

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

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Partha Sarathi Sen**

**C.R.A. 217 of 2021  
CRAN 1 of 2023**

**Barun Lohar  
-Vs-  
State of West Bengal**

|                   |   |                                                                                                                                      |
|-------------------|---|--------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant | : | Mr. Sagar Saha, Adv.<br>Mr. Sandeep Prasad Shaw, Adv.<br>Mr. Raju Baroi, Adv.<br>Mr. Amar Kumar Singh, Adv.<br>Mr. Arup Bagchi, Adv. |
| For the State     | : | Mr. Saibal Bapuli, Ld. APP<br>Ms. Sayanti Santra, Adv.                                                                               |
| Heard on          | : | 27.03.2024                                                                                                                           |
| Judgment on       | : | 27.03.2024                                                                                                                           |

**Joymalya Bagchi, J. :-**

1. On consent of the parties, appeal is taken up for hearing.
2. Appellant has assailed judgment and order dated 19.03.2021 and 20.03.2021 passed by the learned Additional Sessions Judge, Fast Track Court, Suri Birbhum in Sessions Trial No.01/December/2014 arising out of Sessions Case No.99 of 2014 convicting him for commission of offence

punishable under Sections 326A of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay fine of Rs.30,000/-, in default, to suffer imprisonment for six months for the offence punishable under Section 326A of the Indian Penal Code. Fine amount, if deposited, shall be paid to the victim PW 1.

**Prosecution case:-**

3. Prosecution case as alleged against the appellant is to the effect that on 16.12.2013 at 8.30 am the victim (PW 1) was proceeding to her place of work riding on the back seat of the bicycle of Hiran Mahara (PW 3). When she arrived near New Dangalpara, appellant came from behind and threw acid on her and fled away. She cried out in pain and fell from the bicycle. Hiren Mahara informed her husband, Sisir Kora (PW 2). Sisir came to the spot. Victim was taken to police station where she lodged complaint against the appellant resulting in registration of Suri P.S case no. 399 of 2013 dated 16.12.2013 under sections 326A/354D/307 IPC. Thereafter, she was shifted to Suri hospital and referred to Burdwan Medical College and Hospital on 29.12.2013.

4. During investigation, appellant was arrested. On the showing of the appellant, a glass bottle with the word 'Mc. Dowells' written on it was recovered from the place of occurrence. During police custody, appellant made disclosure statement leading to recovery of a red and white plastic battery with the word 'ASTRAL' endorsed thereon from his house. The seized bottle was sent for FSL examination and the report was collected.

**Proceeding before the trial Court:-**

5. Charge sheet was filed against the appellant under sections 326A/307/34 IPC. During trial charges were read out and explained to the appellant. Appellant pleaded not guilty and claimed to be tried.

6. In the course of trial prosecution examined 11 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. During argument the appellant stated charge had been framed under section 326 IPC and not under section 326A IPC. Hence, he could not be convicted of the graver charge.

7. Trial Judge rejected this contention on the ground that the substance of the charge framed clearly disclosed the ingredients of section 326A IPC and reference to section 326 IPC instead of section 326A IPC was an inadvertent error which had not prejudiced the appellant. Relying on the evidence on record the judge concluded the said ingredients had been proved beyond doubt and convicted the appellant as aforesaid.

**Arguments at the Bar:-**

8. During hearing of the appeal learned Counsel for the appellant reiterates though the charge was framed under section 326 IPC, his client had been convicted for a graver offence namely 326A IPC without reframing the charge. This is impermissible in law.

9. Without prejudice to the aforesaid submission, he further contends none of the witnesses corroborated the victim's version that the appellant was the assailant. PW 3 on whose bicycle the victim was riding, admitted during cross-examination that he had not seen the assailant.

PW 9, medical officer noted that the injuries were superficial and the victim suffered 9% burns only. Recovery of the glass bottle from the place of occurrence is not supported by independent witness. There was no FSL examination of the red and white battery said to be seized from the residence of the appellant. Prosecution case has not been proved beyond doubt.

10. Per contra, learned counsel for the State submits PW 1 is the injured victim. She has graphically described the acid attack upon her. Her deposition is corroborated by others, namely, PWs 3 and 4 respectively. Immediately after the incident she lodged FIR naming the appellant. After admission in Suri Hospital she reiterated the name of the appellant as her assailant which is noted in the medical papers. PW 9 medical officer who treated the victim at Suri hospital deposed she suffered acid burn injuries. FSL report of glass bottle recovered from the place of occurrence on the showing of the appellant disclosed presence of acid in the said bottle. Hence, prosecution case is proved beyond doubt.

**Was the error in charge fatal?**

11. Firstly, let me examine the plea of the appellant that no charge had been framed under section 326A IPC.

12. First head of the charge reads as follows:-

*“First- That you, on or about 16/12/13 at about 8:30 A.M. in the morning at New Dangalpara Suri Dist-Birbhum, caused permanent or partial damage or deformity to or burns or names or disfigures or disables any part or parts of the body of the victim Rakhi Kora or caused grievous hurt and you did it by throwing acid or administrators acid to that person or by using*

*any other means. And you did the above act or acts with the intention of causing or with the knowledge that you acts will cause such injury. And that thereby committed an offence punishable under Section 326 of the Indian penal Code, and within (3) Cognizance of this Sessions Court.”*

13. A plain reading of the charge shows the ingredients of the offence under section 326A IPC are stated therein. The charge had been read over and explained to the appellant. Unfortunately, due to inadvertent error the penal provision was wrongly quoted therein as section 326 instead section 326A IPC. Appellant did not raise any objection with the aforesaid error at the time of framing of charge or during recording of evidence. On the contrary, he extensively cross-examined the witnesses. During his examination under section 313 Cr.P.C., appellant effectively responded to the incriminating circumstances put to him. Only during argument, the appellant raised the issue that the penal provision quoted in the first head of charge was 326 and not 326A IPC. Trial judge refuted his contention on the premise that the ingredients of the offence under section 326A IPC had been clearly set out in the charge and the appellant was fully aware of the factual substratum of the charge levelled against him. Hence, he did not suffer any prejudice due to the quoting of a wrong provision in the charge.

14. Section 215 and section 464 Cr.P.C. read as follows:

*“215. Effect of errors.- No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.”*

*“464. Effect of omission to frame, or absence of, or error in, charge.- (1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.*

*(2) If the Court of appeal confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may,-*

*(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;*

*(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:*

*Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”*

15. A combined reading of the aforesaid statutory provisions makes it amply clear, an inadvertent error to state the offence or its particulars would not entail a mistrial unless the error had prejudiced the accused in preparing his defence or occasioned failure of justice.

16. As discussed earlier in the present case ingredients of offence under section 326 A IPC was read out and explained to him. He was fully aware of the nature of accusation and had ample opportunity to cross-examine the witnesses on this score. Tenor of cross-examination of the prosecution witnesses including the medical officer clearly disclose awareness of the appellant that he was facing an accusation of causing acid burn injuries on the victim. During his examination under section

313 Cr.P.C the incriminating evidence with regard to acid burn injuries had been put to the appellant for his explanation. Hence, we are in agreement with the trial judge that the appellant was fully aware of the nature of accusation and had ample opportunity to defend himself against such charge. He did not suffer from any prejudice due to erroneous quoting of a wrong provision and the trial cannot be said to be vitiated on this score.

**Analysis of prosecution evidence:-**

17. PW 1 is the injured victim. She stated on 16.12.2013 at 8.30 a.m she was proceeding from R.T More towards Samannay Palli by riding on the backseat of the bicycle of Hiran Mahara (PW 3). When they reached near New Dangalpara, appellant came riding on his bicycle and threw some liquid on her. She turned her face and the liquid fell on her neck and body. Thereafter appellant fled away from the spot. She fell down from the bicycle. She cried for help. Hiran informed her husband Sisir Kora (PW 2) over phone. Sisir was present at Suri Sadar hospital to attend to a relation. He rushed to the spot and the victim was shifted to the police station. She lodged complaint. Thereafter she was taken to Suri hospital. She was admitted till 29.12.2013. Thereafter she was shifted to Burdwan Medical College and Hospital for better treatment. From Burdwan Medical College and Hospital she was referred to PG hospital and was admitted there for two months. She deposed she had previously worked under the appellant. Appellant used to give illicit proposals to her

which she rebutted. Her husband had a quarrel with the appellant over this issue. Appellant nursed grudge against her. She was extensively cross-examined but remained unshaken during such cross examination.

18. Victim (PW 1) was riding on the backseat of the bicycle of Hiran Mahara (PW 3). The said witness corroborated PW 1 and stated when they reached New Dangalpara, appellant threw acid on PW 1. She cried out in pain. Local people assembled at the spot. Husband of PW 1 was informed. PW 1 was taken to Suri police station and thereafter to Suri hospital. PW 3 saw a bottle lying at the place of occurrence. Police seized the bottle in his presence on the identification of the appellant. He signed on the seizure list. He identified the bottle in court. During cross-examination he stated he did not see the person who had thrown acid at the victim till the latter cried out in pain.

19. Sk. Alauddin (PW 4) deposed he was proceeding to Dangalpara on his bicycle at the material point of time. Hiran was following him. He heard cries "*save me save me*". He came to the spot. Hiran told him appellant had thrown acid at PW 1. Her husband was informed over telephone. She was taken to Suri police station and thereafter to Suri hospital.

20. PW 2 is the husband of the victim. He deposed he received a telephone call that the appellant had thrown acid on his wife. He rushed to New Dangalpara. Thereafter, he along with Hiran and one Alauddin took his wife to Suri police station. Therefrom she was shifted to Suri hospital where she was admitted. Appellant had taken nude photographs

of PW 1 while she was changing her clothes at the work place. He had a quarrel with the appellant over this issue.

21. PW 9, Dipak Kumar Mukherjee is the medical officer who treated the victim at Suri hospital. He deposed victim was admitted under him with a history of assault by pouring corrosive acid on the nape of the neck by the appellant. On examination he found superficial to deep burn injuries on anterior and posterior wall of neck, upper part of chest and the area along the vertebral column up to Lumbo Sacral region. There was 9% burn. The patient was treated conservatively and was referred to Burdwan Medical College and Hospital on 29.12.2013. He proved the bed head ticket (Ext 5). In cross examination he stated if someone threw acid bottle from a running bicycle to the body of any other person then injuries which will be caused are not similar to the injuries of the victim. Injuries by acid burn may be simple or grievous.

22. PW 11 Nurun Nabi is the investigating officer. He deposed officer in charge of Suri P.S received written complaint from PW1. Investigation was entrusted to him. He went to Suri hospital and orally examined the complainant. He also examined her husband. He arrested the appellant. On the showing of the appellant he recovered a glass bottle with the word 'Mc. Dowells' written on it. PW 3 (Hiren Mahata) signed on the seizure list. PWs 7 and 10 constables attached to the police station also signed on the seizure list. He recorded statement of other witnesses. During police custody appellant made a disclosure statement and on his showing a red and white coloured plastic battery with the word 'ASTRAL' was recovered

from his residence. PWs 6 and 8 signed on the seizure list. He sent the seized bottle for FSL examination. He received report from FSL Kolkata marked Ext 10. He filed charge sheet and supplementary charge sheet.

**Is the victim (PW 1) reliable?**

**a) Corroboration from contemporaneous documents and other witnesses:-**

23. Analysis of evidence of PW1 shows on the fateful day at 8.30 am she was riding at the backseat of the bicycle of Hiran. When she had reached near New Dangalpara appellant came from behind on his bicycle and threw some liquid at her. She turned her face and the liquid fell on her neck and body. She suffered burning sensation and cried out. She fell from the bicycle. She disclosed the matter to Hiran (PW 3) and one Alauddin (PW 4) who was riding in front of them. Her husband Sisir (PW 2) was informed. She was taken to police station where she lodged written complaint which was treated as FIR. Her complaint (Ext 6) substantially corroborates her deposition in court. It discloses the genesis of the incident as well as identity of the assailant as the appellant. Thereafter she was taken to Suri hospital and admitted under PW 9. PW 9 disclosed she was admitted with a history of corrosive acid burn by the appellant. She was treated at Suri hospital and thereafter referred to Burdwan hospital on 29.12.2013 for better treatment. These contemporaneous documents namely written complaint (Ext 6) and bed head ticket (Ext 5) corroborate the deposition of injured witness PW1 with regard to manner and circumstance in which she had suffered acid burn injuries at the

hand of the appellant. Her deposition is also corroborated by PW 3 who was with her on the bicycle and another local witness PW 4 who was also travelling down the road on his bicycle.

24. Learned counsel for the appellant submits PW 3 had not seen the assailant. A closer scrutiny of PW 1's version would show she was riding on the backseat of the bicycle of Hiran (PW 3). Appellant came on his bicycle from behind and threw acid on her. Naturally PW 3 could not have seen the appellant till the victim fell down and cried out in pain. In fact PW 3's deposition has a ring of truth and corroborates the version of the injured witness.

25. PW 4 an independent witness has corroborated PW 1. His version with regard to the manner and circumstance in which victim was attacked lends credence to the prosecution case.

**b) Corroboration from medical evidence:-**

26. PW 9 medical officer also deposed victim had been admitted with a history of acid burn injuries caused by the appellant. He found superficial to deep burn injuries on anterior and posterior wall of neck, upper part of chest and the area along the vertebral column up to Lumbo Sacral region. This corroborates the prosecution case of acid burn injuries.

27. Learned counsel referred to a stray sentence in the cross examination of the medical officer that the injuries on the body of the victim are not similar to the injuries that may be suffered by a person if an acid bottle is thrown from a running bicycle.

28. The aforesaid observation does not improbabilise the prosecution case. It is nobody's case that an acid bottle was thrown at the victim from a running bicycle. PW 1 stated appellant came from behind on a bicycle and threw acid at her. He did not throw acid bottle at the victim. Moreover from the medical report it is undeniable victim had suffered acid burn injuries at the spot.

29. For these reasons I am of the opinion medical evidence clearly corroborates the ocular version of the injured victim. Accordingly, I conclude PW 1 is a wholly reliable witness.

**Recovery of acid bottle from the place of occurrence:-**

30. Prosecution case is further bolstered by recovery of the bottle containing acid from the spot. PW 11 investigating officer stated a bottle was recovered from the spot on the showing of the appellant. His version is corroborated by Hiren Mahara (PW 3) as well as constables (PWs 7 and 10) who signed the seizure list. The seized bottle was sent for FSL examination and the FSL report (Ext 10) shows presence of acid in the said bottle.

**Motive proved:-**

31. Motive to commit the crime has also been established. Victim and her husband stated she used to work under the appellant. He gave illicit proposals to her and had taken nude pictures of the victim. Being

enraged, husband of the victim (PW 2) quarrelled with the appellant. This gives motive to the appellant to commit the ghastly crime.

**Conclusion:-**

32. In light of the aforesaid discussion, I hold the prosecution has been able to prove its case beyond reasonable doubt.

33. Conviction and sentence of the appellant are upheld.

34. Appeal is accordingly dismissed. Connected application if any stands disposed of.

35. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

36. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

37. Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

**(Partha Sarathi Sen, J.)**

**(Joymalya Bagchi, J.)**

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