

LEGAL FOXES 1ST NATIONAL MEMORIAL WRITING COMPETITION

BEFORE THE HON'BLE HIGH COURT OF NCT DELHI

CRIMINAL APPELLATE JURISDICTION

UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE, 1973

CRIMINAL APPEAL NO. __/2013

IN THE MATTER OF

SIMRAN AND ANR. APPELLANTS

v.

STATE OF NCT DELHI RESPONDENT

MEMORIAL ON BEHALF OF RESPONDENT

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LIST OF ABBREVIATIONS

&	And	M.P.	Madhya Pradesh
§	Section	U.P.	Uttar Pradesh
Anr	Another	Ors.	Others
Art.	Article	v.	Versus
Cri.	Criminal	Vol.	Volume
Cr.R	Criminal Ruling	Jcc	Journal of criminal cases
Cri.LR	Criminal Law Report	LJex	Law journal exchequer
CrLJ	Criminal Law Journal	F.I.R.	First information report
Cur LJ	Current Law Journal	SC	Supreme Court
u/s	Under section	SCC	Supreme Court Cases
Hon'ble	Honorable	SCR	Supreme Court Reports
Edn.	Edition	Sd.	Signed

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STATEMENT OF JURISDICTION

THE APPELLANTS IN THE PRESENT CASE HAVE APPROACHED THE HON'BLE HIGH COURT OF DELHI UNDER S. 374(2) OF Cr.P.C, 1973 WHICH READS US FOLLOWS:

S. 374 (2), CR.P.C, 1973:

“ANY PERSON CONVICTED ON A TRIAL HELD BY A SESSIONS JUDGE OR AN ADDITIONAL SESSIONS JUDGE OR ON A TRIAL HELD BY ANY OTHER COURT IN WHICH A SENTENCE OF IMPRISONMENT FOR MORE THAN SEVEN YEARS² HAS BEEN PASSED AGAINST HIM OR AGAINST ANY OTHER PERSON CONVICTED AT THE SAME TRIAL], MAY APPEAL TO THE HIGH COURT.”

SYNOPSIS OF THE FACTS

Acid attacks are one of most inhumane and vicious acts by humans. In this case RANI (victim) is merely another women who is an acid attack survivor. The victim aged 25 years worked as a dancer in Rajdoot Hotel, Bhogal. Simran (co-worker) was indeed jealous of RANI taken her talents and beauty. In a quarrel that took place between them one month prior to the incident the former had intimidated the victim of killing and throwing acid on her. One fine day on 19.12.2004 the victim on her way to work was experienced the worst that any individual can while she was sitting in the auto rickshaw. According to her, two people(accused) were waiting for her to arrive and seized the moment for pouring acid on her face through a glass (which is proven to be sulphuric acid)as soon as she sat in the auto resulting in serious burn injuries to the victim as well as the driver. Following this she was immediately taken to Shahi Hospital then to Apollo Hospital and lastly to Safderjung Hospital. While at the Apollo Ct. Balwant Singh with ASI Vedpal recorded the victim's statement culminating in registration of FIR against the accused under section 307 of IPC. Subsequently during investigation various evidences such as the the TSR mat, pant and shirt of auto driver(PW-5). The first arrest made on 20.12.2004 was of simran(A-1) followed by the arrest of her brother(A-2). Pursuant to the latters statements acid bottles, shawl, jeans, pants were recovered. A-2 also produced a grey color jersey, one chunni, pyzama and suit belonging to A-1. Considering the evidences and eye witnesses the sessions court has convicted the accused under sections 307, 326 and 120-B of IPC to which the accused pleads innocence and alleges false implication. Inorder to challenge the order/conviction by the sessions court the defendant now referred to as the appellant has appeared before the high court to set aside the impugned judgement.

ISSUES RAISED

**Q1. WHETHER THE INSTANT APPEAL BEFORE THE HIGH COURT UNDER SECTION 374(2) OF
CRIMINAL PENAL CODE IS MAINTAINABLE OR NOT?**

**Q2. WHETHER THE INSTANT APPELLANT IS LIABLE TO PUNISHES UNDER SECTION 307, 120B& 326A
OF INDIAN PENAL CODE, 1860?**

**Q3. WHETHER THE JUDGMENT PASSED BY LEARNED SESSIONS COURT IS CONTRARY TO LAW &
EVIDENCE ON RECORD?**

SUMMARY OF ARGUMENTS

Q1. Whether the instant Appeal before the High Court under section 374(2) of Criminal penal code is maintainable or not?

It is submitted that the instant Appeal before this Hon'ble High Court under S. 374(2)¹ of Criminal Procedure Code, 1973 is not maintainable. It is implored that the learned Trial Court did appreciate the evidence of the prosecution witnesses in its proper perspectives. The learned Trial Court considered the substantial omissions and contradictions in the evidence and as a result the said Court has come to the finding that both the accused were guilty. Henceforth, in such circumstances, factual aspect need not be revisited.

Q2. Whether the instant Appellant is liable to be punished under section 307, 120B & 326A of Indian Penal Code, 1860?

It is submitted that the Appellants in the instant case are liable to be punished under S. 307, S. 120-B r/w S. 120-A and 34 and S. 326-A of IPC as there was mens rea fulfilled on the part of A1 and A2 as per the essentials of maxim actus non facit reum nisi mens sit rea.

The counsel will also put forth case laws in support of the arguments and prove the guilt of accused A1 and A2 under S. 307, 120B & 326A.

Q3. Whether the judgment passed by learned Sessions Court is contrary to law & evidence on Record

It is implored that the judgment by Sessions Court is not contrary to law and is based on evidence on record with due perusal of the facts and the facts in issues and relevant facts. The counsel will present case laws and statutes that support the arguments presented by the counsel to show the guilt of accused both A1 and A2. And will also present in front of the hon'ble court how a chain of evidences prove the guilt of both the accused.

¹ S. 374 (2), Cr.P.C, 1973 : Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years ² has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

ARGUMENTS ADVANCED

Q1.WHETHER THE INSTANT APPEAL BEFORE HON'BLE HIGH COURT UNDER S. 374(2) OF CRIMINAL PROCEDURE CODE, 1973 IS MAINTAINABLE OR NOT?

1. It is submitted that the instant Appeal before this Hon'ble High Court under S. 374(2)² of Criminal Procedure Code, 1973 is not maintainable. The learned Trial Court did appreciate the evidence of the prosecution witnesses in its proper perspectives. The learned Trial Court considered the substantial omissions and contradictions in the evidence and as a result the said Court has come to the finding that both the accused were guilty. Henceforth, in such circumstances, factual aspect need not be revisited.
2. In addition to the above, referring to *Alamgir v. State of N.C.T. Delhi*³, wherein the Hon'ble Apex Court held "this court is not oblivious to the fact that sometimes witnesses are overawed with the court atmosphere and sometime swayed away by sugar coated artful advocacy. Regarding discrepancies it is made crystal clear by the Hon'ble Apex Court in a decision⁴, wherein the Hon'ble Apex Court held that "in a case of discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders the court should not attempt to jump over the same." In this instant case there is a very minor discrepancy, so I can tread upon it". Vitriolage or throwing or administering acid though is a major offence, however, the discrepancies about the witness stating that PW-5 denied having seen anyone throwing acid on his TSR or A-2 being responsible for the same⁵ is a boulder and there is no need for the Court to tread upon it.
3. Moreover, "a first appeal as provided in Cr.P.C, manifests the value upheld in Art. 21 of the Constitution of India."⁶ Since the right of appeal carries with it a right of rehearing on facts or appreciation of evidence or on law"⁷, in the instant case, the learned trial court had already perused all the records in hand and passed the judgment. Therefore, in the instant case, the

² S. 374 (2), Cr.P.C, 1973 : Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years ² has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

³ 2003 SCC (Cri 170).

⁴ Mewa Lal v. State of UP, 2002 Cr.L.J. Page 2645.

⁵ ¶11, Moot Proposition.

⁶ M.H. Hoskot v. State of Maharashtra, (1978) 3SCC (Cri) 468.

⁷ State of Kerala v. Sebastian ,1983 Cri LJ 1001 (Ker).

learned Sessions Judge has while examining the evidence on record with diligence convicted the Appellants.

Q2. Whether the instant Appellants are liable to punished under section 307, 120B& 326A of Indian Penal Code, 1860?

4. It is submitted that the Appellants in the instant case are liable to be punished under S. 307, S. 120-B r/w S. 120-A and 34 and S. 326-A of IPC as there was mens rea fulfilled on the part of A1 and A2 as per the essentials of maxim actus non facit reum nisi mens sit rea.

2.1 That the instant Appellants are liable to punished under S. 326A of Indian Penal Code, 1860.

5. **It is implored** that the instant Appellants Rani and her brother –(hereinafter referred as A-1 and A-2) have committed the crime of voluntarily causing grievous hurt by throwing acid All the essentials of **S.326 A⁸ Voluntarily causing grievous hurt by use of acid ,etc**

“Whoever causes permanent or partial damage or deformity to, or bums or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine”.

6. of IPC have been fulfilled by virtue of the incident which took place on 19.12.2004 when the brother of A-1 her removed his shawl while already standing near TSR and threw acid on the respondent’s head and face from a glass .⁹Furthermore, as per the landmark case **Laxmi v Union of India**¹⁰ , the Honorable Apex Court issued guidelines regarding the acid attack which are as follows :

- A. This outcome led to several orders being passed which led to the guidelines being passed for the betterment of acid attack survivors.
- B. Meetings were held in the presence of secretary in the ministry of home affairs, Government

⁸ S.326 A of Indian Penal Code.

⁹¶ 3, Moot Proposition.

¹⁰(2014) 4 SCC 431.

of India, and the secretary in the ministry of health and family welfare, Government of India with its all chief secretaries collected data from all over India of acid attack cases and filed the affidavit in court for the same.

- C. After the compilation of such data it came that the number of acid attacks were great in Uttar Pradesh, Madhya Pradesh and Gujarat wherein Delhi being the only Union territory where such heinous crime took place.
- D. This led for the amendment in the Code of Criminal Procedure, 1973 in which section 357-A was inserted for the compensation to the victim or their dependents, prepare a scheme for providing funds to all those who have suffered loss or injury due to such an acid attack and need rehabilitation.
- E. Amendment was also made in Indian Penal Code, 1860 wherein two sections 326-A and 326-B were inserted exclusively dealing with acid attack.
- F. Victim compensation scheme got notified in all states and union territories of India.
- G. Amendment of Cr.P.C led to the insertion of section 357C which is all hospitals whether private or public run by central, state government or local bodies should provide the first aid or medical treatment free of cost.
- H. Supreme Court directed for the minimum compensation of 3, 00,000/- to every acid attack victim in all states and union territories.
- I. The state government issued ban on sale of acid and declared acid as “poison” and which would not be easily available.
- J. Victim compensation scheme was also initiated by the government with the help of legal services authority so that each acid attack victim could take benefit of such an initiation.
- K. No hospital/clinic can refuse for treatment of an acid attack victim and if any such complaint is made, the victim can take further appropriate legal action.
- L. It should be kept in mind that even though this case started as a smaller spark it did not take long for it to turn into a full-blown fire and engulf the ones who were guilty. To take a step like this despite the conditions that Laxmi was facing is something that only a few are capable of. The PIL filed by Laxmi changed the course of acid attacks and its punishment in India while also giving other victims and survivors a change to showcase their sufferings and gain compensation and seek proper justice for what happened to them.

7. The aforesaid guidelines have been followed and upheld by various courts in various cases¹¹. Also, as per **Simran @ Meena Khan v. State**¹², Moreover, in the year 2013, Justice Verma Committee was constituted in response to the countrywide peaceful public outcry of civil society against the failure of government to provide a safe and dignified environment for the women in India, who are constantly exposed to sexual violence. The immediate cause was the brutal gang rape of a young woman known as "Nirbhaya"s **case**" Committee dealt with various issues including "**acid attack**" and opined: "We understand that a most heinous form of **attack** on women, which is commonplace in several Asian and African countries, is the throwing of **acid** on women for a multitude of reasons, including alleged adultery, turning down advances from men, and also as a form of domestic violence. **Acids** and other corrosive substances are thrown on women or administered to them, thereby causing death or physical and psychological damage with unfathomable consequences.
8. Furthermore, the Court in a case¹³, the Hon'ble Court observed that the consideration on the point of compensation is very much alive in this **case**. Rs.75,000/- was ordered to be paid to deceased applicant Rajeev Singh out of the fine deposited in this **case** as compensation. Section 357 (1)(d) of the Cr.P.C. was invoked to pass this order. Considering the fact that applicant (deceased) needed to undergo series of treatment even then, he had to suffer disfiguration and loss of sight in one eye. The compensation awarded by the trial Court seems to be meager which needs enhancement. In present state of things it does not appear to be fit to enhance the sentence &3, but to meet the requirement of expenses made by the applicant (deceased) and his parents, the fine amount can be sufficiently enhanced.¶
9. Moreover, as per Sangeeta Kumari v. State¹⁴, the accused had thrown acid on victim girl and injuries resulted in permanent disfiguring of her face. It was considered injury of grievous nature and acquittal of accused of offence u/s. 326 on basis of medical report only was set aside.
10. Also in recent case Raja v.State of Haryana ¹⁵,the Court held that,(i) It will help the victim in

¹¹(2016) 3 DLT (Cri) 455.

¹²(2014) 2 DLT (Cri) 352.

¹³ Parivartan Kendra Vs. Union Of India And Others, 2016 (3) SCC 571

¹⁴2004Crlj 1734(jhar).

¹⁵ 2019 (2015) 11 SCC 43: (2015) 4 SCC (Cri) 267.

rehabilitation;(ii) It will also make the State to implement the guidelines properly as the State will try to comply with it in its true spirit so that the crime of **acid attack** can be prevented in future. In the instant case in light ,A-1 and A-2 was already standing near the TSR covering himself with the shawl.As the auto driver was also there .

2.1.1 That the act comes under the umbrella of “Voluntarily causing grievous hurt”.

11. It is submitted that a person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. ¹⁶The act in this case was done voluntarily is evident by the chain of circumstances that during the quarrel as the A-1 (Appellant) told to Rani (respondent) she would get acid thrown at her and would get her killed. ¹⁷
12. In Mehbud Shah vs. King Emperor¹⁸, It was clear to the lordships that the common intention within meaning of section implies pre-arranged plan, and to convict the accused of an offence. Applying this section it should be proved that criminal act was done in concert pursuant to the **pre-arranged plan** .It is therefore, implored that in the instant case A-2 and the brother of a-1 was already standing near the TSR covering himself with the shawl¹⁹that means it was a pre-arranged by the Appellant.
13. As per, A.G. Bhagat (Dr.)v. U.T. of Chandigarh²⁰, one day The accused threw acid on her face causing permanent disfiguration of her face. The hurt was dangerous to life and the accused was convicted on a charge under section 326, I.P.C. And also as per the case, Gubbala Venugopalaswamy v. State of Andhra²¹, maxim falsus in uno Falsus in omnibus was applied . The fact that version of eye witness was not credible on certain aspects cannot per se be a ground to discard his evidence when it was otherwise credible. Conviction of accused was

¹⁶S.322- Voluntarily causing grievous hurt.—Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt.”

¹⁷ ¶ 4 of Moot preposition.

¹⁸ Mehbud Shah vs. King Emperor, AIR 1955 CrLJ.

¹⁹ ¶ 5 of the Moot proposition.

²⁰ 1989 Cr LJ 214(1988)3 Crimes 430.

²¹2004 CrLJ2557 (SC): (2004) 10 SCC 120 : AIR 2004 SC 2477.

maintained but sentenced was reduced.

14. Moreover as per, Suresh Chandra Jana v. State of West Bengal²²-Vitriolage not only cause damage to physical appearance of its victims but also cause immense psychological trauma thereby becoming a hurdle in their overall development.
15. Also as per Haji Mohammad Iqbal v. State of Karnataka²³, when the proof of murder case rests on circumstantial evidence, **motive plays a important role**. And here A-1 (Appellant) has a motive to throw acid on the respondent.
16. The same orbiter applies in the instant case in light also where the evidences such as footmate of TSR pant and shirt Parvez Alam(auto driver) and pursuant to the disclosure statement , the recovery of one shawl ,one jean and pant from H.No.WZ-666 Padam basti, Nangal basti and most importantly the recovery of plastic bottle containing acid from the garbage bin of gateNo-2 nearest Esckon temple Garhi were recovered during the course of investigation .

2.2 That the instant Appellants are liable to be punished under S. 307 of Indian Penal Code,1860:

17. As per section 307 IPC, i.e. “**Attempt to murder**”²⁴ ,in the current situation the accused not only caused grievously injury (punishable u/s 326A IPC) the victim (respondent) but also a pre-planned series of actions.
18. Moreover as per, **Hari Singh V. Sukhbir Singh**¹ , the Hon’ble court held that while examining whether a case of commission of offence under section 307 IPC is made out, the court is required to see, whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.
19. It is submitted that the very nucleus of the section lies in the intention and knowledge of the

²² (2017) 16 SCC.

²³ 1990 CrLJ NOC 179 (Kant).

1. ²⁴ 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 1[imprisonment for life], or to such punishment as is herein before mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]*

offender of an act and hence in the present case the intention lies on the very face of the actions committed by A-1 and A-2(appellants). The various other factors that the above case throws light upon are the- nature of the weapon used, manner, in which, it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some the factors that may be taken into consideration to determine the intention, state of mind of the accused has to established from surrounding circumstances and the motive would be relevant circumstance.

20. On considering the ingredients it is but obvious that an act to end human life of another was attempted in a brutal manner that no prudent man can think of. In order that a person may be guilty of attempt to murder, the following two ingredients of the offence must be present: (a) an intention or knowledge of committing murder- this ingredient is fulfilled as soon as the accused throws acid on the victims head and face; (b) **the doing of an act towards it.**² For the purpose of section 307, what is material is the intention or knowledge, and not the consequence of the actual act done for the **purpose of carrying out the intention.**³ This section clearly contemplates an act which is done with the intention of causing death but which fails to bring about the intended consequence on account of the intervention of a cause operating independently of the volition of the agent. To determine whether an act falls within the ambit of section of 307, on the wording of this section, three considerations appear to be essential (1) the nature of the act done, (2) the intention or the knowledge of the agent, and (3) **the circumstances under which the act is done.**⁴
21. Moreover, in the case of **Pasupuleti Siva Ramakrishna Rao v.State of Andhra Pradesh** ⁵, the court held that even if the act does not cause any injury it is punishable with imprisonment up to 10 years if it does cause an injury and therefore hurt, it is punishable with imprisonment for life.
22. Furthermore, to sustain conviction under section 307 the intention to kill should be clearly proved by circumstance like persistence of attack on vital parts of the body or the assailant lying in the weight arm with dangerous weapons or declaration made by him that the victim would be killed. The intention is not gatherable merely from the seriousness of the resulted injury⁶.
23. In relation to the case at hand the act of throwing acid (sulphuric acid) on the victim's head and face was indeed a very vicious act on the extremely vital and vulnerable parts of the body with an easily available dangerous chemical that keeps the capability to cause death.
24. The accused A-1 and A-2 had the intention, motive and the very means to commit such an offence of this heinous nature. For the purposes of intention A-1 had previously criminally

intimidated the victim on her being killed and A-2 being the brother by blood out of love for his sister conspired and committed the offence. The envious nature of the accused is in itself the basis for the courts to establish the occurrence of attempted murder on the victim.

25. In the case of State of M.P. vs. Kashiram & Ors., the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held “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. 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”.⁷
26. Therefore, it is deduced from the above mentioned precedents that the said section of attempt to murder shall be suitable for the adjudication of the case at hand since it fulfils all the credentials and falls under the ambit of the section as well. It is also true that the accused had 1 month prior to the incident intimidated the victim of killing her. The sole motive being the envious nature of the former towards latter being more beautiful and a better dancer as mentioned in the problem itself.

2.3 That the Appellant is liable to be punished under S.120B r/w S.34 of IPC, 1860.

27. It is humbly submitted that the Appellant is liable to be punished under S. 307, S.120B r/w S.34 and S. 326A of IPC, 1860. It is implored before this Hon’ble Court that all the ingredients of S. 120 A of IPC have been fulfilled so as to punish the Appellants under S. 120B of IPC. The essentials of S. 120A which read as :

120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

(1) An illegal act, or

(2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy

Provided that no agreement except an agreement to commit an offence shall amount to a criminal

conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

28. It is implored there is an **illegal act** in the instant case committed by Rani and her brother , hereinafter referred as A1 and A2 and that there is an **agreement** to do or cause to be done the act throwing acid on the Respondent out of jealousy. The elements of a criminal conspiracy have been stated to be as per various Supreme Court cases²⁵:

1. An object to be accomplished.
2. A plan or scheme embodying means to accomplish that object
3. An agreement or understanding between two or more of the accused persons whereby they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement ,or by any effectual means
4. In the jurisdiction where the statute required an overt act.

29. It is submitted that in the instant case that as per the first essential, the object is to throw acid on the Appellant due to the quarrel between A-1 and the victim Rani, which is fulfilled.

30. As per the second requirement, a plan or a scheme is necessary. In the instant case, the scheme is very well established by the fact that the brother A-2 was already standing near the TSR covering himself in a shawl, and that the victim left her house and boarded her regular rickshaw .As the auto driver started the vehicle, A-2 removed his shawl and threw acid on her head and face from a glass.²⁶ Thus, both the accused knew the details of her regular rickshaw, her timings etc. Furthermore, the evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. ²⁷Encouragement and support which co-conspirators give to one another rendering enterprise possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. When two agreed to carry the design into effect, the very

²⁵ Devender Pal Singh v. State of NCT of Delhi, 2002 SCC (Cri) 978; Noor Mohammed Yusuf Momin v. State of Maharashtra ,AIR 1971 SC 885; P.K. Narayanan v State of Kerala (1995)1 SCC 142; State v. Nalini, AIR 1999 SC 2640.

²⁶ ¶3, Moot Proposition.

²⁷ Hussain Umar v. Dalip Sinhji, AIR 1970 SC 45; Suresh Chandra Baheri v. State of Bihar, 1994 CrLJ 3271.

plot is an act itself, and an act of each of the parties, against promise, actus contra capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.²⁸

31. As per the third requirement, an agreement or understanding between two or more of the accused persons whereby they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means must be fulfilled. This condition is too clearly fulfilled in the instant case. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in means sometimes unknown to each other. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy.²⁹ The fourth condition needs no explanation by the perusal of the facts of the case in hand.
32. Therefore, as proposed in the aforementioned, the actions of A-1 and A-2 clearly depict and become relevant facts against both the persons. Thus, the contention of the Appellants that A-1 was not even present at the time of incident³⁰ does not stand good as her person is not material, but her design to commit and the participation in the conspiracy is enough. The Supreme Court in *State of Tamil Nadu v. Nalini*³¹, laid down that “it is not necessary for the conspirator to be present at the scene of crime. If evidence showed that the accused was in thick of conspiracy then his plea that he derived the knowledge of incident after the explosion is not tenable especially when he himself has purchased the battery which he knew will be used for the explosion of human bomb.” Thus, Direct or in the absence of direct, indirect (circumstantial) evidence may also be led to prove the offence. The lack of direct evidence would not fail the prosecution³² (the respondents, in this case). Trustworthy chain of circumstances, even confession may bring home the charge.

2.3.1 That the things said or done by conspirators i.e. A1 and A2 are in reference to common design as per S. 10 of the Indian Evidence Act, 1872.

²⁸ K. Hasim v State of Tamil Nadu, AIR 2005 SC 128.

²⁹ Yes pal Metal v. State of Punjab, AIR 1977 SC 2433.

³⁰ ¶ 8, Moot proposition.

³¹ AIR 1999 SC 2640.

³² E.K. Chandrasenan v. State, AIR 1995 SC 1066; State (Delhi Administration) v. V.C. Shukla, AIR 1980 SC 1382; M.C. Taneja v. State, 1970 CrLJ 945 (Raj.); OM Prakash v State of Haryana, 1979 CrLJ 857 (SC); Jagat Narain v. State of Rajasthan 1979 CrLJ (NOC) 106 (Raj.).

33. As per S. 10 of the Indian Evidence Act,

“Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

Thus, the fact that A-2 was already standing covered in the shawl at TSR and threw acid when the auto started, and that before the incident A-1 told the victim (Rani) that is she quarreled with her she would get acid thrown at her and would get her killed³³ is material evidence as per S. 10 of the Evidence Act.

Q3. Whether the judgment passed by learned Sessions Court is contrary to law & evidence on record?

It is submitted that the judgment by Sessions Court is not contrary to law and is based on evidence on record with due perusal of the facts and the fact in issues and relevant facts.

3.1 That PW 4 was an injured witness and hence can be relied upon:

³³ ¶2, Moot proposition.

As per S.3 of the Indian Evidence Act ³⁴ i.e. injured witness, the law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies.³⁵

Moreover as per, *Jarnail Singh v. State of Punjab*³⁶, where Hon'ble Supreme Court reiterated the special evidentiary status accorded to the testimony of an injured witness and relying on its earlier judgments held as under: "*Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tube well.*"

Furthermore as per, *Shivalingappa Kallayanappa v. State of Karnataka*³⁷, the Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

In the instant case, the statement of PW5 is the injured eyewitness statement, hence one cannot deny the testimony of PW5 and also the defense had failed to prove themselves or submit any proof contrary to the above case law.

The law is well settled that the evidence of the injured witness has greater evidentiary value and unless compelling reasons exist, his/her testimony is not to be discarded lightly. The evidence of an injured witness must be given due weight being a stamped witness. Thus, his/her presence cannot be doubted. His/her statement is generally considered to be very reliable and it's unlikely that she/ he will spare the actual assailant in order to falsely implicate someone else.

³⁴ S. 3 of the Indian Evidence Act, 1872.

³⁵ *Simran v. state* 2016 2016 SCC Online Del 3325 : (2016) 3 DLT (Cri) 455. Also see *Abdul Sayed v. state of Madhya Pradesh*, (2010) 10 SC 259. Vide *Ramaglan Singh v. state of Bihar*, 1972 SC 2593, *Balaji alias Trimbak v. State of Maharashtra* (2010) 6 SCC 673.

³⁶ *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719.

³⁷ *Shivalingappa Kallayanappa v. State of Karnataka*, 1994 Supp (3) SCC 235.

Moreover as per *the case of Ravji v. State of Rajasthan*³⁸, it was observed that:

“It is the nature and gravity of the crime and not the criminal, which art germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in if duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual but also against the society to which the criminal and the victim belong.”

3.2 That “Motive” is established of the accused and other connected facts forming part of same transaction cannot be ignored (Doctrine of Res Gestae) i.e. S. 6,8 and 14 of Indian Evidence Act can be relied upon.:

It is submitted that S. 6 of the Indian Evidence Act, 1872 which cannotes doctrine of res gestae states that “facts forming part of the same transaction are relevant. In the instant case, all facts forming part of the transaction which began from the quarrel between Rani and A1 and continued till throwing acid on her ,are relevant as they are connected issues to the fact in issue.

It is submitted that as per Section 8³⁹ of the Indian Evidence Act- Motive, preparation and previous

Since all the acts and evidences solely point towards the accused it is rational to throw light on this section of the act.

Moreover as per, **Kundula Bala v. State of A.P**⁴⁰: In this case the son-n-law before his marriage to the

³⁸ Ravji v. state of Rajasthan (1996) 2 SCC 175.

³⁹ Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. Explanation 1.—the word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act. Explanation 2.—when the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct is relevant.

demanded a piece of land from the deceased. The connivance of the mother-in-law was also there before this demand. The marriage took place but the deceased refused to transfer the property in the name of the accused and wanted to give it to the daughter. That infuriated the accused and crime was committed. It was held that there was a strong motive for the accused to commit the crime.¹

The motive stands established. In order for a crime to take place there has to be a clear knowledge, motive, intention, preparation, conduct and means and ends for that crime to come into existence. In this case the crime takes place via an acid bottle that is easily available in the stores without any sort of regulation.

The choice of the offender hereby lied in the ruining of the beauty due to the rage that the accused had in her from a very long time. It was nothing but the fate of the victim's destiny to face the inhumane wrath of accused. As quoted by Austin- **"We have resolved or determined on an act' only means that we have examined the objects the objects of the desire, have considered the means of attaining it and that since we think the object worthy of pursuit, we believe we shall resort to the means which will give us a chance of getting it."**

The following cases show the relevancy of the four stages of crime and why section 8 of the Indian Evidence Act comes into picture. In **State of Haryana v. Sher Singh**⁴¹, held that if the prosecution proves motive, Court has to consider it and see whether it is adequate. When there is direct evidence, the evidence of motive is not of so much significance. The evidence of motive becomes important to corroborate the circumstantial evidence.

In **Sakharam v. State**⁴², held that absence of Motive may not be relevant when Evidence is overwhelming but it is a plus point in case where the Evidence against the accused is only Circumstantial.

Therefore, the accused cannot under any circumstances or grounds deny the very fact that there was an unhindered dedication and furiousness in the motive of the accused that nonetheless was accompanied to her by her very brother.

3.3 That CIRCUMSTANTIAL EVIDENCE can be relied upon in the instant case:

It is submitted that Circumstantial evidence as mentioned under section 3 of THE INDIAN EVIDENCE

⁴⁰ 1993 CrLJ 1635 SC.

⁴¹ State of Haryana v. Sher 1981 SC 1021.

⁴² Sakharam v. State AIR 1992 SC 758.

ACT, 1872⁴³ means,

“The evidence which related to a series of other fact than the fact in issue: but by evidence here have been found so associated with the facts in issue in relation of cause and effect that it leads to a satisfactory conclusion.”

The Hon’ble Supreme Court in a case observed that, “In the case of circumstantial evidence , all the circumstances should be established by independent evidence and they should form a complete chain , bring home the guilt to the accused without giving room to any hypothesis.”⁴⁴

In a landmark case of SHARAD BIRDICHAND SARDA v. STATE OF MAHARASHTRA⁴⁵ Hon’ble supreme court pronounced five golden principles of circumstantial evidence that are as follows:-

- “1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
- 2) The Facts so established should be consistent only with the hypothesis of the guilt of the accused that is say they should not be explained on any hypothesis except that the accused is guilty.
- 3) The circumstances should be of a conclusive nature and tendency.
- 4) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused”

Moreover, as per Nizam and anr v. State of Rajasthan ⁴⁶in a judicial pronouncement the Hon’ble Supreme court held that Case of the prosecution is entirely based on the circumstantial evidence , settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, forming a chain and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused totally inconsistent with his evidence.⁴⁷

Close association of the Accused is a very important piece of evidence in a case of circumstantial

⁴³ Section 3 of the Indian Evidence Act 1872.

⁴⁴ Maria venkatari v. State of AP 1994 SC 470.

⁴⁵ Sharadbirdichandsarda v. State of Maharashtra AIR 1984 SC 1682.

⁴⁶ Nizam and anr v. State of Rajasthan AIR 2015 SC 3430.

⁴⁷ AIR 2015 SC 3430.

evidence⁴⁸ which is so in the instant case as well.

There is no doubt that it is a not a case of direct evidence but the conviction of the Accused is founded on circumstantial evidence .It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis i.e the guilt of the Accused. The circumstances should be conclusive and proved by the prosecution .There must be a chain of events so complete as not to leave any substantial doubt in the mind of the Court .Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the Accused and the only possibility is that the Accused has committed the crime⁴⁹.

⁴⁸Siddharth Vashisth @Manu Sharma v. State (NCT of Delhi), AIR 2010 SC 2352.

⁴⁹Rajendra Prahalad Rao Wasnik v. State of Maharashtra (2012) 4 SCC 37.

PRAYER

Wherefore, in the light of the issues raised, arguments advanced, and authorities cited, may this Hon'ble Court be pleased to adjudge and declare:

1. That the instant Appeal be dismissed.
2. That, the judgment passed by the learned Trial Court be upheld and A1 And A2 be punished under S. 326-A, 120-B and 307 of the Indian Penal Code, 1860.
3. That the fine imposed by learned Session Court be increased from Rs. 1 lakh to Rs. 5 lakh and thus, 80% of Rs. 5 lakh be released for victim compensation and her welfare.

And/or

Pass any other Order, Direction, or Relief that this Hon'ble Court may deem fit in the

Interest of justice, equity and good conscience.

For this act of Kindness, the Respondent, as in duty bound, shall humbly pray.

Place:

Sd/-

Date:

(Counsel for the Respondent)

