

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 266 of 2008

Avinash Kumar Sharma

-Vs-

The State of West Bengal

For the Appellant : Ms. Pallavi Priyadarshee
(Amicus Curiae)

For the State : Mr. Avishek Sinha

Heard on : 06.10.2023, 18.01.2024

Judgment on : 19.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 17.03.2008 passed by the Learned Additional Sessions Judge, 6th Fast Track Court, Bichar Bhavan, Calcutta in Sessions Trial No. 5 of February 2007 arising out of Sessions Case No. 123 of 2006 convicting the appellant under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/- in default, further rigorous imprisonment for 6 months for the offence under Section 307 of the Indian Penal Code.
2. A complaint was filed by the mother of the victim who stated to have given birth to her son from an earlier marriage. Later on she married the present appellant and gave birth of a girl. She belonged to her native place at

Rajasthan, village- Chitwayan Mahalla, District- Alowan, P.O. Tahshil-Tihara. On her failure to adjust to her matrimonial home she returned to Kolkata and started to reside at 75B, Sovabazar Street. Her son, the victim worked as driver. The appellant/husband would stay with them for certain period and subsequently would return to their house.

3. On 25.01.2006 at about 2.30 p.m. the victim was having his lunch after returning from his work and suddenly screamed aloud "*Save me, save me*". The complainant witnessed her husband, the present appellant pouring a black coloured liquid from a pot on the victim's head exclaiming to kill him. Consequently, the victim screamed to be dying. The de-facto complainant tried to save the victim but was resisted by her husband who intended to kill her too and threw a liquid substance at her which injured several parts of her body. The victim suffered burns at his face, head, cheek, right eye and right hand. Thereafter, the victim and de-facto complainant were admitted in R.G. Kar Hospital by the neighbours.
4. Based on the aforesaid complaint, Shyampukur P.S. Case No. 16 dated 25.01.2006 was instituted under Section 307 of the Indian Penal Code against the present appellant.
5. After completion of the investigation, charge-sheet was filed under the aforesaid Sections. Subsequently, charge was framed to which the appellant pleaded not guilty and claimed to be tried.
6. The prosecution examined 16 witnesses and exhibited certain documents.
7. The Learned Amicus Curiae appearing on behalf of the appellant submitted as follows:-

- i. On the fateful day of the incident, i.e. 25.01.2006 only two persons were present, i.e., PW-2, the wife of the appellant, PW-3, the stepson of the accused/appellant.

PW-2's presence in the same room or her exact position was not ascertained. History of quarrel or commotion prior to the liquid being poured was absent.

- ii. In the written complaint PW-2 admitted that she could not adjust at her matrimonial home in Rajasthan and therefore she moved out of her matrimonial home with her children, PW-3 from her previous wedlock and PW-6 from her present wedlock and settled in Kolkata at Sovabazar. Accused/appellant used to come and stay with them for some time and return to his native place to look after his ailing parents striking a balance in the role of a dutiful son, husband and father.

- iii. There were contradictions in the testimony of PW-2. Hearing their scream the neighbours arrived at the place of occurrence where PW-2 asked everyone not to let go her husband as he was a thief. Such statements clearly indicated that PW-2 expressed a *mala fide* intention to malign the accused/appellant's reputation. PW-2 further deposed at the time of incident she was lying down in the room. As she heard her son screaming she got up and tried to resist the accused.

- iv. Moreover, PW-2 suppressed the fact that she out of her own will moved out of Rajasthan to Kolkata as she could not adjust there. Again she improved her statement that she had come to Kolkata

after her daughter PW-6's birth. Such improvements and suppression of material facts of PW-2's evidence ascribed untrustworthiness and unreliability.

- v. PW-3 deposed at the time of incident when he was eating, his father had poured the liquid from the back side and hearing his scream his mother/PW-2 had come for his rescue. It was crystal clear that PW-2 was not present at the place of occurrence at the time of the incident. If PW-2 had been present at the place of occurrence she could have seen the accused trying to pour the liquid and at the very first instance she could have refrained the accused from committing such act.
- vi. PW-4's cross-examination revealed when he heard the scream and cries he went up to their room and saw PW-2, PW-3 and the accused/appellant were having a tussle but strangely PW-4 chose to be a mute spectator.
- vii. PW-5 deposed to have seen a sweater wet with acid which turned black and the sweater was the wearing apparel of PW-3. However the Investigating Officer/PW-16 had clearly stated that he seized one 'ghoti' and one kettle in front of the dwelling room of PW-2, i.e., the courtyard in presence of two witnesses and the seizure list was prepared where the accused had also put his signature. Further the Investigating Officer seized the sweater being the wearing apparel of PW-3 which was brought by PW-6 from the hospital to the place of occurrence. Such contradictions in the statement of PW-5 attributed him an unreliable witness.

- viii. The Investigating Officer admitted that he did not call anyone from the forensic department to ascertain the liquid or the spots of the floor. The fingerprints available on the 'ghoti' or kettle from where the acid was poured which was seized from the place of occurrence, were not verified.
 - ix. PW-16 in the course of his investigation did not investigate as to the source and by whom the acid was procured.
 - x. The case is based on circumstantial evidence as there is no eye-witnesses to the occurrence.
 - xi. Seizures was improper as the seizure witnesses did not know the contents of the seizure list and had just put their signatures therein.
8. The Learned Advocate for the State referred to the evidence of PW-2 emphasizing that on the date of incident the victim was having food and PW-2 was lying in the room at the relevant time she heard her son crying aloud *"Mother get up soon. My eyes were burnt and something was poured on me by the accused. So I got up immediately and tried to save him but accused threw the Acid on me and also on my hand and other parts of my body. Immediately the people residing in the same building came there and shifted me and my son to the hospital. My hands and other parts were fully burnt and my son's both eyes and other parts were burnt due to the Acid thrown by the accused. Myself and my son were admitted at R.G. Medical College and Hospital. We both myself and my son remained admitted at R.G. College and Hospital for about four months. Police came to the hospital and recorded my statement. I had also stated about the incident to the doctor attending me. This is my signature in the statement. Witness identifies her signature on the FIR. The*

signature of the witness in the statement/FIR is marked Ext. 1. My husband Abinash Sharma is present in the court today. (witness identifies the accused Abinash Sharma)”.

9. He further submitted that the evidence of PW-2 corroborated that of the evidence of the victim i.e. PW-3. Both PW-2 and PW-3 were admitted in the hospital with burn injury and the ocular evidence corroborated with the medical evidence corroborated by the independent witnesses PW-5, PW-6, the daughter of appellant.
10. PW-10, the Medical Officer confirmed the history of injury sustained by victim/PW-3 as per the injury report prepared by her marked as Ext. 5 aptly corroborated by the evidence of PW-11, 12, 13 and 14.
11. The prosecution was successful in establishing its case and as such the appeal should be dismissed.
12. A circumsppection of prosecution witnesses revealed as follows:
 - i. PW-1 stated in his examination-in-chief that on 25.01.2006 he was posted in the Photography Section DD, Lalbazar as Constable cum Photographer. On 27.01.2006 a message was received by A/C, Computer Cell from Shyampukur P.S. and A/C, Computer Cell sent the message to Photography Section on the following day, i.e. 28.01.2006 at about 08:00 a.m. The message was for sending a Photographer to Shyampukur P.S. On 28.01.2006 he was on duty and O/C of Photography Section directed him to go to Shyampikur P.S. and meet S.I. S. Roy. On 28.01.2006 at about 08:30 a.m., he went to Shyampukur P.S. and met S.I. S. Roy who took

him to 75B, Sovabazar St., Calcutta-5 and asked him to take photograph of outside portion of premises No. 75B where on the door the number of the premises was written. PW-1 took the photograph of that outside of the said premises bearing the number. PW-1 took the photograph of a room inside the house. The photograph of outside portion of the premises No. 75B, Sovabazar St. The photograph bearing No. 75B was marked Mat Exhibit-I. The negative of that photograph was marked Mat. Exhibit I/I. The photograph of the room was marked Mat. Exhibit- II and the negative of the photograph was marked Mat. Exhibit- II/I. Thereafter S.I. S. Roy then closed the door of that room and asked him to take the photograph of immediately adjoining to that door on its outside having the stains of the acid. Accordingly he took the photograph of the outside of that door having the stains of acid on the floor. The photograph was marked Mat. Exhibit- III and the negative of the photograph was marked Mat. Exhibit- III/I.

- ii. PW-2 stated in her examination-in-chief that she resided at 75B, Sovabazar St., Calcutta-1. The incident took place on 25.01.06 at about 02:30 p.m. She was married before and out of her first marriage, she had a son but her first husband used to ill-treat and she left him. She was residing with her mother in Bihar. She used to reside at Rajasthan thereafter and at Rajasthan she was married to Avinash

Sharma, appellant. After marriage, he brought her to Calcutta and she was residing at Shovabazar with him. Subsequently, she gave birth to one daughter. She came to Calcutta with him after their daughter was born in Rajasthan and resided along with his son, the victim. After she was brought by the accused Avinash Sharma, he left her and he was residing at Rajasthan and he used to come sometimes to Calcutta and used to remain for some time in Rajasthan but thereafter he just left them and was residing at Rajasthan for about 20 years and did not take any information about her. The accused came 15 days prior to the incident and was residing with them in their house. On the date of incident his son was having food. She was just lying down in the room, at that time, she heard her son to shout *“Mother, get up soon my eyes were burnt and something was poured on me by the accused.”* She got up immediately and tried to save him but accused threw the acid on her and also on her hand and other parts of her body. Immediately the people residing in the same building came there and shifted her and her son to the hospital. Her hands and other parts were fully burnt and her son's both eyes and other parts were burnt due to the acid thrown by the accused. Herself and her son were admitted at R.G. Medical College and Hospital. They both remained admitted at R.G. Kar Medical College and Hospital for about four

months. Police came to the hospital and recorded her statement. She had also stated about the incident to the doctor attending her. Witness identified her signature on the F.I.R. The signature of the witness in the statement/F.I.R was marked Exhibit-1.

- iii. PW-3 in his examination-in-chief stated that he was working as a driver and plied a private vehicle. At a young age his father died and his mother married the appellant Avinash Kr. Sharma. He had a stepsister namely Sangita Mondal. She got married and after marriage the said sister had been residing at Sovabazar. The husband of his sister worked as an auto driver. When they were young, they had been taken by the appellant to Rajasthan but while staying at Rajasthan the appellant used to ill-treat his mother and so himself, his mother and his sister came to Calcutta and were residing at 75B, Sovabazar St. His mother used to work as a priest in different houses and used to do Pujas in different Marwari houses. The accused used to visit sometimes in their house in Calcutta but whenever he visited their house, he used to fight and quarrel with them. On 25.01.06 in the afternoon between 02:30 p.m. to 03:00 p.m., he was having his food and saw his father sitting inside the house but he was very reserved. When he was eating, his father from back side poured some liquid on his head and he had a burning sensation and he started shouting for his mother and his

mother came there. His mother tried to save him but his father threw that liquid on his mother also. His mother started shouting for help. Consequently, the people residing near their house came and removed them to R.G. Kar Hospital. He and his mother remained admitted in the hospital for quite some time. They were discharged from the hospital in the month of March. Due to the said pour of liquid on his face and hand and other parts of his body, the different parts of his body were burnt and his face was also burnt including his eyes and then he could not see from his right side eye as it was damaged.

- iv. During cross-examination, PW-3 denied of having any enmity with his father.
- v. PW-4 stated in his examination-in-chief that he resided at 75B, Sovabazar Street. He stated that the incident took place on 25.01.06. On the same date, he was residing in the same house and address. In the adjoining room Ashok Sharma, Avinash Sharma and his wife used to reside. He heard a clamour at about 02:30 p.m. from their room and when he went there he saw on the face and on the shoulder part of Ashok Sharma there was something blackish mark and he saw "*Dhoya Moto Uthchilo*". His mother was also having the same injury, the blackish mark on the same parts of her body and he saw one jar was lying in the room. Avinash Sharma was also in the room and in his hand also there was

the same blackish mark. Ashok Sharma and his mother were immediately removed to hospital. Avinash Sharma was detained in the room and afterwards the police came and took him. Avinash Sharma used to reside mostly in his native and sometimes he used to come and reside in that room with Ashok Sharma and his mother. They had some family dispute. Avinash Sharma was present in the Court that day (identified the accused on the dock).

- vi. PW-5 stated in his evidence that he resided as a tenant in a room at 75B, Sovabazar Street, Calcutta-5. He was working in the factory of Gangee of his father. In the building where he resided, there were many tenants. The tenants resided in the first floor and in the ground floor. On 25.01.06 at about 02/02:30 p.m. when he was coming to his house from outside he saw many people gathered on the ground floor and Avinash Sharma was sitting in front of his room. He saw one sweater fully wet with acid and it seemed black. He learnt that the sweater was removed from the body of Ashok Sharma. He went inside the room where Avinash Sharma, Ashok Sharma and his mother were residing and inside the room he saw some black marks in the floor and in the bed looked like it was burnt by some liquid. For last five years, Avinash Sharma was not residing with his wife and son. He used to come sometimes and used to reside with them. There used to be quarrel between Avinash Sharma, his son and

with his wife. They used to hear the same but as it was a family matter, they never intervened.

- vii. PW-6 stated in her examination-in-chief that she was residing at 391, Rabindra Sarani. She was married and had a son. Her parents' house was at 75B, Sovabazar Street, Calcutta. The incident took place on 25.01.06. She was in her father-in-law's house. She got an information that her father poured acid on her mother and her brother. So, immediately she went to the room of his mother, father and brother at 75B, Sovabazar Street. She went after 02:30 p.m. She saw in the room the wearing apparel was lying in burning condition '*Rokto Makha Kaporer Tukro*' (blood stained cloth). She learnt that her mother and brother were shifted to the hospital, so she went to the R.G. Kar Hospital and saw that they were admitted in the hospital. She saw the burn injury on the face and shoulder part of her brother "*Mangso Gole Gole Porche*" and she also saw the same nature of injury on the hand of her mother and other parts of the body of her mother. The wearing apparel which her mother and her brother had worn at the time of incident was removed by the doctor and the same was handed over to her. Thereafter she came with that wearing apparel to her home and thereafter she went to Thana with the wearing apparel and handed over the same to the police. The said wearing apparel was seized by the police and police prepared a

document and she signed in the said document. The signature of the witness in the seizure list was marked Exhibit-2. The sweater was marked Mat. Exhibit- IV. She identified the full pant of her brother marked Mat. Exhibit- V. She identified the Ganjee worn by her brother on the date of incident. The Ganjee was marked Mat. Exhibit- VI. She identified the shirt of her brother and the torn mark was due to the acid thrown by her father on her brother. The shirt was marked Mat. Exhibit- VII.

viii. During cross-examination, PW-6 stated that she was matriculate and she studied at Balika Bidyalay, Burrabazar. She was 24 years old. Her brother was 30 years old. Her brother had looked after her studies. Her father used to reside at Rajasthan. She got married with Surja Mondal about three years before and he was a driver by profession. Her marriage was out of love affair. Her father did not love her or her brother. She loved her mother. Voluntarily said that her father never looked after her. She also loved her brother.

ix. PW-7 stated in his examination-in-chief that he was then posted as Constable at Plan Making Section DD, Lalbazar. On 28.01.06 as per the direction of O/C, Plan Making Section, he met S.I. Saibal Roy of Shyampukur Thana. The O/C then took PW-7 to 75B, Sovabazar Street, Calcutta-5 and he instructed him to prepare the plan of the portion in

the ground floor of 75B, Sovabazar Street and its surrounding. PW-7 prepared a rough sketch map on the spot. The rough sketch map was marked as Exhibit-3. Thereafter on returning the Thana in the office, subsequently he prepared a final tracing on the basis of the rough sketch map according to scale. The final tracing was marked Exhibit- 3/1. On the basis of the final tracing he prepared the blue print by mechanical process marked as Exhibit- 3/2.

- x. PW-8 in his deposition stated that he resides at 69B, Sovabazar Street. 75B, Sovabazar Street was by the side of 69B, Sovabazar Street. He worked as a barber. He appeared that that day on receipt of summon. He did not remember the date of incident. He did not know anything about the incident. He went to thana with Guria, the sister of Ashok. She had taken with her some cloth and ghati and tea kettle at thana. That cloth was actually a pant. If he saw the pant he could identify the same. He did not remember the nature of other cloth then. PW-8 identified the pant marked Mat. Ext. V. PW-8 identified the Ganjee marked Mat. Ext. IV. PW-8 was shown a shirt and on seeing the same he identified that was the shirt which was seized by the police and it was taken to thana by Guria identified as Mat. Ext. VII). PW-8 identified his signature in the seizure list marked Ext. 2/1.

- xi. PW-9 in his deposition stated that he resides at 75B, Sovabazar Street in the first floor. He worked there in a shop. He appeared that day in court on receipt of summon. On 25.01.06 police seized one tea kettle and ghati (steel made container) from a courtyard in the ground floor in front of a room in his presence. Police asked him to sign in a document. That signature in that document was his signature. The signature of the PW-9 in the seizure list was marked Ext. 4. At that stage PW-9 was shown one tea kettle and on seeing the same he identified that was the tea kettle seized by the police. Tea kettle was marked as Mat. Ext. VIII. At that stage one another sealed packet was opened by removing the seal and from inside one ghati was taken out and on seeing the same PW-9 identified that was the ghati seized by the police. The ghati was marked Mat. Ext. IX. On the label of the packet containing the ghati PW-9 signed. That was his signature on the label of the packet. The signature of the PW-9 on label of the packet containing the ghati was marked Mat. Ext. IX/1.
- xii. During his cross-examination PW-9 stated that police came to 75B, Sovabazar St. at about 7.30 hrs. in the evening. At that time he was working in the factory in the first floor. Police did not call him. He of his own came there in the ground floor. He could not say the contents of the document in which he signed. Police told him that they were taking the

kettle and ghati and so he had to sign. He did not remember in how many papers he had signed. On the body of that kettle he did not sign. It was correct that similar nature of that kettle was available in the market. It was also correct that same nature of ghati was available in the market. It was correct that on the body of kettle and ghati he did not sign.

“Ques.- Suggested that you have today at the instruction of the police. Ans.- Police told me whatever they had taken on that day from the ground floor of 75B, Sovabazar St., I had to depose.”

- xiii. PW-10 in her examination stated that she was posted as Medical Officer in the R.G. Kar Medical College and Hospital, Calcutta. On 25.01.06 she was posted as Emergency Medical Officer in the same hospital. On that date, she examined one Ashok Sharma who was brought by Amita Sharma, the mother. On examination of Ashok Sharma, she found that he was conscious and had multiple acid over his body. The history of the injury as stated by the patient Ashok Sharma of pouring of some unknown liquid corrosive acid on his body by his father Avinash Sharma on that date at 02:30 hrs at his residence. Ashok Sharma stated his age 27 years and he was a driver by profession. On examination of Ashok Sharma, PW-10 prepared that report and it bore her signature. The injury report of Ashok Sharma was marked as Exhibit-5.

- xiv. During cross-examination, PW-10 stated that she did not prepare any other report apart from the injury report.
- xv. PW-11 in his examination-in-chief stated that he was posted as Medical Officer, General Surgery attached with R. G. Kar Medical College and Hospital. On 25.01.2006 he was posted in the same post and place. On that day at 04:30 p.m. one Smt. Amita Sharma, Hindu, female, aged 60 years, who was admitted with corrosive acid burn, in Bed No. 24 female. Her statement was recorded by S.I. Saibal Roy in his presence. The patient at the relevant time of giving her statement was in a position to make the statement. Police Officer recorded the statement in question answer form. After the statement was recorded by the police officer S.I. Saibal Roy he read over and explained the same to the patient. Before recording the statement of the patient, she was made understood the position by PW-11 that her statement would be recorded by the police officer and whether she volunteered to make the statement. After the statement was recorded, Amita Sharma the victim put her signature as she could sign as she did not have any burn on her fingers. After she signed, PW-11 also signed below her signature identifying her signature. The signatures of the witness on the concluded page i.e. 3rd page was marked as Exhibit-6 collectively.
- xvi. During cross-examination, PW-11 stated that the patient was not treated by him at any time but as he was an

emergency surgeon, he remained present at the time of recording of statement of the patient by the police to see and assess that patient was in a position to make the statement. Apart from his presence at the time of recording of statement of the patient, he did not do anything else in connection with this case.

- xvii. PW-12 stated in his evidence that he was then attached with R.G. Kar Medical College and Hospital as Associate Professor and Surgeon. In the month of July of 2006 he was attached with the same hospital and in the same post. Ashok Sharma and Amita Sharma both the patients were admitted under Unit-5 Surgery in which Unit-I was attached. As PW-12 was attached with the said Unit, he had to visit both these patients regularly. Patient Ashok Sharma and Amita Sharma were admitted in the said Unit on 25.01.2006. On examination of the patient Ashok Sharma, he referred him to visiting surgeon of Ophthalmology on 26.01.2006. Ashok Sharma was suffering from corrosive burn injury. Again PW-12 referred the patient Ashok Sharma on 02.02.2006 for his eye problem to Ophthalmology department. This was that reference sheet dated 26.01.2006 written by him when the patient Ashok Sharma was referred to department of Ophthalmology. The relevant reference and the writing by the doctor in the bed head tickets was marked Exhibit-7 and this was another reference to the same department dated

02.02.2006 written by him and it also bore his signature. The reference dated 02.02.2006 was marked as Exhibit 7/1. In a case of acid injury of this nature there would be disfigurement on the part of the body. In this case Ashok Sharma the patient due to the acid injury suffered the disfigurement of his face including his one eye. In case of the acid injury found by him on examination of Ashok Sharma there was chance of death of a patient.

- xviii. During cross-examination PW-12 stated that in this bed head tickets there was no document to show that he regularly visited the patient Ashok Sharma. Volunteers:- the patient was examined and visited regularly by the team member and whoever visited the patient and examined him on that date he had written the bed head tickets. In this document the bed head tickets itself there was reflection that he was the member of the team in Unit-5. It was true that in the bed head tickets it was written Unit-5 General Surgery and his name and the name of Dr. G. Ghosh. In the Exhibit-7 the writing was not by him but by the house surgeon. PW-12 also stated this in his evidence that there might be miscommunication. He only signed. The reference was written by Dr. Saugata Das and he was a house surgeon. He knew his hand writing. The reference dated 26.01.2006 was written by Dr. Saugata Das and the reference dated 02.02.2006 was written by Dr. Subhendu Adhikary but it

was signed by him. He knew the hand writing of Dr. Subhendu Adhikary. In Unit-5 the in-charge was Dr. Gautam Ghosh Associate Professor. There was no other Professor for Unit-5. In the bed head tickets, there was no other prescription written by him.

xix. PW-13 in his examination-in-chief stated that he was then posted as Statistical Assistant at R. G. Kar Medical College and Hospital. On 10.07.06 he was posted in the same place and post. On that date, he produced bed head tickets of the patients Amita Sharma consisting in 11 pages and Ashok Sharma in 21 pages before the Police Officer, who seized the same in his presence and prepared a seizure list prepared by the Police Officer bearing the signature of PW-13. He identified his signature in the seizure list. The signature of the witness in the seizure list was marked as Exhibit 9/1 and those were the bed head ticket in 11 pages of Amita Sharma which he had produced before the Police Officer. The bed head tickets in 11 pages of Amita Sharma were marked as Exhibit 10 collectively and these were the bed head tickets in 21 pages of Ashok Sharma. The said bed head tickets of Ashok Sharma in 21 pages were marked as Exhibit-11 collectively.

xx. During cross-examination PW-13 stated that he did not know anything else apart from producing the bed head tickets before the police officer.

- xxi. PW-14 stated in his evidence that he was then posted at R. G. Kar Medical College and Hospital as Emergency Medical Officer. On 25.01.06 he was in the same post and place. On that date he examined one patient Amita Sharma aged 60 years Sujata Mondal. Sangita Mondal was the daughter of the patient. The history of the case as stated by the patient and the patient party was that she along with her son were burnt by her husband Avinash Sharma at about 02:30 p.m. Her son Ashok Sharma was severely burnt and admitted. On examination of Amita Sharma, PW-14 found severe deep extension burnt by Acid (Nitric Acid) all over body including upper limbs, face and abdomen. On examination, he advised the patient to be admitted at C. B. Observation Ward. On examination of Amita Sharma, he prepared the report which bore his signature which was marked Exhibit-12. The injury which he had noted on examination of the patient was fatal in nature and if not treated in time was sufficient to cause death.
- xxii. During cross-examination, PW-14 stated that he could not say beyond this injury report as he did not remember then. He did not remember then why the injury of the patient was treated. After the examination of the patient by him in the emergency, she was transferred and admitted at casualty ward but he could not say about the treatment provided therein. It was correct that after the examination of the

patient by him he could not say the condition of the patient when she remained admitted that whether the injuries subsequently were fatal and vital.

xxiii. PW-15 stated in her evidence that she resided at 75B, Shobhabazar with her sons. They resided there as tenants. There were other tenants also in that building. On 25.01.02 (then said she did not remember the year) the incident took place. Anita with her son Shauma also resided there as a tenant in one room and their room was just one room after the room of PW-15. She heard a quarrel between the husband of Anita and her son. Police had come to their room and from the room police seized in her presence one 'Ghoti' and 'Ketli'. She signed the document prepared by the police. She identified her signature in the seizure list which was marked as Exhibit 4/1.

xxiv. PW-16 stated in his evidence that he was then posted as S.I. at Shyampukur P.S. He was posted at Shyampukur P.S. previously. On 25.01.06 he was at Shyampukur P.S. on duty at about 02:45 hrs. He received an information over telephone that there were some disturbance at 75B, Sovabazar St., Calcutta-5. He diarized the said information and thereafter he visited the place of occurrence, i.e. 75B, Sovabazar St. On reaching the spot, he found that accused Avinash Kr. Sharma was detained by some people in front of his room in that building in the ground floor. He saw from

inside that room there were black acid stains on the floor and also in the some place outside the room. He also learnt from the local people gathered there that the wife and son of accused Avinash Kr. Sharma were shifted to hospital due to their acid injuries on their person. He apprehended the accused and brought him at thana and thereafter PW-16 visited the R.G. Kar Medical College and Hospital where the injured persons were admitted. Amita Sharma the wife of the accused was admitted at female ward CB Observation. Her condition was serious but she could speak. So, he interrogated her in presence of the doctor on duty at that time and recorded her statement. Thereafter, he went to the ward S.A.W. where the son of the accused Avinash Kr. Sharma was admitted. He was severely injured and so he was not in a position to say anything. Thereafter, he came back to thana and registered a case bearing Shyampukur P.S. Case No. 16 dated 25.01.2006 under Section 307 of the Indian Penal Code against accused Avinash Kr. Sharma. He registered the case on the basis of the statement of Amita Sharma recorded by him in the hospital. That was the statement of Amita Sharma recorded by him and it bore the signature of Amita Sharma. The statement was read over and explained by PW-16 to Amita Sharma and on being satisfied she had signed. That was the statement and it bore his signature also. The F.I.R./statement of Amita Sharma

was marked Ext. 1/1. PW-16 had given a requisition in the photography section for sending a photographer. That was the formal F.I.R. filled up by him and it bore his signature. The formal F.I.R. was marked Ext. 13. After registration of the case, the accused Avinash Kr. Sharma who was detained at thana was arrested. Thereafter, again he went to the place of occurrence and he seized one ghati and one kettle in front of the dwelling house of Amita Sharma i.e. the courtyard. He seized the said articles in presence of the two witnesses namely Malati Bala Saha and Jagannath Borai. PW-16 prepared a seizure list which was signed by the two witnesses named by him and also he signed on it. The seizure list was marked Ext. 4/2. In the seizure list accused Avinash Kr. Sharma also signed as when he left from the thana to visit the place of occurrence he had taken Avinash Kr. Sharma with him at the place of occurrence. The seizure was also made in the presence of accused Avinash Kr. Sharma. PW-16 also seized the wearing apparel of Ashok Sharma which he had worn at the time of incident. The said wearing apparel was brought by the daughter of Avinash Kr. Sharma from the hospital. He seized the same at the place of occurrence in presence of two witnesses namely Naresh Thakur and Sangita Mondal the daughter of Avinash Kr. Sharma. The wearing apparel of Ashok Sharma consisting of one white coloured sando ganjee partly torn and burnt, blue

coloured woolen sweater partly torn and burnt, one ash coloured full pant having marks of some unknown stains and one full sleeve light greenish coloured check shirt having several marks of burnt. That was the seizure list prepared by him bearing the signature of Naresh Thakur and Sangita Mondal and also he signed. The seizure list was marked as Ext. 2/2. He recorded the statement of all the seizure witnesses. On 28.01.2006 the photographer accompanied him and he had taken him to the place of occurrence and the photographer took the photographs of the place of occurrence. Those were the said three photographs taken by the photographer of the place of occurrence on being identified by him. Those three photographs were with the negative (PW-16 identified Mat. Ext. I, I/1, II, II/1, III and III/1).

- xxv. PW-16 in his deposition further stated that on 27.01.2006 they had received a requisition from MSVP, R.G. Kar Hospital for recording the dying declaration of Amita Sharma. So he went to the hospital and in presence of Dr. Jayanta Moulick he recorded the statement (dying declaration) of Amita Sharma. Amita Sharma. Amita Sharma had put her signature after the statement was recorded and Dr. Jayanta Moulick also signed and he also signed the statement. The signature of Amita Sharma was attested by Dr. Jayanta Moulick. On 28.01.2006 on their requisition on

plan maker from the D.D. came and so he took him to the place of occurrence on the same date and identified him to the place of occurrence. The plan maker prepared a plan of the place of occurrence and its surrounding. On 22.01.2006 PW-16 sent the seized alamsats to FSL for its examination. On 17.07.2006 the bed head tickets of Amita Sharma and also the Ashok Sharma were seized by him on being produced by record keeper of R.G. Kar Hospital. He seized the bed head tickets by a seizure list and that was the seizure list prepared by him and it bore his signature and the signature of the record keeper namely Daridra Bhanjan Bhounick. The seizure list was marked as Ext. 9. The bed head ticket of Amita Sharma consisted of 11 pages and the bed head ticket of Ashok Sharma consisted of 21 pages. Those were the said bed head tickets of Amita Sharma (PW-16 identified Ext. 10 collectively) and those were the said bed head tickets of Ashok Sharma (PW-16 identified Ext. 11 collectively). On conclusion of the investigation he submitted the charge-sheet against the accused Avinash Kr. Sharma for the offence under Section 307 of the Indian Penal Code on 16.11.2006 pending the receipt of CFSL report. After submission of the charge-sheet the CFSL report was received which he submitted before the Court. PW-16 arrested the accused who was present that day (identified the accused).

xxvi. During his cross-examination PW-16 stated that he joined the Calcutta Police as constable in the year 1989. He received the information over telephone at 2.45 p.m. He was a duty officer at that time at thana. He did not try to ascertain the name of the person who gave the information over telephone but to ascertain the facts he visited the spot. He had not noted the exact time when he reached the place of occurrence. Before departure from the thana he made a GD which bore no. 2233 dated 25.01.2006 at 2.45 p.m. He left with Additional Officer-in-Charge, S.I. B.B. Bhattacharjee and other force for the spot and it was mentioned in the GD. When he reached the spot at 75B, Sovabazar St., Calcutta he found 8/10 persons were standing in the courtyard of the premises. He interrogated some of persons standing namely Harinarayan Saha, Sekhar Nath and Shankar Sarkar. He had not mentioned the specific time of recording their statement but he interrogated them after 15 minutes from reaching to the spot. He did not interrogate any other persons at that time on that day. He saw one man aged from 50 to 55 years was crying.

xxvii. PW-16 in his cross-examination further stated that cognizance of the case was taken by him at thana at 17.35 hrs. The old man whom he saw crying was accused Avinash Kumar. PW-16 did not ascertain why he was crying. He was crying in the courtyard i.e. outside the building. PW-16 saw

there was injuries of black spot i.e. acid injuries on hands and legs of accused. He had removed to the hospital i.e. R.G. Kar Medical College before the emergency doctor. PW-16 had taken him to emergency between 15.30 hrs. to 16.00 hrs. On 27.01.2006 he gave requisition for photography and plan making at 10.40 p.m. Photographer and plan maker took the photographs and prepared plan as per his instructions. It was not noted as to how many photo were taken but it might be at 5 to 6 photographs. He did not call anyone from forensic to ascertain the liquid or the spots on the floor. He had not noticed in the case diary as to what were the furnitures and fixtures in that room. He submitted the charge-sheet on 16.11.2006 under Section 307 of the Indian Penal Code after he found materials under Section 307 of the Indian Penal Code. Not a fact that there were no materials under Section 307 of the Indian Penal Code to submit the charge-sheet. He did not send the accused for any mental treatment. During the period of his investigation he did not find that accused was suffering from any mental disorder. Not a fact that he had not investigated this in accordance with law or that the investigation conducted by his was total false.

13. In **Sivamani and Anr. Vs. State Represented by Inspector of Police**¹, the Hon'ble Supreme Court observed as follows:

“8. Section 307, IPC reads as under:

‘307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or

¹2023 SCC OnLine SC 1581

delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.'

9. In *State of Madhya Pradesh v. Saleem*, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that '*...The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.*' The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in *Jage Ram v. State of Haryana*, (2015) 11 SCC 366 and *State of Madhya Pradesh v. Kanha*, (2019) 3 SCC 605. Yet, in *Jage Ram* (supra) and *Kanha* (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, '*The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.*'

14. In ***Sachin Jana and Anr. Vs. State of West Bengal***², the Hon'ble Supreme Court observed as follows:

"11. "9. ... Section 307 IPC reads:

'307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person

²(2008) 3 SCC 390

by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.'

To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

This position was highlighted in State of Maharashtra v. Balram Bama Patil [(1983) 2 SCC 28 : 1983 SCC (Cri) 320] , SCC p. 32, para 9.

12. *When the evidence on record is analysed, it is clear that Section 307 read with Section 34 IPC has clear application. The acid burns caused disfigurement."*

15. In **State of M.P. v. Harjeet Singh**³, the Hon'ble Supreme Court held as follows:

³(2019) 20 SCC 524

“5.5.1. *The weapon of offence was a 4-inch long knife which is a dangerous weapon. Respondent 1-accused had assaulted the complainant with the said knife, and inflicted multiple injuries on his chest, scapula, back, and buttocks. The multiple blows inflicted by Respondent 1-accused would prove the intention of causing bodily injury likely to cause the death of the victim. Stabbing a person with a knife, near his vital organs would in most circumstances lead to the death of the victim, thereby falling squarely within the meaning of Section 307.*

5.6. *Section 307 uses the term “hurt” which has been explained in Section 319 IPC; and not “grievous hurt” within the meaning of Section 320 IPC.*

5.6.1. *If a person causes hurt with the intention or knowledge that he may cause death, it would attract Section 307.*

5.6.2. *This Court in R. Prakash v. State of Karnataka held that : (SCC p.30, paras 8-9)*

“8.... The first blow was on a vital part, that is, on the temporal region. Even though other blows were on non-vital parts, that does not take away the rigour of Section 307 IPC....

9. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section”.

(emphasis supplied).

5.6.3. *If the assailant acts with the intention or knowledge that such action might cause death, and hurt is caused, then the provisions of Section 307 IPC would be applicable. There is no requirement for the injury to be on a “vital part” of the body, merely causing “hurt” is sufficient to attract Section 307 IPC.*

5.6.4. *This Court in Jage Ram v. State of Haryana held that : (SCC p.370, para 12)*

“12. For the purpose of conviction under Section 307 IPC, prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.”

(emphasis supplied)

5.6.5. *This Court in the recent decision of State of M.P. v. Kanha held that : (SCC p. 609, para 13)*

“13. The above judgments of this Court lead us to the conclusion that proof of grievous or life-threatening hurt is not a sine qua non for the offence under Section 307 of the Penal Code. The intention

of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.”

5.7. *In view of the abovementioned findings, it is evident that the ingredients of Section 307 have been made out, as the intention of Respondent 1-accused can be ascertained clearly from his conduct, and the circumstances surrounding the offence.”*

(emphasis supplied)

16. PW-2, 3, 4, 5 and 6 in unison corroborated the testimony of each other disregarding minute deviations in the deposition of PW-2. The crux of the prosecution story was unfettered and unaltered. The administration of a liquid to the PW-3 by the appellant had been fortified by the evidence of prosecution witnesses enabling the same to be emboldened by the evidence of the doctors namely PW-10, 11, 12, 13 and 14.
17. The documents marked as Ext. 5, 7, 7/1, 9/1, 10 collectively , Ext. 11 collectively and Ext. 12 indubitably beyond any reasonable doubt established the acid burn injuries sustained by PW-2 and PW-3 culminating in their hospitalization at R.G. Kar Hospital.
18. The document marked as Ext. 8 provided the result of examination of the contents of the exhibits marked A, B, C, D, E and F which were the seized articles sent to the Forensic Science Laboratory for examination whereby it was conclusively opined the detection of sulphuric acid – a highly corrosive concentrated mineral acid in the washing of the contents of the exhibits marked A to F. It was further opined that from literature it was found to be harmful to human life as well as any other inanimate things.

19. The victim suffered chemical burn injury mainly over the face, neck and upper limb, head and right eye. The evidence of PW-12 revealed that the victim Ashoke @ Ashok Sharma suffered corrosive burn injury and in such case of acid injury there was disfigurement of face including one eye. PW-12 further opines *“In case of acid injury found by me on examination of Ashok Sharma there is chance of death of a patient”*.
20. The instant case related to the intention of the appellant to cause injury to the victim which might have terminated his life. The vital organs of the victim were severely affected. None of the witnesses indicated the element of sudden provocation or instigation caused to the appellant. There might have been subdued dispute between the parties, however, it did not aggravate beyond the extent of tolerance. The intention of the appellant was writ large and conspicuous since he attempted to injure the victim when he was vulnerable and having his food without an iota of incitement on his part. The repulsive and deleterious act of the appellant was savage and lethal. The death dealing conduct of the appellant was pre-meditated which expressly intensified his intention which was translated into action. The appellant had adequate knowledge and understanding of the effect of the acid upon the victim coupled with the malefic intention to injure the victim which according to the testimony of PW-12 could have terminated his life. The ocular evidence, the evidence of doctors, the injury reports marked as exhibits as well as the report of forensic examination proved the prosecution in its entirety.
21. In view of the above discussions, the instant criminal appeal is dismissed.
22. There is no order as to costs.

23. I record my appreciation for the able assistance rendered by Learned Advocate, Ms. Pallavi Priyadarshee, as Amicus Curiae in disposing of the appeal.
24. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
25. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)