

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

GA 32 OF 1996
STATE OF WEST BENGAL
VS
PROBHAS KUMAR DAS

For the Appellant/State : Ms. Faria Hossain, Adv.
Mr. Anand Kesari, Adv.

For the Respondent : Mr. Milon Mukherjee, Adv.
Mr. Dattatreya Dutta, Adv.

Last heard on : 13.11.2025

Judgement on : 11.12.2025

Uploaded on : 12.12.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This criminal appeal was filed with the leave to appeal on behalf of the State of West Bengal under Section 278(3) of the Code of Criminal Procedure, 1973, from an order of acquittal dated 4th March, 1995, in respect of the charge under Section 324 of the Indian Penal Code, passed by the Learned Additional Judge at Barasat District-24 Parganas North, for setting aside the said order of acquittal.

Prosecution case

2. The prosecution case was that on 22 March 1984 at about 7:30 or 7:45 PM while proceeding towards their residence, two accused persons, namely Prabhas Das a local resident and his companion Sameer threw acid to them, resulting serious acid burn injury. The two sisters on being injured raised hue and cry and the neighbouring people rushed to the place of occurrence, and removed both of them at the nearest Hospital. Where from one of the sister was released after first aid, but the other sister was admitted in the hospital for treatment. The prosecution case further discloses that Prabhash Kumar Das used to mix with one of the injured victim, and as exception was taken by her guardian, she refused to meet and then Prabhat threatened her with dire consequences and out of grudge, the accused persons threw acid on them. On the basis of such complaints, before the O/C Barasat P.S by the brother of the victim girls, Barasat Police Station case no. 54, dated March 22, 1984, under Section 326 of the Indian Penal Code started and on completion of investigation, the charge-sheet was submitted against the accused persons under Section 324/34 of the Indian Penal Code. The charge was framed by the learned court on commitment, under Section 324/34 of the Indian Penal Code, and the content of the charge was read over and explained to the accused person to which they pleaded not guilty and claimed to be tried. Hence, the trial commenced.

3. In order to bring home the charges, the prosecution adduced as many as 15 witnesses out of which P.W.1 is the de-facto complainant and P.W.2 and 3 are the victim injured girls and P.W.4, 5 and 6 are the local people who rushed to

the spot and removed the girls to the hospital. P.W. 12 is the Mahajan who received the stitched blouse on that day. P.W. 9 and 10 are the seizure list witnesses, P.W. 13 and P.W. 15 are the treating doctors and P.W. 14 is the I.O. The witness fully supported the prosecution case and the injured girls adduced evidence and their testimonies could not be shaken. The Learned Trial Court after assessing the evidences, and considering the submissions advanced by the learned Counsels for both the parties passed an order of conviction against the respondent No. 1 and sentenced to suffer simple imprisonment for three years and to pay fine of ₹3000/- . The learned Trial Court passed the order of acquittal so far the Respondent No. 2 is concerned. The said order of conviction was challenged and the learned appellate court set aside such order of conviction mostly on the ground of identification of the accused person as the torchlight was not available or seized. Being aggrieved, thereby the state has preferred this appeal.

Submission of the Prosecution/Appellant .

4. The Trial Court presumed that there was a torch in the possession of the victims that was used to identify the accused but that was not seized . The learned court did not consider that non-seizure of torch is not fatal to the question the P.W.2/victims ability to identify the accused. In this regard relied upon the decision of the Hon'ble Supreme Court in **Pruthiviraj Jayantibhai vs Dinesh Dayabhai Vala & ors.¹and Satyendra.@ Chinu versus State of UP²** . The learned advocate further relied upon the case of **Surajit Sarkar vs**

¹ (2022) 18 SCC 683

² (2019) AHC 71`951 DB

State of West Bengal³ to show that non-seizure of the torchlight or any other sources of light is not fatal to the prosecution case.

5. It is further contended that the learned session court ignored the fact that P.W.2 lost consciousness, a little while after the attack and only regained her consciousness in the hospital which she mentioned in her evidence. The Learned Court is making a conjecture about the acquaintance between P.W. 4, 5 and 6 and the accused, which is contrary to the record as P.W. 4, 5 and 6 categorically denied to recognise the accused. That apart, the Learned Appellate Court ignored, the nature of the attack was brutal and sudden, and the urgency of the situation meant that the torchlight was relatively trivial which is supported by P.W.6. It was ignored by the Learned Session Court while passing the order of conviction that P.W.2 revealed the assailant's name to P.W.9 and P.W. 10 on the same day of the incident while in hospital in the presence of the I.O that is P.W. 14. The learned council relied upon the decision of **Bhargavan & others versus state of Kerala**⁴ where it was held that so far as non-disclosure of names to the doctor, same is really of no consequence. In the decision of **Kilakkatha Parambath Sasi & ors. versus state of Kerala reported in**⁵, it was held that first and foremost, it has to be borne in mind that it is not the function of the doctor to record the names of those who may have caused the injuries to the person who is being examined by him. That apart the learned court failed to appreciate the established principle of law that sole witness to the prosecution, if trustworthy, is sufficient to uphold the conviction. It was succinctly set out by the Hon'ble

³ 2009 Cri LJ 2895

⁴ (2004) 12 SCC 414

⁵ (2011) 4 SCC 552

Supreme Court *in State (government of NCT, Delhi) versus Pankaj Chaudhary & Ors. Reported in*⁶. In this regard further relied upon a decision of the Apex Court in *Phool Singh vs State of M.P*⁷. It is submitted that the learned session court ignores that the grudge as alleged by the defence is improbable. The decisions relied upon reported in *Jamaat versus West Bengal*⁸, *Ashok Kumar Singh Chandel versus State of UP*⁹ to establish that close proximity between the occurrence of the incident and filing of the F.I.R minimises the possibility of false implication. Therefore the order of acquittal must be set aside.

Submission of the Respondents

6. The learned Senior Advocate, Mr Milon Mukherjee argued that the appeal is filed from an order of acquittal, and in such case, the power of the Appellate Courts, to interfere with an acquittal is not unfettered. The appellate court's duty is to determine whether the findings of the Learned Trial Court is palpably wrong, manifestly erroneous, or demonstrably unsustainable. Unless those infirmities are found and reasons are recorded, the appellate court cannot re-appraise the evidence and overturn the order of acquittal. Otherwise, the order of acquittal must stand, upholding the presumption of innocence and the integrity of the process of trial. In this regard referred *Ramesh Babulal Doshi vs State of Gujarat*¹⁰, *Sheo Swarup vs King Emperor*¹¹. The learned Senior advocate further relied upon the decision of Sanjeev

⁶ (2019) 11 SCC 575

⁷ (2022) 2 SCC 74

⁸ (2023) CRI LJ 734

⁹ (2022) 20 SCC 114

¹⁰ (1996) 9 SCC 225

¹¹ (1934) SCC online PC 42

& Anr Vs State of Himachal Pradesh¹² . That apart on merit, it is pointed out that there is a delay in sending FIR to the Learned Magistrate and no cogent reasoning has been provided for the same. The FIR was lodged on March 22, 1984, but it was sent to the Magistrate only on March 24, 1984, and since it was received belatedly by the Magistrate, it should be considered with caution as the possibility of it being tampered with cannot be ruled out. It is further submitted that Section 157 of the Code of Criminal Procedure mandates that the report should be sent forth with to the magistrate empowered to take cognizance of the offence, and it is observed by Hon'ble Apex Court that when no explanation is offered for an extraordinary delay in sending the report to the magistrate, it becomes a circumstance providing a legitimate basis for suspecting that the FIR was recorded much later than the stated date, and hour and thereby affording sufficient time to the prosecution to introduce improvements and embellishment and to set up a distorted version of the occurrence. In this regard relied upon the decision of **Rebati Baidya versus State of West Bengal¹³** .

7. It is further mentioned in the written notes of argument that none of the victims stated the names of the assailants to the doctors who examined them first in point of time. P.W 13 Dr Bharathi Bose found superficial burn on the face and chest with opacity of the right cornea when she examined the victim X. However, she admitted in her cross that she did not enquire about the cause or history of such injury. The version of this witness contradict the statement of victim P.W.2 who alleged acid injuries on her right ear, nose,

¹² (2022) 6 SCC 291

¹³ (2013) SCC online 1977

upper abdomen ,front side of right hand. The doctor further found superficial burns on the face of P.W.3 and lacerated injury on the lower lip when P.W.2 stated that her sister sustained burns on both hands and face. That apart Dr S.S Pramanik, P.W. 15 deposed ,the injuries could have resulted from dry or wet heat there by weakening the prosecution claim of acid involvement. The further stand taken on behalf of the respondent that there are inconsistencies and irregularities in the seizure witnesses. Both witnesses admitted that they were gossiping near Natun Pukur. When police requested them to visit the scene, suggesting lack of actual presence during seizure. The seized burnt Lungi was never produced during trial for identification and P.W3, later produced certain partly burnt garment at the police station on March 24, 1984, which was then, seized however, it was neither sent for forensic examination nor it was produced in court for identification. Further point raised regarding non seizure of torchlight. It is argued that the torchlight as alleged is a crucial article connecting the event was never seized and non-seizure of Torch being the only source of identification by the victim is fatal . In this regard put reliance upon the decision of ***Durbal Vs State of Uttar Pradesh***¹⁴ Accordingly argued that the learned appellate court rightly set aside the order of conviction passed by the Learned trial court and hence the Appeal has no merit .

Analysis

8. Before entering into the detailed discussion of the case the point raised which pertains to delayed F.I.R and defective investigation be considered at the

¹⁴ (2011) 2 SCC 676

outset in the touchstone of the decision relied by the Learned Senior Advocate. In the case of **Rebati Baidya (Supra)** the FIR was lodged on 3rd September 1990 at 6:30 A.M and was dispatched from the police station on 4th September 1990, therefore, there was a delay in dispatching the FIR and receiving by the court of eight days, hence the point raised that the contents of the FIR are untrustworthy therefore the delay in receipt of the FIR by the concerned Magistrate is fatal to the prosecution case. The stand of the prosecution on the other hand is it may be a mere irregularity and not an illegality and cannot be fatal to the case of prosecution. The Division Bench of this Court considered **Ishwar Singh versus State of UP¹⁵**, where it was observed by the Hon'ble Supreme Court that when no explanation is offered for the extraordinary delay in sending the report to the Magistrate, it is a circumstance which provides a legitimate basis for suspecting that FIR was recorded much later than the stated date and hour, providing sufficient time to the prosecution to introduce improvements and embellishment and to set up a distorted version of the occurrence and held that the tardy dispatch of the FIR and its belated receipt by the Magistrate has cast a shadow of doubt on the contents of the FIR.

9. In this case, the complaint was lodged on March 22,, 1984 and it was seen by S.D.J.M on March 24, 1984, therefore, there is a gap of two days when the complaint was placed before the Learned Magistrate. In the decision of **Ishwar Singh (Supra.)** the above observation made as no explanation was offered for the extraordinary delay in sending the report but where the delay is of two days cannot be counted to be an extraordinary delay for which an offence

¹⁵ AIR 1976 SC 2423

committed upon the victim girls by throwing acid can be thwarted at the threshold. It was further held in ***Bijoy Singh versus State of Bihar reported in¹⁶***, that the requirement to send the copy of the report to the Magistrate under Section 157 of the CRPC is an external check on the working of the police agency and it must be strictly followed, but the delay may not by itself rendered the whole of the case of the prosecution doubtful.

10. It cast a duty on the court to guard while ascertaining whether the version stated in the Court was the same as reported in the FIR or whether it was as a result of deliberations involving persons other than those who are actually involved in the commission of crime. In ***Shivlal & Anr. versus state of Chattisgarh reported in¹⁷***, also, it was held by the Supreme Court that the absence of any explanation furnished by the prosecution regarding such delay as required under Section 157(1) of Cr.Pc would cast a shadow on the case of the prosecution. Therefore, held that at no point of time, if a delay is occurred in sending such FIR to the magistrate, the whole of the prosecution case is to be thrown away. In the wake of the above discussion in this case it can be observed that the delay of two days has created a shadow for which the other corroborative evidences are required to be scrutinized.

11. The second point taken by the Learned Defence Counsel about the identification of the respondent is tardy as there was no source of light and the alleged torch was not seized which was said to be the only source of identification. The fact of the instant case revealed that the incident occurred in the evening, when there was load shedding and no other source of light was

¹⁶ AIR 2002 SC 1949

¹⁷ AIR 2012 SC 280

there. The prosecution case is that the victim had torchlight in her hand and she flashed the light on hearing sound of footsteps and could identify the accused persons, but the police did not seize the said torch neither the local witnesses stated anything about such torch. The victims themselves identified the assailant and hence the identity of the present appellant is not at all questionable.

12. On perusal of the decision relied upon on behalf of the prosecution/Appellant in ***Prithviraj Jayanti Vai versus Dinesh Dayabhai (supra)*** it can be seen that in that case the deceased was assaulted on October 1, 2003 at 2:30 AM while returning on a motorcycle along with P.W.2, who was the Pillion Rider, and the respondents are said to have assaulted with offending weapons. There was evidence about availability of light near the place of occurrence, otherwise, there may not have been any source of light. It was held that the criminal jurisprudence developed in this country recognises that the eyesight capacity of those who live in rural areas is far better than compare to the town folk. Identification at night between known persons is acknowledged to be possible by voice, silhouette, shadow, and gait also. Therefore, the court did not find much substance in the submission of the respondents that identification was not possible in the night to give them the benefit of doubt.

13. In this case the prosecution cited as many as, 14 witnesses to bring home the charges. The De-facto complainant is the brother who deposed as PW1. His evidence would transpire that after returning home from office he came to learn from a man that his sisters sustained burn injuries due to throwing of acid on them, and they were taken to Barasat S.D.M. Hospital. After going there, he found his sisters, conscious, and he spoke with them, and then came

to know from one of his sister that the accused persons threw acid on her. He could identify the Respondent -not the other F.I.R named accused person.

14. In the instant case the most vital witnesses are the victims/injured girls.

The elder sister being victim girl X who was then aged about 18 years and sustained severe burn injuries deposed that she used to stitch blouses and used to supply the same to Tulsi Shah .On March 22, 1984, she along with her younger sister were going to her house to handover the articles at about 7/7.45 PM and she heard sound of moving sandal from behind, and she turned around and flashed torch and found the respondent about 4/5 cubits away and other accused further 4/5 Cubit behind the respondent . She knew the respondent and she turned front and then respondent came to her right and threw a liquid on her, and she immediately felt burning sensation on her right side of face starting from the ear and it's surrounding facial area, chest up to abdomen and front side of right hand and left hand. Her sister was at her left. She also sustained injury on her face and hand. She started shouting and running, then she was removed to hospital, but she could not say who are the persons who removed her to hospital as she became senseless due to severe pain . After she regains her sense she found herself at Barasat S.D Hospital and was there about 3/4 months. The burn injuries sustained by her was from her facial region, neck, ears, nose, and all other parts and those spots are permanently disfigured. Her right ear got permanently disfigured, and shortened in size due to burn injury. While adducing in the month of May, 1988, that is after almost 4 years of the date of incident, she informed the court that the burn injuries are not fully cured.

15. The other victim girl Y who was only aged about 9/10 years on the date of the incident, deposed before the court and fully corroborated evidence of her elder sister. Her evidence discloses that she along with her elder sister were going to the house of Tulsi Shah from Kalu Pukur for delivery of blouse and on hearing of the sound of footsteps from behind her elder sister flashed torchlight, and then she could see the Respondent at a distance from them and the other accused behind him. She identified the accused persons. She further deposed that the respondent suddenly threw some liquid substance to them which caused pain in their person and then Vishnu Da, Utpal and others whom she didn't know by name, removed them to hospital. She narrated the entire incident to her brother at hospital.

16. The narratives of the aforesaid victim girls are found corroborated by the evidence of P.W.4 Dipak Bain who deposed that the occurrence took place on March 23, 1984, between 7 to 7:30 PM when there was load shedding. He along with Shubho Sarkar, Krishnan Du Talukdar, were gossiping on the Bank of Kalu Pukur and suddenly they heard hue and cry from a nearby distance, and they rushed to the spot and found the victim girl running restlessly and crying, also found the younger sister of the victim girl. They took them to Barasat Sub Divisional Hospital and came to know after arriving at hospital that the injury was due to throwing acid on her. Subrata Sikdar as P.W.5 deposed in the similar line as of P.W.4. Krishnendu Talukdar also deposed as P.W.6 who further said that he along with the other two persons that is P.W.4 and 5 took them to hospital by rickshaw. The investigating authorities seized one burnt Lungi from the P.O by virtue of a seizure where P.W.7, Utpal Chakraborty put his signature. P.W.8, Vishnu Paada Goswami

also put his signature on the date of occurrence at about 10 PM when police seized a burn Lungi from the place of occurrence. P.W.9 Tarapada Ghenda corroborated in whose presence at the hospital, the victim X told the police officer that the respondent assaulted her with acid. The Police Officer seized victim girl's wearing apparel vide a seizure list where this witness put the signature and proved that seizure list. P.W. 13 Dr. Bharathi Bose, who was posted as Medical Officer at Barasat S.D Hospital on March 22, 84 on examining the victim girl X found superficial burn on face and part of chest anterior surface, right cornea opaque fraction of liquid was present and on examination of Y aged about nine years found some superficial burn on her face and lacerated injury on lower lip right side.

17. The I.O. seized partly burnt printed frock, one grey coloured partly burnt skirt, one red frock, partly burnt, and one tape frock, partly burnt, by virtue of a seizure list. The articles were handed over to him on March 24, 1984 by the younger victim girl.

18. Dr S.S. Pramanik posted as Medical Officer on May 3, 1984 proved the bed head ticket of the victim girl who was in care on March 3 ,1984 under his surgical ward and he examined the patient, prescribed medicines . he did not note whether the patient was conscious or not and further said it was not his duty to enquire who caused the injury .

19. The learned defence counsel has raised a strong exception regarding non production of the seized wearing apparels before the court and the effect and consequences for such non production in order to prove the charge .The evidence adduced by the victim girls which are otherwise of sterling qualities and the corroboration found from the testimonies of the supporting witnesses

and the eye witness coupled with the medical evidence are assimilated left hardly any scope to raise a doubt over the factum of sustaining burn injuries by the victims on the relevant date and time due to throw of acid or any such corrosive liquid which caused such injury. In the above nature of facts and circumstances this court is to see how the point raised regarding identification of the accused in absence of seizure of torchlight is substantiated.

20. In the case of **Surajit Sarkar (Supra)** and **Balo Yadav (Supra)** as was considered by the Division Bench of Calcutta, High Court observed that non seizure of torchlight cannot be considered as a lapse on the part of the I.O. and was not a ground for impairing the testimony of the witness concerned. It was further held that if there is failure on the part of the investigating officer to take steps for the seizure of torchlight, omission cannot be treated as a ground to reject the prosecution case. In that case, also, the evidence came that one of the witness when returning to his house by cycle with the torchlight in his hand, so 5/6 persons going towards South from the road, and with the light of the torch, he identified the accused and on proceeding to some extent/four cubits, he saw the elder brother of his father lying on the road in bloodshed injuries. The I.O did not seize anything in his presence.

21. In the decision of **Balo Yadav.(Supra)** the point harped heavily was the failure of the investigating officer to seize the torchlight which the witness claimed to have flashed for witnessing the occurrence. The Hon'ble Supreme Court did not appreciate such argument and held, 'if the accused had used a torchlight or if the victim had a torchlight with him during the occurrence, there would be force in insisting that the investigating officer should have seized it as the same could be used as a material object during trial, but a torchlight used by

the witness to see the occurrence cannot be equated with the torchlight used by the victim or the assailant in the encounter for identity purposes. Non-seizure of such torchlight cannot, therefore, be considered as a lapse on the part of any investigating officer, much less a ground for impairment of the testimony of the eyewitness concerned.’ In the instant case the torchlight was used by the victim for identification purpose.

22. In the decision of ***Durbal versus State of Uttar Pradesh (Supra)*** where all the witnesses stated in their evidence that lantern was burning in the Varaanda and the prosecution witnesses were having torchlight in their hands and only with the help of the lanterns and torchlight, they could recognise and identify the assailants. The lantern and torchlight both were alleged to have been seized were not produced in the court and the memo did not contain the crime number and other recovery particulars. In the circumstances, it becomes highly doubtful as to whether those torchlight and lanterns were actually seized during the course of investigation by the Officer. In paragraph 24 it was held that;

“The very fact that the lantern and torchlight were pressed into service for the purpose of identifying the accused, itself suggests that it was a pitch - dark night during the mid-winter and it was not possible to identify the assailant without the aid of lantern or torchlight. It is highly doubtful as to whether the PW 1, 2 and 3 had actually torchlight in their hands as stated by them, in absence of their recovery details in the seizure memos and their non-production before the court”.

The case pertained to commission of offence under Sections 302/149/147 and 148 of Indian Penal Code and some of the eye witnesses identified the assailant taking aid of the torchlight and there was grudge due to dispute over fish rights. Number of persons involved and the order of acquittal was reversed against which the matter went to the Hon'ble Supreme Court.

23. In another decision of ***Kalu Roy @ Dilip & another versus state of West Bengal***¹⁸ the Division of High Court at Calcutta set aside the order of conviction holding that prosecution failed to establish the chain of circumstances which could link the appearance with the crime. In that case torchlight was used and it was dark night, and there was no electricity light at the place of occurrence and appellants were reportedly seen in the torchlight near the site of murder on the relevant night, but torchlight was not seized and produced in support of their claim. There were number of accused persons and the order of conviction was passed against the appellants. This was a case based on circumstantial evidence.

24. In none of the above mentioned cases, the injured/victim, himself, or herself deposed before the court and or the accused was identified by the victim himself/herself. When in this case both the sisters suffered burn injuries because of throwing of acid or any liquid substance ,corrosive in nature and they identified the accused persons with the use of torchlight. It is pertinent to mention here that P.W.2 herself stated during her cross-examination that the appellant no1 is a local resident.P.W.3 deposed that she knew the respondent for a long time and his family was a tenant in their locality and at the relevant time, he resided in a house intervening by 3/4 houses from their house.

¹⁸ CRA NO. 407 of 2009

Therefore even though in this case the identification of the respondent and the other accused was by a torchlight which was not seized but that cannot nullify the version of the victim/injured and of the eye witnesses which are otherwise clinching and withstand the cross examination by the defence counsel and their evidence could not be shaken. In the case of **State (NCT) vs Pankaj Chowdhury**¹⁹ it was held taking note of the decision of **Vishnu vs State of Maharashtra**²⁰ that conviction can be sustained on the sole testimony of the prosecutrix if it inspire confidence .

25. The question therefore crystalized into the motive behind commission of such offence which caused a permanent scar over the victim who was a lady and attained a marriageable age. Usually this type of incidents are rooted in a desire for revenge or control frequently seen in cases of stalking, harassment where perpetrator often target victims especially women with harmful intentions often driven by rejection or perceived slights .

26. In this case, the accused persons cited two defence witnesses. Santosh Das deposed as D.W.1, who said that about 15 to 20 days prior to the present case, there was a trouble in the locality centring and involving his daughter, Anjana and the de-facto complainant of the case. He also said Prabhat, Panchu , Ashok were present at the time of incident, and Santosh Nag was assaulted by accused Provash and/six others. This witness interfered there in the interest of his daughter. This witness admitted that the house of the injured girls is adjacent to her house and house of Prabhas is thereafter. The brother /de facto complainant mentioned in his written complaint that Prabhash Kumar

¹⁹ 2019 (11) SCC 575

²⁰ (2006) 1 SCC 283

Das used to mix with one of the injured victim, and as exception was taken by her guardian, she refused to meet and then Prabhat threatened her with dire consequences and out of grudge, the accused persons threw acid on them. However while adducing evidence nothing was mentioned about the same but the written complaint was proved and no suggestion was put to the witness to discard that. The learned trial court did not put much reliance on the stand of the defence about the circumstances which might have triggered the victims to falsely implicate them but admittedly an inimical relation can be found to be established.

D.W.2 Pankaj Das deposed that the victim in order to discard the prosecution case deposed that the victims were 2/3 cubit behind them near Kalupukur and victim learned from the behind saying babago, maa go. It was during night time and there was no light. They raised alarm and the local People came. Thereafter, they left the place they were not present at the P.O when the people came. He did not see anybody to escape from P.O. This witness further deposed that he turned behind his face and felt some liquid substance on his face and started burning. His third sister also felt some liquid substance on her leg and also felt burning sensation.

This testimony though may not be found to be of much help for the defence established that on the relevant day and time, there was an incident of throwing acid or any corrosive substances and the victims shouted (Baba go Mago) from behind and both this witness and his third sister could feel the liquid substance on their face and the leg.

27. The witnesses' testimony suggests they fled the scene when others arrive so it is glaring that they left the place to avoid any consequences .In cross-

examination, this witness said that he was wearing sweater, shirt, and a half pant and the woollen sweater was damaged, but no intimation was given to the police though they felt that acid was thrown . His sister was examined by Doctor but nothing produced to substantiate the same. The issue raises several red flags as leaving someone in distress without extending any help, not reporting the incident to police and disappearing without a word and these circumstances has a severe impact on the credibility of their testimony. Therefore it is clear that either this witness had tried to hide or deposing on behalf of the accused person to mislead the Court.

28. In the case of ***Hari Singh vs State of U.P.***²¹ the Hon'ble Supreme Court held that where eye witnesses being a co-villager are well known to each other and deposed that they saw the accused from close quarters with aid of a torch, and there was no reason to otherwise doubt the truth of their testimony, merely on ground that the torchlight was not seized by the I.O, and that would not mean that their evidence is not credible.

29. Therefore, this court do not find much weightage to the point that non-seizure torch can be fatal for prosecution case since the testimony of the injured victims as well as eye witness could not be impeached and the ocular evidence matches with the medical evidence. The doctor said her right eye, ear, face, hands suffered the burn injuries and the P.W 2 said the liquid substance was thrown from her right side. Her right ear permanently damaged and shortened and after four years of the incident, while deposing said how she was still suffering.

²¹ AIR 2011 SC 360

30. In the decision of **Phool Singh (supra)** It was held by Supreme Court that there can be a conviction on the sole testimony of the victim./prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible, and her evidence is of sterling quality. Even if the injured is not the victim of sexual violence, in that case, also, the evidence of an injured witness cannot be doubted. In state of **State of U.P versus Naresh**²² It was held that the testimony of an injured witness is regarded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. In the instant case, the nature of offence committed is so heinous and the victim girls suffered burnt injury due to throwing of acid ,question of false implication of third person doesn't arise. The learned Senior Advocate assailed before this Court that when the victims immediately after the incident as alleged were brought before the doctor, did not take the name of any of the accused and subsequently the complaint was lodged and the delay in sending the F.I.R before the Magistrate club together raises doubtful questions.

31. In this regard, the decision relied upon by the prosecution in **Bhargavan and others versus State of Kerala**²³ may be look into. It was held that so far a non-disclosure of names to the doctor, same is really of no consequence. Further held as rightly noted by the courts below, the primary duty is to treat the patient and not to find out by whom the injury was caused. The plea in this regard is clearly unacceptable. In the decision of **Pattipatti Venkaiah**

²² (2011) 4 SCC 324

²³ 2002 (12) SCC 414

versus State of A.P²⁴. This question was examined and held mere failure to disclose name of the assailant to doctor would not discredit him as an eye witness.

32. That apart regarding the nature of substance, the evidence of Dr Bharathi Bose who examined the victim girls on March 22, 1984, are vital and the doctor found superficial burnt on face and part of chest, anterior surface, opacity of right cornea and refraction of light was present. She denied that such type of injury can be caused by fire and injuries are caused by Acid/ liquid thrown upon them. PW4, the local witness who along with two other local witnesses rushed to the spot on hearing hue and cry, said that when they caught the victim they found some liquid substance on her person and also felt burning sensation due to contact with such substance. P.W.6, heard the crying of a girl saying jale gelo jole galo. Dr is is Pramanik P.W. 15, who proved the bed head ticket of the victim who was admitted on March 3, 1984, and examined the patient only said that the medicine he prescribed were for burn injury and such burn injury may be caused either by dry heat and wet heat. Most importantly the defence witnesses who admitted that acid was thrown and they also felt the same over their body though they did not report either to the doctor or police.

33. The learned Session Court at first took the technical point raised regarding the date of incident which was mentioned in the charge on 23rd March 1984 when the evidence disclosed the date on 22nd March 1984. The learned Court discussed the decision reported in **Ram Bali Rajbhar vs State of West**

²⁴ (1985) 4 SCC page 80

Bengal ²⁵, where in it was held that judging a question of prejudice, court must act with a broad vision and look the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, and he knew that he was being tried for what are the main facts sought to be established against him where explain to him fairly and clearly, and whether he was given full and fair chance to defend himself. The learned court observed that a substantial mistake in the charge is a serious lacuna which would naturally there to the benefit of the accused and if there is at all any reasonable and substantial doubt, whether the accused was reasonably meet late or not, the Court shall take it into consideration, but simply because of mentioning the date of occurs incorrectly, there is no reasonable and substantial mistake so as to cause prejudice to the accused persons.

34. The Learned Court also did not consider the point raised by the defence council that misleading questions were put to accused under Section 313 Cr.Pc. The Learned Court after considering the evidence regarding the incident of throwing acid discussed the manner, how the victim girl in the Load shedding and in the midst of darkness could recognise by the flash of torchlight, but she held that at the relevant point of time, there should have been in all probability search for the torchlight in order to find out the nature of injury sustained by the two sisters in order to find out the nature of injury, but prosecution failed to show any such evidence that after the arrival young men, there was any search or even mention of the existence of a torchlight

²⁵ (1975) SC page 623

which might have been dropped from the hands of the victims, considering the sudden ness of the attack to which the victims were placed.

35. It was the observation of the learned court that the persons who came to rescue at least could trace out the torchlight as to detect the nature of injuries sustained by two minor girls. This Court is unable to accept this part of the observation, considering the circumstances and the nature of offence committed. The fact that people prioritized searching for torch over taking the injured girls to hospital or the injured girls who was writhing in pain from burning injuries would request them to search for the torchlight, seems to be not only unusual but raised that would have questions about the circumstances.

36. Therefore as it can be gathered the learned Trial Court considered the circumstances and the evidences and further considering the principle of law regarding the evidence adopted by the witnesses, relying on the celebrated decision of ***Gurbakhs Singh Sibbia vs State of Punjab***²⁶.

37. The learned Court was of the view that the other accused did not take part in the matter of throwing acid to the victim and as per prosecution, the offence was committed by both of them in furtherance of their common intention, but failed to adduce evidence to that extent, hence passed the order of acquittal in respect of the other accused Sameer Das, passed the order of conviction against the present respondent and this Court has no hesitation to accept such view.

²⁶ 1980 CRI LJ 1301 SC

Conclusion

38. In the above facts bad circumstances the Learned Senior advocate as raised by is to be assessed. The further point of the limitations in exercising the extent and power under Section 482 Cr.Pc for setting aside an order of acquittal. The Learned Counsel heavily relied upon the age old observation of the Privy Council in the year 1934 where it was observed in the case of **Sheo Swarup (Supra)** that there is no indication in the code of any limitation or restriction on the High court in the exercise of its power as an appellate tribunal. Further observed that no distinction is drawn as regards the power of the High Court in dealing with an appeal ,between an appeal from an order of acquittal and an appeal from conviction but in exercising such power before reaching any conclusion the High court should and will always give proper weight and consideration to such matters as the view of trial judge as to the credibility of the witnesses ,the presumption of innocence in favour of the accused ,a presumption of certainty not weakened by the fact that he has been acquitted at his trial ,the right of the accused to the benefit of doubt and the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses .

39. This Court is fully alive of the said principles regarding reversal of the order of acquittal and keeping in mind all the guidelines have carefully scrutinized the entire facts and circumstances and the law laid down in this regard as well as anxiously considered the seriousness of the nature of the allegations ,the sufferings faced by the victims and permanent damage sustained by the injured girls and the observation of the learned appellate court while passing the order of reversal of the order of conviction on the ground of non-seizure of

torch and the identification of the respondent/accused by the said torchlight, ignoring the evidences, adduced by the victims themselves ,which fully corroborated the medical evidence and the eye witness, arrived at the opinion that the said judgement passed by the learned appellate court are demonstrably unsustainable considering the totality of the circumstances and therefore are liable to be set aside.

40. Therefore, this Court in agreement concur with the decision of the learned Magistrate and express similar view so for the order of conviction of the Respondent and also that the case was not established against the accused Samir Das as no materials can be found him .

41. The nature of the case suggest the offence committed directly attract Section 326A of IPC corresponding to 124 BNS but when the complaint was lodged, Section 326A was not incorporated and the charge was initially under Section 326 and 324/34IPC. However, the Learned Court framed the charge under Section 324/34IPC. At that point of time the victim compensation under Section 357 was also not in existence and it was inserted after the Amendment Act of 2008 on the recommendation of the Malimath committee report on reforms of criminal Justice system, 2008. In the celebrated decision of **Laxmi versus Union of India**²⁷ , the Hon'ble Supreme Court directed to grant compensation of at least 3,00,000 by state/Union/union territory. In the case of **Parivartan Kendra versus union of India**²⁸ the direction was given that compensation to be awarded, not only in terms of physical injury, but noting of victims inability to lead a full life. In the later decision of **Laxshmi versus**

²⁷ (2014) 4 SCC 427

²⁸ (2016) 3 SCC 571

union of India²⁹ , it was directed that in addition to the compensation, if further, sum over three lakhs can be paid and was sent for the decision of the Hon'ble Supreme Court.

42. This Court also directed to pay the compensation, and the quantum was specially mentioned to be paid under the Bengal victim compensation scheme where Section 2(1)(i) defines the term 'victim'. In this case, though the state has filed this appeal against the order of acquittal but did not take any initiative to pay any compensation which was subsequently introduced. Since the percentage of disability or physical inability to lead a full life cannot be ascertained or could not be ascertained by the learned Trial Court or Appellate court,

a) Direction is given to the Member Secretary, State Legal services Authority to take all endeavour to contact with the victims and to ascertain their actual physical incapacity by the committee constituted under the guidelines framed by NALSA and to decide as to what would be the exact compensation in addition to the minimum compensation of ₹3 lakhs.

b) The appellant/ State is directed to pay and disburse at an earliest the victim compensation of ₹3 lakhs to each of the victim girl and not less than a period of two months from this date.

c) The state can take the assistance of the Member Secretary of State, legal Aid services authority in order to

²⁹ (2016) 3 SCC 669

find the victim girls and after disbursement of such amount and the State must submit a report to the Learned Registrar General of this High Court.

- 43.** Hence, this criminal appeal stand allowed. The judgement and order of conviction passed by the Learned Appellate Court is here by set aside. The judgement and order of conviction passed by the Learned Trial Court is hereby affirmed. All other connected applications are disposed of.
- 44.** The appeal was pending since 1996 and a period of 30 years have elapsed and the respondent who was then aged about 26 years is now approximately aged about 55/56 years.
- 45.** The order of conviction passed by the Learned Trial Court whereby the respondent was directed to serve the sentence for a period of three years and to pay a fine of ₹3000. In view of the nature of offence the provision of, probation of offenders Act cannot be applied, in this case however considering the long passage of time the sentence stands modified which as follows, the respondent is to serve the sentence for a period of 2 years and to pay a fine of ₹50, 000 (25,000 each.) to the victim, girls and in default to pay such amount, he will serve sentence for further period of six months. The rest part of the order of Learned Magistrate will remain unaltered.
- 46.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities

(CHAITALI CHATTERJEE DAS, J.)