

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

**C.R.A. 399 of 2018
(CRAN 3 of 2024)**

***Abhi Saha*
-Vs-
*The State of West Bengal & Anr.***

For the Appellant : Mr. Pinak Kumar Mitra, Adv.
Ms. Sananda Bhattacharjee, Adv.
Mr. Kaustav Talukdar, Adv.

For the State : Mr. Saibal Bapuli, Id. A.P.P.
Ms. Debadrita Mondal, Adv.

Heard on : 25.11.2024

Judgment on : 25.11.2024

Joymalya Bagchi, J. :-

1. Appeal is directed against judgment and order dated 11.05.2017 & 12.05.2017 passed by learned Additional Sessions Judge, Alipurduar in Sessions Case No.14 of 2016 (Sessions Trial No.5 of 2016) convicting the appellant for commission of offence punishable under Sections 341/326(A)/307 of the Indian Penal Code and sentencing him to suffer

simple imprisonment for one month and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for ten days more for the offence punishable under Section 341 of the Indian Penal Code, to suffer imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for six months more for the offence punishable under Section 326A of the Indian Penal Code and to suffer imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for six months more for the offence punishable under Section 307 of the Indian Penal Code; all the sentences shall run concurrently.

Prosecution case:-

2. Prosecution case levelled against the appellant is as follows :

Victim is a college going girl. She was pursuing a course in B.A. English (Hons.) at ABN Seal College, Cooch Behar. Appellant used to give indecent proposals and disturb her. On 15.09.2015 she was coming back from her college by bus. Appellant telephoned her and requested her to disembark at Beltala rail gate. She refused to do so. When the bus stopped at Beltala rail gate, appellant boarded the bus and threatened her. When she got down from the bus at NBSTC Bus Stand, Alipurduar and proceeded to walk towards her residence through '*cyber cafe gali*', appellant blocked the road and hurled acid at her from a glass bottle and ran away. Her face, hands and other parts of the body including her wearing apparels were burnt by acid. She raised alarm. Local people

shifted her to hospital. At the hospital she made statement before police. Her parents visited her at the hospital and she narrated the incident to them.

3. Her father (PW 1) lodged written complaint which was scribed by PW 11 resulting in registration of Alipurduar Police Station Case No.365 of 2015 dated 15.09.2015 under Sections 341/326A/307 of the Indian Penal Code.

4. During investigation, appellant was arrested and the glass bottle was recovered. Charge sheet was filed against the appellant. Charges were framed under Sections 341/326A/307 IPC. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined eighteen witnesses including the victim as PW 2. Defence of the appellant was one of innocence and false implication.

5. In conclusion of trial, learned trial Judge by impugned judgment and order dated 11.05.2017 & 12.05.2017 convicted and sentenced the appellant, as aforesaid.

Arguments at the Bar:-

6. Mr. Pinak Kumar Mitra, learned Advocate for the appellant submits the genesis of the prosecution case has not been established. None from the bus deposed to support the victim that the appellant had accosted her in the bus. Medical report with regard to acid burn injuries has not been proved. Recovery of the bottle is also doubtful. Accordingly, he prays for acquittal of the appellant.

7. Learned Additional Public Prosecutor submits the victim's (PW. 2) version is corroborated by PW 3, an independent witness who identified the appellant during Test Identification Parade as well as in court. Victim was shifted to hospital where she made statement before police in presence of the nurses (PWs.12 & 13). She also narrated the incident to her relatives (PWs.1, 8 & 9). Medical Officer (PW 10) proved the acid burn injuries. Glass bottle was recovered from the appellant. FSL report shows presence of acid. Accordingly, the appeal is liable to be dismissed.

Analysis of the evidence on record:-

8. PW 2 is the victim and the most vital witness. She deposed she was pursuing her studies as a student of B.A. English (Hons.) at ABN Seal College, Cooch Behar. Appellant used to disturb her. On 15.09.2015 while she was returning home by bus, appellant asked her to get down at Beltala rail gate. When she did not do so, appellant boarded the bus and threatened her. After she alighted from the bus at NBSTC Bus Stand and proceeded towards her residence, appellant accosted her on the road and threw acid on her face, hand and other parts of the body. She cried for help. Appellant ran away. She was thereafter shifted to hospital where she disclosed the incident to police. She was referred to SSKM Hospital for better treatment.

9. PW 1 (Ramjit Sarkar) and PW 8 (Papiya Sarkar) are parents of the victim. PW 9 (Sandhya Sarkar) is her aunt. They deposed receiving the

news of the incident, they went to hospital and PW 2 disclosed the incident to them. PW 1 lodged FIR scribed by PW 11.

10. PW 3 (Chandan Malakar) is an independent eyewitness. He is a lawyer by profession. He deposed on the fateful day he was standing in front of the cyber cafe. He saw a young boy hurl acid at a girl. The girl shouted '*Abhi Saha amake mere phello, Abhi Saha amake mere phello*'. He saw the boy when he was running away. He identified the boy during Test Identification Parade as well as in court.

11. PW 4 (Bula Nandi), PW 5 (Dulal Chanda), PW 6 (Subrata Sarkar) and PW 7 (Subir Roy) are local people. They saw the girl with acid burn injuries crying in pain. She was shifted to hospital.

12. PW 10 (Dr. Sandipan Sarkar) deposed on 15.09.2015 he attended the victim in the hospital who was admitted with a history of throwing acid by one Abhi Saha. He found acid burn injuries to the extent of 45% in total area as follows :-

- 1) *face almost all over except eyes 9%;*
- 2) *both upper arm 18%*
- 3) *front of chest and back and breast 18%*

He proved the injury report. A medical board was constituted for treatment of the patient. He proved the treatment sheet (Exhbt. 5). Victim was referred to SSKM hospital.

13. PW 12 (Chhanda Goswami) and PW 13 (Sarbooshree Narjinary) are the nurses attached to Alipurduar Hospital. They deposed the victim

made statement to police in their presence. They proved their signatures on the statement.

14. PW 14 (Sanu Hossain) deposed prior to the incident appellant obtained sulphuric acid from him on the false plea that he wanted the acid to test *Amway* products. He identified the glass bottle which was seized during investigation.

15. PW 18 [Anindita Mondal (Majumdar)] is the Investigating Officer. She deposed in course of investigation she visited the place of occurrence and prepared rough sketch map with index. She seized one umbrella and one black coloured back pack from the place of occurrence. She seized the wearing apparels of the deceased. She seized one brown coloured glass bottle produced by the appellant. She sent the bottle for FSL examination. FSL report showed presence of sulphuric acid in the bottle. She proved the report. She collected medical reports. She submitted charge sheet.

16. From the aforesaid evidence it appears the version of the injured witness i.e. victim (PW 2) is corroborated by the medical officer (PW 11). Her deposition is also corroborated by independent witness (PW 3) and other local witnesses (PWs.4 to 7). PWs.1, 8 & 9, her relations corroborated her and stated she had narrated the incident to them at the hospital implicating the appellant. These overwhelming evidence on record has remained untarnished during cross-examination.

Conclusion:-

17. In light of the aforesaid convincing evidence, I am inclined to uphold the conviction of the appellant on all counts.

18. On the score of sentence, I note appellant has been sentenced to life imprisonment on both counts i.e. Sections 326A/307 IPC.

19. It is contended sentence is too harsh. Appellant is a young person and does not have criminal antecedents.

20. I have considered the aforesaid submission in light of the evidence on record. Victim is a young girl and had suffered deep scars on her face. Though the offence is a grave one, it is relevant to note appellant does not have criminal antecedents. He is a young man aged around 25 years and there is possibility of his reformation. Balancing the aforesaid aggravating and mitigating factors, I am of the opinion indeterminate sentence of life imprisonment imposed on the appellant on the score of Sections 326A/307 IPC may be modified and he is directed to suffer rigorous imprisonment for fourteen years on each count respectively. Other sentences including the fine amount shall remain unaltered. All the sentences shall run concurrently.

21. Appeal is accordingly, disposed of.

22. In view of disposal of the appeal, connected application being CRAN 3 of 2024 is also disposed of.

23. 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.

24. Trial 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 judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

akd/pa