upon cross-examination he stated that, while looking at this injury report it is not clear that injured have been referred to Samastipur Hospital. Looking at this it is not clear whether this paper was received here or not. He don't know who brought the patient to him. He don't remember, whether patient brought his paper with him. No



one came with aforesaid injury report. This paper was sent under reference. He did not write the patient's identification mark on it. Duration of injury is not given. In normal course the vision is of 6x6, the vision keeps changing with age. Vision is written, distance is not written. Distance vision is not written on it. Medically it is a case of conjunctive congestion injury. The nature of the injury is not written. Conjunctive congestion was in entire eye.

32. **P.W. 12 is Dr. Kapporchan Tekriwal,**

who deposed that on 14.11.1995, he was posted at Sub-Divisional Hospital Dalsingsarai and examined one injured Rambilas Thakur S/o Late Ram Sevak Thakur of village-Kewala, PS-Dalsingsarai and found following injuries on his person:-

(i) acid burn superficial skin involument on right outer front thigh area 8"x6" skin black.

(ii) Few spot on left front thigh and acid burn area.

(iii) One acid burn area on lower abdomen size 2"x2".

(iv) Left eye was red + Swelling eye lid swell with



severe pain + tearing.

(v) Injury no.- 1,2,3 simple injury, caused by acid burn.

Injury no.-4 Patient referred to eye hospital Sadar Samastipur for expert opinion and opinion reserved. Age of injury within 12 hours. M/o- one black mole on back. This injury report was said to be written and signed by him, which exhibited as Injury no. 4 Expert opinion received which shows corneal haziness which is suggestive of left eye injury as "grievous".

32.1. Upon cross-examination, he stated that injured is not available before him. He was on duty on 14.11.1995 from 8 AM to 2.00 PM. He examined injured between aforesaid timing. Superficial injury can be easily manufactured. Measurement and numbering of injuries are also not mentioned. Specific location of acid burn on lower abdomen has not been mentioned. Redness of eye can be possible in cold by biting of insect and due to infections. Swelling can also be caused by insect biting and cold wave. He had not issued injury report on 14.11.1995 rather issued



on 17.11.1995. Burning of clothes can also cause burn injury OD slip was received on 14.11.1995. It is not a fact that his injury report is collusive in the connivance of informant. It is not a fact that he had issued wrong injury report.

33. **P.W. 13 is Gauri Shankar Pandey**, who is the Investigating Officer of this case, who deposed that on 14.11.1995 he was posted as ASI, who said to record the statement of P.W. 8/informant in Sub-Divisional Hospital, Dalsinghsarai. He identified his signature and hand writing on FIR, which upon his identification was exhibited as **Exhibit No. 5**. He also identified the signature of then SHO namely Amarkant Jha, regarding endorsement to lodge case, which upon his identification of hand writing and signature of the then SHO exhibited as Exhibit No. 6. He took charge of investigation on 14.11.1995 and on the same very day statements of P.W. 8/informant/injured, P.W. 2/injured, P.W. 3/injured and P.W. 4/injured were recorded. He deposed that when he visited the place of occurrence, he found recent sign of dismantling and destruction of the wall



of the house, which appears to be caused by "*khanthi*", brick plates were also found recently broken. He recorded the statement of remaining witnesses also, where they deposed that witnesses said that appellant alongwith co-accused Chinta Devi, took acid in their hands and poured/sprinkled upon P.W. 8, P.W. 2 and P.W. 3 caused acid burn injuries during the occurrence. He also deposed to obtain injury reports of the aforesaid injured and thereafter submitted charge-sheet against appellant and other co-accused persons.

33.1. Upon cross-examination, he deposed that he visited hospital under order of then SHO on 14.11.1995. OD slip was received at police station from the hospital and thereafter *sanha* was also registered. He did not mention the time of *sanha* in the case diary. He recorded *fardbeyan* at 5:30 PM. He stated that he arrested co-accused Chinta Devi in hospital, while she was admitted there. He also deposed that co-accused Meena Devi, Geeta Devi and Sabo Devi were also admitted in hospital. He deposed that co-accused Chinta Devi lodged a case against informant and others



which was registered as Dalsinghsarai P.S. Case No. 160 of 1995 for the offences under Sections 147, 323, 447, 427 and 379 of the IPC, which is a counter case of the present occurrence. He investigated that case also. He deposed that place of occurrence of both cases i.e., present Dalsinghsarai P.S. Case No. 159 of 1995 and Dalsinghsarai P.S. Case No. 160 of 1995 are same. He affirmed land dispute between the parties. He deposed that prior to this occurrence, another criminal case between the parties was registered with same police station as Dalsinghsarai P.S. Case No. 25 of 1995 and Dalsinghsarai P.S. Case No. 26 of 1995. He stated that P.W.-2 Shiv Nath Thakur stated before him that Hari Nandan Thakur took bottle of acid from the hand of co-accused Chinta Devi. He never stated that his father received injuries on left leg, hand and thigh, uncle on his right hand and both legs, which was due to acid attack. He also deposed that P.W. 3 never stated before him that acid caused injuries on his chest and hand. He also stated that P.W. 6 never stated before him that the P.W. 8/informant received acid injury in his eye, P.W. 3 on his thigh and son



of P.W. 8 on his left cheek.

34. It would be appropriate at this stage to reproduce Section 326 of the IPC for the better understanding of law to discuss evidence and facts surfaced during the trial.

326. Voluntarily causing grievous hurt by dangerous weapons or means.—

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for 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, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.



35. It would be apposite to re-produce para-30 of the legal report of Hon'ble Supreme Court as available through **Balraje @ Trimbak Case (supra)**, which is as under:-

30. In law, testimony of an injured witness is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence.

36. It would be apposite to re-produce para-25 and 26 of the legal report of Hon'ble Supreme Court as available through **Nand Lal and Others Case (supra)**,



which is as under:-

25. We will first consider the issue with regard to non-explanation of injuries sustained by Accused 11 Naresh Kumar. In *Lakshmi Singh v. State of Bihar* [*Lakshmi Singh v. State of Bihar*, (1976) 4 SCC 394 : 1976 SCC (Cri) 671] , which case also arose out of a conviction under Section 302 read with Section 149IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus : (SCC pp. 401-402, para 12)

"12. ... It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences: (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; (3) that in case there is a defence version which explains the injuries on the person of



the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [*State of Gujarat v. Bai Fatima*, (1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect



the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."

26. A similar view with regard to non-explanation of injuries has been taken by this Court in *State of Rajasthan v. Madho* [*State of Rajasthan v. Madho*, 1991 Supp (2) SCC 396 : 1991 SCC (Cri) 1048] , *State of M.P. v. Mishrilal* [*State of M.P. v. Mishrilal*, (2003) 9 SCC 426 : 2003 SCC (Cri) 1829] and *Nagarathinam v. State* [*Nagarathinam v. State*, (2006) 9 SCC 57 : (2006) 3 SCC (Cri) 212].

37. It would be apposite to re-produce para-15 of the legal report of Hon'ble Supreme Court as passed in the matter of **Amar Singh Case (supra)**, which is as



under:-

15. Coming to the last point regarding certain omissions in DDR, it has come in evidence that on the basis of the statement of PW 4 Amar Singh, which was recorded by PW 14 Sardara Singh, SI in the hospital, a formal FIR was recorded at the police station at 9.20 p.m. In accordance with Section 155 CrPC the contents of the FIR were also entered in DDR, which contained the names of the witnesses, weapons of offence and place of occurrence and it was not very necessary to mention them separately all over again. It is not the case of the defence that the names of the accused were not mentioned in DDR. We fail to understand as to how it was necessary for the investigation officer to take in his possession the wire gauze of the window from where A-1 is alleged to have fired. The wire gauze had absolutely no bearing on the prosecution case and the investigating officer was not supposed to cut and take out the same from the window where it was fixed. It would have been certainly better if the investigating agency had sent the firearms and the empties to the Forensic Science Laboratory for comparison. However, the report of the ballistic expert would in any case be in the



nature of an expert opinion and the same is not conclusive. The failure of the investigating officer in sending the firearms and the empties for comparison cannot completely throw out the prosecution case when the same is fully established from the testimony of eyewitnesses whose presence on the spot cannot be doubted as they all received gunshot injuries in the incident. In *Karnel Singh v. State of M.P.* [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] it was held that in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect and to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. In *Paras Yadav v. State of Bihar* [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] while commenting upon certain omissions of the investigating agency, it was held that it may be that such lapse is committed designedly or because of negligence and hence the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. Similar view was taken in *Ram Bihari Yadav v. State of Bihar*



[(1998) 4 SCC 517 : 1998 SCC (Cri) 1085]
when this Court observed that in such cases the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials, otherwise, the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice. In our opinion the circumstances relied upon by the High Court in holding that the investigation was tainted are not of any substance on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eyewitnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief.

38. It would further be apposite to re-produce para-13 of the legal report of Hon'ble Supreme Court as available through **Ram Bihari Yadav Case (supra)**, as cited by learned counsel for the informant which is as



under:-

13. Before parting with this case we consider it appropriate to observe that though the prosecution has to prove the case against the accused in the manner stated by it and that any act or omission on the part of the prosecution giving rise to any reasonable doubt would go in favour of the accused, yet in a case like the present one where the record shows that investigating officers created a mess by bringing on record Exh. 5/4 and GD Entry 517 and have exhibited remiss and/or deliberately omitted to do what they ought to have done to bail out the appellant who was a member of the police force or for any extraneous reason, the interest of justice demands that such acts or omissions of the officers of the prosecution should not be taken in favour of the accused, for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the appellant. In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be



perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.

39. It would be apposite to re-produce para-6 of the legal report of Hon'ble Supreme Court as passed in the matter of **Karnel Singh Case (supra)**, cited by learned counsel for the informant which is as under:-

6. We must admit that the defective investigation gave us some anxious moments and we were at first blush inclined to think that the accused was prejudiced. But on closer scrutiny we have reason to think that the loopholes in the investigation were left to help the accused at the cost of the poor prosecutrix, a labourer. To acquit solely on that ground would be adding insult to injury.



Conclusion

40. From the aforesaid evidences as discussed above, one fact appears admitted that occurrence is not disputed as free fight because for the same set of occurrence counter case was also lodged by appellant's side i.e., Dalsinghsarai P.S. Case No. 160 of 1995, where during the occurrence person from appellant's side also claimed to received injuries. It also appears from the testimony of informant/P.W. 8, itself that occurrence took shape of free fight. Investigating officer/P.W. 13 also deposed that place of occurrence of both the cases i.e., present case and the counter case as lodged by appellant's side are one and same. Hence, this court has no hesitation to accept occurrence as free fight, where place of occurrence is "disputed house" claimed by both parties.

41. Another important aspect *qua* occurrence, which can be gathered from **Exhibit-D**, which was relied upon by appellant in his defence, which is the certified copy of FIR of Dalsinghsarai P.S. Case No. 160 of 1995, which is counter case of the present occurrence. It appears upon perusal that informant namely Chinta Devi, who was also



one of the co-convict, nothing mentioned regarding presence of any male member of her family including appellant during the occurrence where time of occurrence and place of occurrence are same. Author of FIR is Chinta Devi, who was also one of the co-convict, in this case under Section 326 of the IPC but as she died during the pendency of the present appeal, same stands abated against her, vide order dated 20.12.2023. FIR is also not speaking that how informant and his family members received bodily injuries and other burn injuries due to corrosive substance. Counter case was lodged subsequent to present case, where main allegation appears regarding house trespass and theft and as such **Exhibit-D** instead of helping appellant raised a doubt against appellant himself, *qua* suppressing the material aspects of the occurrence *qua* acid attack, which is the main consideration for present appeal.

42. In view of aforesaid backgrounds of evidence, this appellate court to decide mainly whether conviction of appellant as recorded by learned trial court under Section 326 of the IPC with available evidence is



justified or not.

43. In this context it would be apposite to discuss the evidence of three injured witnesses, who received injuries out of acid attack during the course of occurrence, who are P.W. 2, P.W. 3 and P.W. 8/informant. All three injured witnesses consistently deposed that they received acid burn injuries from co-accused Chinta Devi (since died) and appellant Hari Nandan Thakur. There are certain minor discrepancies regarding occurrence from the deposition of P.W. 1, who during the trial stated that it was only Chinta Devi, who poured acid but from his deposition, it appears that he is not the eye-witness of the real occurrence *qua* pouring of acid as he arrived at the place of occurrence on public alarm only and further quality of his deposition is also not of such nature, which can be accepted to disbelieve the version of these injured witnesses.

44. Though, during the course of investigation no mark of acid was found on the surface and no acid burn clothes were seized by police, neither any chemical examination reports are available to ascertain the nature of



chemical but same are not helping appellant as it may be due to faulty investigation and for that reason only depositions of three injured witnesses, which appears fully corroborated with finding of three doctors (P.W. 10, P.W. 11 & P.W. 12) who found "grievous" injuries upon injured persons by strong corrosive acid cannot be disbelieved.

45. It further appears from the depositions of injured witnesses that soon after the occurrence they were hospitalized. The occurrence was admittedly a free fight, where several persons found involved from both sides and in such circumstances non-explanation of injury as received during the course of occurrence by appellant's side is normal phenomenon and thus on this score alone, it cannot be said that prosecution failed to established its case. It appears that injury as suggested to be received by appellant's side was not visible and moreover, no injury report was brought on record. Hence, in want of any visible injuries non-explanation not appears fatal to prosecution.

46. Submission was also raised regarding mechanical examination of appellant under Section 313 of



the Cr.P.C., it appears that question regarding pouring/sprinkling of acid was put to appellant specifically, which he denied simply and therefore the argument of learned counsel *qua* mechanical examination of appellant under Section 313 of the Cr.P.C. also not appears convincing.

47. Hence, by considering the nature of depositions of injured witnesses, which appears in full corroboration with medical finding that injury received by them are due to strong corrosive substance like acid, this court did not find any irregularities as to interfere with impugned judgment of conviction, where appellant was convicted for the offence punishable under Section 326 of the IPC.

48. Accordingly, the appeal stands dismissed.

49. However, by taking note of overall aspects of the occurrence, age of appellant etc., as appellant remains in custody for more than six years against maximum sentence of ten years as appellant is in custody since 11.09.2018, his sentence is reduced herewith for the period



as already undergone by him.

50. Accordingly, appellant is directed to be released forthwith if not required in any other case, if he deposit fine of Rs. 10,000/-, failing which he shall be released only after period of one year, in lieu of fine as imposed by learned trial court counting from the date of this judgment.

51. Office is directed to send back the Trial Court Records (TCRs) along with a copy of the judgment to the trial court forthwith.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	18.07.2024
Uploading Date	20.09.2024
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