Team Code: LF153

1ST LEGAL FOXES NATIONAL MEMORIAL WRITING COMPETITION

IN THE HON'BLE HIGH COURT OF JUDICATURE AT DELHI

C.C. NO. _ OF 2019

Simran & Anr ... ... Appellant(s)

V.

State of Delhi… ... ... Respondent

FOR OFFENCES CHARGED UNDER:

SECTIONS 326(A), 120(B), 307

OF THE INDIAN PENAL CODE, 1860

UPON SUBMISSION TO THE HON'BLE HIGH COURT JUDGE

MEMORIAL ON BEHALF OF THE APPELLANTS

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LIST OF ABBREVIATIONS

&	And
A.P.	Andhra Pradesh
AIR	All India Report
Anr.	Another
Bom CR	Bombay Criminal Reporter
Cr. P.C.	Code of Criminal Procedure
CrLJ	Criminal Law Journal
Del	Delhi
Etc.	Et cetera
Hon'ble	Honorable
HC	High Court
IPC	Indian Penal Code, 1860
M.P.	Madhya Pradesh
No.	Number
Ors.	Others
r/w	Read with
S.	Section
SC	Supreme Court
SCC	Supreme Court Cases
Sd/-	Signed
St.	State
U.P.	Uttar Pradesh
u/s	Under Section
v.	Versus

INDEX OF AUTHORITIES

ARTICLES

1. JASANOFF, SHEILA. "Science on the Witness Stand." Issues in Science and Technology, vol. 6, no. 1, 1989, p. 86. JSTOR, www.jstor.org/stable/43309424. Accessed 02 Jan. 2020.
2. Schiff, Stanley. "The Previous Inconsistent Statement of Opponent's Witness." The University of Toronto Law Journal, vol. 36, no. 4, 1986, pp. 442, 453. JSTOR, www.jstor.org/stable/825652. Accessed 15 Jan. 2020.
3. Zoran Dimitrievski and ors. Doubt in favour of the Defendant, Guilty Beyond Reasonable Doubt. OSCE, www.osce.org/skopje. Accessed 31 Dec. 2020.

CASE LAWS

17. Central Bureau of Investigation v. V.C. Shukla, AIR 1998 SC 1406
18. Chaman Lal v. State of Punjab, AIR 2009 SC 2972
19. Chandran v. State, AIR 2011 SC 1594
20. Charandas Swami v. State of Gujarat, AIR 2017 SC 1761
21. Coughlan, (1976) 64 Cr App Rep 11
22. D.B. Naik, 1982 CrLJ 856 (Bom)
23. Damodar v. State of Rajasthan, AIR 2003 SC 4414
24. Darshan Singh v. State of Punjab, AIR 1983 SC 554
25. Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270
26. E.G. Barsay, AIR 1961 SC 1762
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45. John Pandian v. State Rep. by Inspector of Police, T.N., AIR 2011 SC (Supp) 531
46. K Hashim v. State of T.N., AIR 2005 SC 128
47. K. R. Purushothaman v. State, AIR 2006 SC 35
48. Kehar Singh v. State (Delhi Admn.), 1983 3 SCC 609
49. Krishan v. State of Haryana (2006) 12 SCC 459

50. Krishna v. State of U.P., AIR 2007 SC 2452
51. Krishnan Assari Velayudhan Asari v. Parmeshwaran Pilllai Madhwan Pillai, AIR 1989 Ker. 163
52. Kuria v. State of Rajasthan, AIR 2013 SC 1085
53. Limbaji and ors. v. State of Maharashtra, AIR 2002 SC 491
54. M. Jignesh v. State of A.P., 2003 Cr LJ 739 (AP)
55. Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 957
56. Madan Lal Bhandari v. State of Rajasthan, AIR 1970 SC 436
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59. Mani v. State of Tamil Nadu, AIR 2008 SC 1021
60. Manu Sharma v. State (NCT of Delhi), AIR 2010 SC 2352
61. Mayawati v. Union of India, AIR 2012 SC 3765
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63. Mohar & Anr. v. State of Uttar Pradesh (2002) 7 SCC 606
64. Mohd. Hussain v. K.S. Dalipsinghji, AIR 1970 SC 45
65. Narinder Pal Singh v. State of Punjab, AIR 2017 SC 399
66. Plummer, (1902) 2 KB 339
67. Pratapbhai Hamirbhai Solanki v. State of Gujarat and Anr., (2013) 1 SCC 613
68. R Sai Bharathi v. J Jayalalitha, AIR 2004 SC 692
69. Rabin Mallick v. State of West Bengal, 2011 Cr LJ 3801 (Cal)
70. Rai Sandeep alias Deepu v. State of NCT of Delhi, AIR 2012 SC 3157
71. Rai Sandeep alias Deepu v. State of NCT of Delhi, AIR 2012 SC 3157
72. Raj Kumar Singh v. State of Rajasthan, AIR 2013 SC 3150
73. Ram Narayan Popli v. Central Bureau of Investigation, (2003) 3 SCC 641
74. Ram Singh v. State of H.P., AIR 1997SC 3483
75. Rama Devi v. State of Bihar, AIR 2010 SC (Supp) 83
76. Ramlagan Singh v. State of Bihar, 1972 SC 2593
77. Ravi v. State, (2007) 15 SCC 372
78. Ravinder Kumar and Anr. v. State of Punjab, AIR 2001 SC 3570
79. Ravinder Singh @ Ravinder Pavar v. State of Gujarat, AIR 2013 SC 1915
80. Rumi Bora Dutta v. State of Assam, AIR 2013 SC 2422
81. S.C. Bahri v. State of Bihar, AIR 1994 SC 2020
82. Sardari Lal v. State of Punjab, 2003 CrLJ 383 (P&H)

83. Sarvan Singh v. State of Punjab, AIR 1957 SC 637
84. Sherimon v. State, AIR 2012 SC 493
85. Sow Bhima Bai v. Suresh Dayanand Kesar, AIR 1999 Bom. 379
86. State of H.P. v. Gian Chand, 2000 CrLJ 949 (HP)
87. State of H.P. v. Satya Dev Sharma, (2002) 10 SCC 601
88. State of Himachal Pradesh v. Jai Chand, AIR 2013 SC 3349
89. State of Himachal Pradesh v. Jeet Singh, AIR 1999 SC 1293
90. State of Himachal Pradesh v. Krishanlal Pradhan, AIR 1987 SC 773
91. State of M.P. v. Paltan Mallah, AIR 2005 SC 733
92. State of M.P. v. Sheetla Sahai, (2009) 8 SCC 617
93. State of Maharashtra v. Bharat Farika Dhiwar, AIR 2002 SC 16
94. State of Maharashtra v. Damu, AIR 2000 SC 169
95. State of Maharashtra v. Somnath Thapa, (1996) 4 SCC 659
96. State of Maharasthra v. Suresh, (2000) 1 SCC 471
97. State of Punjab v. Gurmit Singh and ors, 1996 SCC (2) 384
98. State of Punjab v. Gurnam Kaur, 2009 AIR SCW 3371
99. State of Rajasthan v. Ravindra Singh, 2003 Cr LJ NOC 63 (Raj)
100. State of Rajasthan v. Wakteng, AIR 2007 SC 2020
101. State of T.N. v. Nalini, AIR 1999 SC 2640
102. State of U.P. v. Kishan Chand, (2004) 7 SCC 629
103. State of U.P. v. Sunil, AIR 2017 SC 2154
104. State of UP v. Pheru Singh, AIR 1989 SC 1205
105. State through Superintendent of Police, CBI/ SIT v. Nalini & Others, (1999) 5 SCC 253
106. State v. Dilbagh Rai, 1986 Cr LJ 138 (Delhi)
107. State v. V.C. Shukla, 1980 CrLJ 965
108. Subbaiah, AIR 1961 SC 1241
109. Subhash Harnarayanji Laddha v. State of Maharashtra, (2006) 12 SCC 545
110. Sujit Biswas v. State of Assam, AIR 2013 SC 3817
111. Sushil Suri v. C.B.I, AIR 2011 SC 1713
112. Tapandas, AIR 1956 SC 33
113. Tara Devi v. State of Haryana, 2003 Cr LJ 725 (P&H)
114. Tara Singh v. State of Punjab, AIR 1991 SC 63
115. V.C. Shukla v. State (Delhi Admn.), AIR 1980 SC 1382

116. V.P. Shrivastava v. Indian Explosives Limited, (2010) 10 SCC 361
117. Vijayee Singh v. State of U.P., AIR 1990 SC 1459
118. Vishnu & Ors. v. State of Rajasthan (2009) 10 SCC 477
119. Wingly v. State of Madhya Pradesh, AIR 1954 SC 15
120. Y. Venkaiah v. State of A.P., AIR 2009 SC 2311
121. Yash Pal Mittal v. State of Punjab, AIR 1977 SC 2433
122. Yogesh v. State of Maharashtra, AIR 2008 SC 2991
123. Zahira Habibullah H. Sheikh v. State of Gujarat, (2004) 4 SCC 158
124. Zahoor v. State of U.P., 1991 Suppl. (1) SCC 372

BOOKS

1. Ratanlal and Dhirajlal, The Indian Penal Code, 41st Ed. (2019)
2. P.S.A. Pillai (15th Ed. 2019)
3. Gaur, KD, Criminal Law: Cases and Materials, (15th Ed. 2018)
4. Gupta and Dighe, Criminal Manual, (16th Ed. 2016)
5. Kelkar, R.V. Criminal Procedure, (9th Ed. 2015)

STATUTES

1. The Code of Criminal Procedure, 1973 (Act 2 of 1973)
2. The Indian Evidence Act, 1872 (Act 18 of 1872)
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STATEMENT OF JURISDICTION

The Appellants humbly approach the Honourable High Court of Delhi under Section 374(2) of the Code of Criminal Procedure, 1973 to challenge the conviction ordered by the Court of Sessions. The Respondent humbly submits to the jurisdiction of this Honourable Court.

STATEMENT OF FACTS

(1) DESCRIPTION OF THE PARTIES

The victim in this case is a young girl aged 25 years and is known by the name 'Rani'. She worked as a dancer at Rajdoot Hotel, Bhogal in Delhi. 'Simran' (A-1) worked as a co-dancer with the victim. One day, a quarrel ensued between the two dancers, wherein in a fit of rage, A-1 allegedly threatened the victim of dire consequences.

(2) ACID ATTACK ON THE VICTIM

On 19th December, 2004 the victim left her home and boarded her usual autorickshaw for work at 7 p.m. As soon as the auto driver started the vehicle, a person who had been standing near her auto the entire time uncovered his/ her shawl just for a split second. S/he threw Sulphuric Acid from a glass on the victim's head and face, thereby causing severe burn injuries on the victim's face and completely damaging her eyesight.

(3) REGISTRATION OF F.I.R AND INVESTIGATION

The victim was approached by constable Balwant Singh (PW-9) and ASI Vedpal (PW-15) at Apollo Hospital, wherein her statement was recorded and an F.I.R was registered under section 307 of the Indian Penal Code (IPC). This led to the inception of investigation:

(a) Statement of Mr. Parvez Alam (PW-5), the auto driver was recorded and his shirt, pant and his TSR footmat were seized.

(b) A-1 was arrested on 20th December, 2004. A day later, A-2 was arrested.

(c) A shawl, a pair of jeans and pant were recovered from H. No. WZ-666 Padam Basti, Nangal Rai.

(d) A plastic bottle containing very little quantity of acid was allegedly recovered from garbage bin of gate no.2 near Esckon Temple, Garhi.

(e) A grey colour jersey, one chunni, pyzama and suit belonging to the victim was obtained from her brother on 07th January, 2005.

All the aforementioned evidence collected were sent to the Forensic Science Laboratory for examination. A chargesheet was issued under sections 307, 326-A and 120-B of the IPC and the Trial Court framed the charges accordingly.

(4) PRESENTATION OF ARGUMENTS

The prosecution examined 18 witnesses to establish its case that the victim was actually attacked with acid. The star witness of the case was the victim herself. All the incriminating circumstance was put to accused persons under Section 313 Cr. P.C but they pleaded innocence and alleged false implication in the case.

(5) VERDICT OF THE TRIAL COURT

The Sessions Judge mindlessly purported that the flimsy quarrel culminated in the motive. In its furtherance, A-2 attacked the victim with acid. Via its verdict dated 15th January, 2011 the Trial Court mercilessly convicted A-1 and A-2 for the offences punishable under sections 307, 326-A and 120-B of the IPC. They were sentenced to undergo rigorous imprisonment for 10 years. They were also directed to pay a fine of Rs. 1 Lakh to the victim, upon default of which they were directed to undergo simple imprisonment for an additional 6 months. Further, Rs. 2 Lakh was directed to be paid under the Victim Compensation Scheme for her welfare.

(6) APPEAL FILED BY THE CONVICTS

A-1 and A-2 jointly appealed before the Honourable High Court of Delhi against the above decision of the Trial Court holding it to be contrary to the law and evidence on record based on the ground of reasonable doubt, considering the following:

(a) The material contradictions of various prosecution witnesses.

(b) Motive is unrealistic. An imbecile quarrel lacks the potential to lead to a crime as grave as an acid attack.

(c) A-1 was not present at the time of the incident.

(d) A-2 had no motive to commit such a heinous crime against the victim.

(e) Owner of the hotel PW-7 didn't even speak of any quarrel between them.

(f) PW-4 and PW-5 did not support the case of prosecution. PW-5, the auto driver who also sustained injuries due to the acid attack, denied having seen A-2 throwing acid on the victim.

(g) There was insufficient light being a December evening at Delhi, thereby a case of mistaken identity is reasonably anticipated.

(h) No medical evidence was adduced by the victim to prove she lost her eyesight solely due to this incident.

ISSUES RAISED

I. THAT THE HONOURABLE TRIAL COURT HAS WRONGFULLY RELIED UPON THE SOLE TESTIMONY OF THE VICTIM BY NEGLIGENTLY CONSIDERING HER AS A STERLING WITNESS.

(1.1) Quintessential of being a sterling witness

(1.2) That the victim lacked the quintessential of being a sterling witness.

II. THAT THE QUARREL BETWEEN A-1 AND THE VICTIM LACKS THE GRAVITY REQUIRED TO PERPETRATE A CRIME AS HEINOUS AS AN ACID ATTACK.

(2.1) The quarrel between A-1 and the victim.

(2.2) Motive is too flimsy.

(2.3) There existed no criminal conspiracy between the appellants.

III. THAT THE PROSECUTION HAS FAILED IN PROVING BEYOND REASONABLE DOUBT THAT A-2 WAS THE ASSAILANT RESPONSIBLE FOR THE ATTACK.

(3.1) Occurrence of the acid attack.

(3.2) Discrepancy in the testimony of the victim.

(3.3) Reliance cannot be placed on the sole testimony of the victim in the present case.

IV. THAT THE INVESTIGATION CARRIED OUT BY THE PROSECUTION IS COMPRISED OF MATERIAL DEFECTS THAT HAVE NOT BEEN SCRUTINIZED BY THE TRIAL COURT.

SUMMARY OF ARGUMENTS

ISSUE I. THAT THE HONOURABLE TRIAL COURT HAS WRONGFULLY RELIED UPON THE SOLE TESTIMONY OF THE VICTIM BY NEGLIGENTLY CONSIDERING HER AS A STERLING WITNESS.

It is humbly submitted by the appellants that the trial court has convicted the accused solely based on the testimony of the victim. Thus, the victim has been accorded the status of a sterling witness. It is the humble contention of the appellants that the victim lacks the quintessential of being a sterling witness, as: firstly, there is a discrepancy in her testimony in identifying the witness; secondly, the victim has been unsuccessful in establishing a chain of circumstances and thirdly, the victim has failed to produce medical evidence proving that she lost her eyesight solely due to the acid attack.

ISSUE II. THAT THE QUARREL BETWEEN A-1 AND THE VICTIM LACKS THE GRAVITY REQUIRED TO PERPETRATE A CRIME AS HEINOUS AS AN ACID ATTACK.

Firstly, the quarrel between A-1 and the victim is too trivial a matter to be considered as the motive of the case. It is flimsy and lacks the gravity required. Secondly, it is the assertion of the appellants that there existed no criminal conspiracy between the appellants as: (2.3.1) Existence of an unlawful Agreement has not been proved; (2.3.2) There is an absence of Meeting of minds and (2.3.3) No liability can be enforced via an allegation of conspiracy upon A-1 due to the existence of a reasonable doubt as to the guilt of the accused.

ISSUE III. THAT THE PROSECUTION HAS FAILED IN PROVING BEYOND REASONABLE DOUBT THAT A-2 WAS THE ASSAILANT RESPONSIBLE FOR THE ATTACK.

Firstly, the victim's testimony exhibits a discrepancy as upon her statement, A-1 was first arrested. Secondly, it has been alleged by the victim that based on the testimony of A-1, A-2 was arrested. Thus, a reasonable inference to be deciphered is that the victim herself had reasonable doubt as to the identity of the perpetrator who threw acid at her. Further, not disposing medical evidence regarding her lost eyesight solely due to the acid attack, as has been contended, further corroborates the claim of the appellants that reliance cannot be placed on the sole testimony of the victim in the present case.

ISSUE IV. THAT THE INVESTIGATION CARRIED OUT BY THE PROSECUTION IS COMPRISED OF MATERIAL DEFECTS THAT HAVE NOT BEEN SCRUTINIZED BY THE TRIAL COURT.

It is the humble contention of the appellants that the investigation carried out by the prosecution is comprised of material defects, which were not materially considered by the Trial Court by giving its verdict. Firstly, material contradictions between the various prosecution witnesses including PW-4 and PW-5 were not considered in proper perspective and unreasonable reliance was placed on the testimony of the victim, making her the star witness of the case. Secondly, A-1 was not present at the scene of crime. Thirdly, A-2 lacked the motive to commit such a heinous crime against the victim. Fourthly, the Owner of the hotel PW-7 didn't even speak of any quarrel between them. Fifthly, there was insufficient light being a December evening at Delhi, thereby a case of mistaken identity is reasonably anticipated. Sixthly, no medical evidence was adduced by the victim to prove she lost her eyesight solely due to this incident. Lastly, no proof has been adduced linking the evidence recovered to the accused persons.

ARGUMENTS ADVANCED

I. THAT THE HONOURABLE TRIAL COURT HAS WRONGFULLY RELIED UPON THE SOLE TESTIMONY OF THE VICTIM BY NEGLIGENTLY CONSIDERING HER AS A STERLING WITNESS.

(¶ 1.) It is the case of the Appellants that the Trial Court has placed wrongful reliance solely upon the testimony of the victim in the present case. It is the humble contention of the appellants that this weightage of evidence is only accorded to a sterling witness in a case, where no further corroboration is required to prove the victim's testimony.

(¶ 2.) However, what the Hon'ble Trial Court forgot to take into consideration was the fact that a person can only be accorded the status of a sterling witness when the witness' statement is devoid of material discrepancies and is further supported unconditionally by the evidence of all other witnesses, which is not the present case.

(1.1) Quintessential of being a sterling witness

(¶ 3.) A sterling witness' version has a very high degree of acceptance and is deemed reliable by the court without any need for corroboration and based on which the accused could be punished.[1] The sterling witness should be of a very high quality and calibre whose version should be unassailable.[2] The court considering the version of such witness should be in a position to accept it for its face value without any hesitation.

(¶ 4.) The consistency of the statement right from the starting point of making initial statement and ultimately before the court is relevant which should be natural with the case of the prosecution qua the accused. The witness must withstand the cross-examination of any length, which is bound to be strenuous but the sterling witness must under no circumstance give room for any doubt as to the (a) factum of the occurrence, (b) persons involved and (c) Sequence of the circumstances. Where the witness fails to prove all the three aforementioned elements, his testimony cannot be solely relied upon.[3]

[1] Kuria v. State of Rajasthan, AIR 2013 SC 1085.
[2] Rai Sandeep alias Deepu v. State of NCT of Delhi, AIR 2012 SC 3157.
[3] Narinder Pal Singh v. State of Punjab, AIR 2017 SC 399 p. 401; Sow Bhima Bai v. Suresh Dayanand Kesar, AIR 1999 Bom. 379.

(1.2) That the victim lacked the quintessential of being a sterling witness.

(1.2.1) The Factum of the Occurrence

(¶ 5.) The First Information Report, the evidence of all the prosecution witnesses especially the evidence of the doctors PW-17 and PW-18, the evidence of the victim PW-1, evidence of injured eyewitness PW-5 and evidence of another eyewitness PW-4 who came to spot imminently after the incident, show that on the date of incident victim did receive acid burns on her person and clothes.[4] This fact is not even disputed by the appellants. It is the mere case of the appellants that they are not responsible for causing the attack and have been wrongfully convicted.[5]

(1.2.2) The Persons Involved

(¶ 6.) The victim was approached by constable Balwant Singh (PW-9) and ASI Vedpal (PW-15) at Apollo Hospital post the incident, wherein her statement was recorded and an F.I.R was registered.[6]

(¶ 7.) Pursuant to the registration of F.I.R the police first arrested A-1 on 20th December, 2004.[7] This indicates a discrepancy in the testimony which can be inferred from the following. If the victim was so sure that the perpetrator was A-2 and she knew him beforehand, then the victim would have implicated A-2 first, and the police would have taken A-2 into cognizance. However, in the present case, some confusion is sensed as first A-1 has been arrested, and further *"at the instance of A-1"*, A-2 was arrested, as has been stated by the prosecution themselves.[8]

(¶ 8.) Two simple question are posed by the appellants:

(A) If the victim had been so sure in the first place that it was A-2 who threw acid at her, why did she have A-1 arrested first?

[4] Statement of Facts, para 4.
[5] Statement of Facts, para 5.
[6] Statement of Facts, para 3.
[7] Ibid.
[8] Statement of Facts, para 3.

(B) Would any victim be willing to spare the real assailant while having a person she quarrelled with a month ago convicted (whom she didn't even see at the place of crime; unless she was under a reasonable doubt herself as to whether her perpetrator was A-2?[9]

(¶ 9.) Further, in the present case, there have been material contradictions in the testimonies of various prosecution witnesses. Despite there being several eye-witnesses in the case, including an injured witness PW-5, there is a discrepancy between the evidence of the victim in identification of the assailant as A-2, as opposed to the other eye-witnesses A-4 and A-5.[10]

(¶ 10.) It has been held by the Courts that the material contradictions of the prosecutrix would lead to acquittal of the accused, if such testimony further lacks corroboration. The Court stated that it would be dangerous to rely on the version of the prosecutrix.[11]

(¶ 11.) Applying the aforementioned stance to this case, it is humbly stated by the appellants that due to the inadequacy of the victim in identifying her actual assailant, there exists a reasonable doubt as to the guilt of the accused persons. Thus, the victim has been unsuccessful in satisfying the criteria for identification of her perpetrators, thereby vindicating her of the status of a sterling witness.

(1.2.3) Sequence of The Circumstances.

(¶ 12.) The version should have co-relation with each and every one of other supporting material such as the recoveries made, weapons used, the manner of offence committed, the scientific evidence and the expert opinion.[12] It should consistently match with the evidence of every other witness. It should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him.[13]

[9] Zoran Dimitrievski and ors. Doubt in favour of the Defendant, Guilty Beyond Reasonable Doubt. OSCE, www.osce.org/skopje. Accessed 31 Dec. 2020.
[10] Statement of Facts, para 7.
[11] Rai Sandeep alias Deepu v. State of NCT of Delhi, AIR 2012 SC 3157; Ganga Ram v. State of Rajasthan, 1968 CrLJ 134.
[12] JASANOFF, SHEILA. "Science on the Witness Stand." Issues in Science and Technology, vol. 6, no. 1, 1989, p. 86. JSTOR, www.jstor.org/stable/43309424. Accessed 02 Jan. 2020.
[13] Schiff, Stanley. "The Previous Inconsistent Statement of Opponent's Witness." The University of Toronto Law Journal, vol. 36, no. 4, 1986, pp. 442, 453. JSTOR, www.jstor.org/stable/825652. Accessed 15 Jan. 2020.

(¶ 13.) In the present case, an absence of link is felt due to the discrepancy between the evidence of the victim in identification of the assailant as A-2 as opposed to the other eye-witnesses A-4 and A-5.[14]

(¶ 14.) Further, the victim has testified that A-2 allegedly threw Sulphuric Acid at the victim from a glass;[15] whereas what has been disputedly recovered is a plastic bottle containing little acid;[16] without any further clarity as to whether the acid present in it was indeed Sulphuric Acid or some other acid. The glass was never recovered.

(¶ 15.) Thirdly, the victim has not mentioned any gloves worn by A-2. Thus, upon a thorough examination of the plastic bottle for fingerprints, a solid proof of evidence could have been presented before the court which would have undoubtedly linked A-2 to the plastic bottle supposedly recovered. However, no such evidence has been adduced, thus marking an absence of connection between A-2 and the articles recovered.

(¶ 16.) In **State of U.P. v. Sunil**,[17] the Supreme Court held that *"there can be no conviction founded on the sole circumstance of recovery and other articles, if the basic foundation of prosecution crumbles down by not connecting the accused with the incident in question."*[18]

(¶ 17.) Where no attempt was made by the prosecution to prove that discovered articles belonged to the accuse and that there was also further no evidence of motive, it was held to be a clear case of benefit of doubt.[19]

(¶ 18.) Fourthly, the clothes allegedly recovered by the investigation officers include a shawl, a pant and a pair of jeans.[20] An attempt has been made to link these to A-2. It is humbly urged by the appellants that it is a matter of common sense that no person would wear a pant and a pair of jeans all at the same time.

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[14] Statement of Facts, para 7.
[15] Statement of Facts, para 2.
[16] Statement of Facts, para 3.
[17] AIR 2017 SC 2154.
[18] State of Himachal Pradesh v. Jai Chand, AIR 2013 SC 3349 at p. 3355; Gurjinder Singh v. State of Punjab, AIR 2011 SC 972 at p. 976; Limbaji and ors. v. State of Maharashtra, AIR 2002 SC 491; State of Maharashtra v. Bharat Farika Dhiwar, AIR 2002 SC 16; State of Himachal Pradesh v. Jeet Singh, AIR 1999 SC 1293; Aftab Ahmad Ansari v. State of Uttaranchal, AIR 2010 SC 773; State of Maharashtra v. Damu, AIR 2000 SC 169; State of Maharasthra v. Suresh, (2000) 1 SCC 471; State of Punjab v. Gurnam Kaur, 2009 AIR SCW 3371; Bhagwan Dass v. State (NCT of Delhi), AIR 2011 SC 1863; Manu Sharma v. State (NCT of Delhi), AIR 2010 SC 2352; Rumi Bora Dutta v. State of Assam, AIR 2013 SC 2422; Charandas Swami v. State of Gujarat, AIR 2017 SC 1761 pp. 1784-1785.,
[19] Mani v. State of Tamil Nadu, AIR 2008 SC 1021 at p. 1025.
[20] Statement of Fact, para 3.

(¶ 19.) Thus, the prosecution has seemingly stooped to the extent of accusing the appellants with any rubbish found lying on the streets or has itself planted the evidence to showcase the accused persons as being guilty.[21]

(¶ 20.) Lastly, the victim has not given any medical evidence to prove that she lost her vision solely due to this incident.[22] It is a sincere plea of the appellants that there exists a reasonable doubt that the victim might have lacked perfect vision even prior to the acid attack, due to which she has refrained from adducing medical evidence that she lost both her eyes solely due to the acid attack.[23]

(¶ 21.) Further, if the victim did really lack the ability to see clearly, a defence from her end would have been that she did indeed wear her spectacles at the time of the incident, thereby facilitating her to identify her perpetrator with utmost clarity.

(¶ 22.) However, the victim in the present case had not worn any spectacles; which is indicated by the fact that the victim's eyes were entirely burnt due to the acid, as a result of which the victim completely lost her existing eyesight. Had the victim worn her spectacles at the time of the incident, her specs would have served as a protective barrier to her eyes, thereby saving them from complete damage.

(¶ 23.) All the aforementioned criterion proves that the victim in the present case was not capable of being a sterling witness, and as the prosecution has failed to provide any corroboration for her testimony,[24] the pending case must immediately be dismissed on the ground of reasonable doubt of the innocence of the accused persons.

(¶ 24.) The statement of the victim is not coherent and material discrepancies can be inferred from her testimony. Thus, the appellants have successfully proved that PW-1 lacked the quintessential of being a sterling witness.

In light of the aforementioned reasons, it is humbly submitted that the victim lacks the quintessential to be a Sterling Witness, thus the Honourable Trial Court has committed an error by considering her as one.

[21] State of Rajasthan v. Wakteng, AIR 2007 SC 2020 at p. 2023.
[22] Statement of Facts, para 6.
[23] Ibid.
[24] Statement of Facts, para 4.

II. THAT THE QUARREL BETWEEN A-1 AND THE VICTIM LACKED THE GRAVITY TO FORM THE REQUISITE MENS REA REQUIRED TO PERPETRATE A CRIME AS HEINOUS AS AN ACID ATTACK.

(2.1) The quarrel between A-1 and the victim.

(¶ 25.) The victim in this case is a young girl aged 25 years and is known by the name 'Rani'. She worked as a dancer at Rajdoot Hotel, Bhogal in Delhi. 'Simran' (A-1) worked as a co-dancer with the victim. One day, a quarrel ensued between the two dancers, wherein in a fit of rage, A-1 allegedly threatened the victim of dire consequences. But the threat of attacking the victim with acid is an overstatement by the victim.[25]

(¶ 26.) In a fit of rage, A-1 had merely threatened the victim; but not for a moment did A-1 actually consider harming the victim. It's been about a month and that A-1 had only said that in a fit of rage.[26] But she soon returned to her senses and has since then had no dispute with the victim.

(2.2) Motive is too flimsy.

(¶ 27.) The motive already alleged is too flimsy and unrealistic. Also, there may have been some miscommunication causing the victim to believe that the accused envied her. It is not true that the accused envied the victim. Even if it is accepted for a second that A-1 was envious, it still would not add up to the mens rea required to perpetrate such a horrendous crime.

(¶ 28.) The quarrel was under sudden provocation and the matter was solved at that time itself, and the accused held no grudge against the victim post the quarrel. It is the humble contention of the appellants that acid attack is an over-exaggeration of what A-1 had said. In a spit of anger, she fought with the victim and threatened her of dire consequences.[27] Attacking the victim with Acid was never mentioned by her.

(¶ 29.) To further corroborate the aforesaid, the hotel manager has not testified to any quarrel.[28] This in itself proves that the quarrel between A-1 and the victim was considered too trivial for anyone to even connect it with the present case of acid attack remotely. Thus, the motive for the crime remains un-established.

[25] Statement of Facts, para 1.
[26] Ibid.
[27] Statement of Facts, para 1.
[28] Statement of Facts, para 6.

(2.3) There existed no criminal conspiracy between the appellants.

(¶ 30.) The most important ingredient of a criminal conspiracy is an agreement for an illegal act; conspiracy continues to subsist till it is executed or rescinded or frustrated by choice or necessity.[29] During its subsistence, whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the IPC.[30] A statement which constitutes prima facie evidence of a conspiracy may amount to an act for which all the members can be held liable.[31]

(¶ 31.) Thus, a conspiracy has the following ingredients: (a) Existence of an unlawful agreement, (b) agreement to do an illegal act, and (c) meeting of minds.[32]

(2.3.1) Existence of an unlawful Agreement has not been proved.

(¶ 32.) Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is the intention to commit crime and joining hands with persons having the same intention.[33] Not only the intention, but there has to be an agreement to carry out the object of the intention, which is an offence.[34] It is the unlawful agreement, which is the gravamen of the crime of conspiracy.[35] An express agreement need not be proved. Evidence relating to transmission of thoughts leading to sharing of thought relating to the unlawful act is sufficient.[36]

(¶ 33.) In the present case, the acts of throwing acid by A-2 itself has not been proved beyond reasonable doubt. The testimony of the victim and the cognizance of A-1 prior to A-2 clearly earmark a discrepancy.[37] Further, A-1 was not even present at the scene of crime; yet she was

[29] Damodar v. State of Rajasthan, AIR 2003 SC 4414; R Sai Bharathi v. J Jayalalitha, AIR 2004 SC 692; Hardeep Singh Sohal v. State of Punjab, AIR 2004 SC 4716; Hem Raj v. State of Punjab, AIR 2003 SC 4259; State of H.P. v. Satya Dev Sharma, (2002) 10 SCC 601.
[30] Kehar Singh v. State (Delhi Admn.), 1983 3 SCC 609; State of Maharashtra v. Somnath Thapa, (1996) 4 SCC 659.
[31] State of T.N. v. Nalini, AIR 1999 SC 2640; Ram Singh v. State of H.P., AIR 1997SC 3483; Subhash Harnarayanji Laddha v. State of Maharashtra, (2006) 12 SCC 545; Mallana v. State of Karnataka, (2007) 8 SCC 523.
[32] Yogesh v. State of Maharashtra, AIR 2008 SC 2991; Arul Raja v. State of Tamil Nadu, 2010 (8) SCC 233; Mohan Singh v. State of Bihar, AIR 2011 SC 3534; Central Bureau of Investigation Hyderabad v. K. Narayana Rao, 2012 AIR(SCW) 5139; Ajay Aggarwal v. Union of India, AIR 1993 SC 1637.
[33] State through Superintendent of Police, CBI/ SIT v. Nalini & Others, (1999) 5 SCC 253.
[34] State of M.P. v. Sheetla Sahai, (2009) 8 SCC 617.
[35] Pratapbhai Hamirbhai Solanki v. State of Gujarat and Anr., (2013) 1 SCC 613; Ram Narayan Popli v. Central Bureau of Investigation, (2003) 3 SCC 641.
[36] Esher Singh v. State of A.P., AIR 2004 SC 3030; K Hashim v. State of T.N., AIR 2005 SC 128.
[37] Statement of Facts, para 3.

arrested first, which proves the victim had not seen the assailant clearly and was herself under a reasonable doubt regarding the identity of her assailant.

(¶ 34.) If it cannot be proved that the attack was by the accused, it also cannot be alleged that they entered into a criminal conspiracy; as there happen to be no incriminating circumstances against the two. Thus, no existence of unlawful agreement between the accused is proved.

(2.3.2) Absence of Meeting of minds

(¶ 35.) For the offence of conspiracy there must be meeting of minds resulting in decision taken by conspirators regarding commission of crime.[38] A quarrel, however flimsy, has been shown between A-1 and the victim.[39] However, no such dispute has been showcased between A-2 and the victim for him to have the mens rea to perpetrate the crime. Since there is no such evidence, conviction of appellant with the aid of section 120-B is liable to be set aside.[40]

(2.3.3) No liability enforced via an allegation of conspiracy upon A-1.

(¶ 36.) Where offences are committed by several persons in pursuance of a conspiracy, it is usual to charge them with those offences as well as conspiracy to commit those offences.[41] Criminal conspiracy, being a continuing offence, charges every person who is a party to the conspiracy and makes him/ her liable for all the acts performed forthwith.[42]

(¶ 37.) A person may join a conspiracy by word or deed. One who tacitly consents to the object of a conspiracy and goes along with other conspirators, intending to take no active part in the crime is still declared guilty for the crime committed by his foes who were a part of such conspiracy.[43]

[38] Chandran v. State, AIR 2011 SC 1594; Ravinder Singh @ Ravinder Pavar v. State of Gujarat, AIR 2013 SC 1915.
[39] Statement of facts, para 1.
[40] Sherimon v. State, AIR 2012 SC 493; Rabin Mallick v. State of West Bengal, 2011 Cr LJ 3801 (Cal).
[41] Subbaiah, AIR 1961 SC 1241; Mohd. Hussain v. K.S. Dalipsinghji, AIR 1970 SC 45; Jagdish Prasad v. State of Bihar, 1990 Cr LJ 1169 (Raj).
[42] Abdul Kadar, (1963) 65 Bom LR 864; State of UP v. Pheru Singh, AIR 1989 SC 1205; Darshan Singh v. State of Punjab, AIR 1983 SC 554; Balwant Kaur v. U.T. Chandigarh, AIR 1988 SC 139; E.K. Chandrasenan v. State of Kerala, AIR 1995 SC 1066; Aniceto Lobo v. State (Goa, Daman and Diu), AIR 1994 SC 1613; State of Rajasthan v. Ravindra Singh, 2003 Cr LJ NOC 63 (Raj); M. Jignesh v. State of A.P., 2003 Cr LJ 739 (AP); Tara Devi v. State of Haryana, 2003 Cr LJ 725 (P&H).
[43] State of Himachal Pradesh v. Krishanlal Pradhan, AIR 1987 SC 773; K. R. Purushothaman v. State, AIR 2006 SC 35; John Pandian v. State Rep. by Inspector of Police, T.N., AIR 2011 SC (Supp) 531; E.G. Barsay, AIR 1961 SC 1762; Yash Pal Mittal v. State of Punjab, AIR 1977 SC 2433.

(¶ 38.) For the purpose of framing the charge of conspiracy, it will be enough to show some connecting link or connecting factors somewhere in the chain of events.[44] In order to bring home the charge of conspiracy within the ambit of Section 120-B IPC, it is necessary to establish that there was an agreement between the appellants for doing an unlawful act.[45] The respondent here lacks in showing any such connecting factors and hence the proceedings is liable to be quashed.[46]

(¶ 39.) In another case, the prosecution side was not able to prove that one of the two accused were a party to the conspiracy. The charge of conspiracy could not stand against the other as in a conspiracy there must be two parties, to avoid inconsistent verdicts and to propagate uniformity in the application of laws.[47]

(¶ 40.) In the present case, no particular liability has been established against A-2 by the evidence given by the prosecution. Though several evidences were adduced in an attempt to hold him liable, a connection between the evidences and A-2 has been failed to be established. A-1 was not present at the scene of the crime.[48] A-2 lacked the motive to perpetrate such a heinous crime.[49] Therefore, it is impossible to discern that there existed a conspiracy between the appellants.

(¶ 41.) Where the case of the prosecution is entirely dependent upon circumstantial evidence alone, it is necessary for the prosecution to prove and establish such circumstances as would lead to the only conclusion of existence of a criminal conspiracy and rule out the theory of innocence.[50]

(¶ 42.) The onus is on the prosecution to prove the charge of conspiracy by cogent evidence, direct or circumstantial.[51] Each such circumstance must be proven beyond reasonable doubt.

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[44] Hardeo Singh v. State of Bihar, AIR 2000 SC 2245; Hira Lal Hari Lal v. CBI, AIR 2003 SC 2547; Jayrajsinh Digvijaysinh Rana v. State of Gujarat, 2012 AIR(SCW) 4092; Mayawati v. Union of India, AIR 2012 SC 3765; Ravi v. State, (2007) 15 SCC 372.

[45] Sushil Suri v. C.B.I, AIR 2011 SC 1713; Chaman Lal v. State of Punjab, AIR 2009 SC 2972; S.C. Bahri v. State of Bihar, AIR 1994 SC 2020

[46] V.P. Shrivastava v. Indian Explosives Limited, (2010) 10 SCC 361; Rama Devi v. State of Bihar, AIR 2010 SC (Supp) 83.

[47] Central Bureau of Investigation v. V.C. Shukla, AIR 1998 SC 1406; Faguna Kanta Nath v. State of Assam, AIR 1959 SC 673; Madan Lal Bhandari v. State of Rajasthan, AIR 1970 SC 436; Bhagat Ram, AIR 1972 SC 1502; Tapandas, AIR 1956 SC 33; Fakhruddin, AIR 1967 SC 1326; State v. Dilbagh Rai, 1986 Cr LJ 138 (Delhi); Plummer, (1902) 2 KB 339; Coughlan, (1976) 64 Cr App Rep 11.

[48] Statement of Facts, para 6.

[49] Ibid.

[50] D.B. Naik, 1982 CrLJ 856 (Bom); Hari Ram, 1982 CrLJ 294 (HP).

[51] State v. V.C. Shukla, 1980 CrLJ 965; V.C. Shukla v. State (Delhi Admn.), AIR 1980 SC 1382; State of H.P. v. Gian Chand, 2000 CrLJ 949 (HP); Sardari Lal v. State of Punjab, 2003 CrLJ 383 (P&H); Baldev Singh v. State of Punjab,

Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation.

(¶ 43.) Nowhere has A-1's presence been established at the scene of crime.[52] With such a flimsy motive being presented,[53] and A-1 being absent from the scene of acid attack, there is absolutely no evidence connecting A-1 to the crime. Further, the circumstances indicate in favour of A-2, wherein the victim's testimony against him has not been corroborated by any of the other witness.[54] Thus, neither A-1 nor A-2 can be booked for the charge of criminal conspiracy.

In light of the aforementioned reasons, it is humbly submitted that the quarrel between A-1 and the victim lacked the gravity required to form the requisite mens rea required to perpetrate a crime as heinous as an acid attack.

(2009) 6 SCC 564; Y. Venkaiah v. State of A.P., AIR 2009 SC 2311; State of M.P. v. Paltan Mallah, AIR 2005 SC 733.

[52] Statement of Facts, para 6.

[53] Statement of Facts, para 1.

[54] Statement of Facts, para 3 r/w para 6.

III. THAT THE PROSECUTION HAS FAILED IN PROVING BEYOND REASONABLE DOUBT THAT A-2 WAS THE ASSAILANT RESPONSIBLE FOR THE ATTACK.

(3.1) Occurrence of the acid attack.

(¶ 44.) The attack took place at 07:00 p.m. in the evening at Delhi. A Delhi evening at 07:00 p.m. is quite dark and since the assailant's face was covered with a shawl, it would be impossible to see the face of A-2.[55]

(¶ 45.) The auto had already started when the attack took place. The perpetrator had covered his face with a shawl. Then, within seconds he removed his shawl and attacked the victim, pouring acid over her face.[56] There was no chance for the victim to glance at the perpetrator to identify him sufficiently. There was insufficient lighting, the man's face was covered, only being visible for a split second when the attack occurred. Acid distorted her vision, which again made it impossible for her to identify her assailant.

(3.2) Discrepancy in the testimony of the victim.

(¶ 46.) The victim was approached by constable Balwant Singh (PW-9) and ASI Vedpal (PW-15) at Apollo Hospital, wherein her statement was recorded and an F.I.R was registered under section 307 of the Indian Penal Code (IPC).[57] This led to the inception of investigation.

(¶ 47.) Pursuant to the registration of F.I.R the police first arrested A-1 on 20th December, 2004.[58] This indicates a discrepancy in the testimony of the victim. If the victim was so sure that the perpetrator was A-2 and she knew him beforehand, then the victim would have implicated A-2 first, and the police would have taken A-2 into cognizance. However, in the present case, some confusion is sensed as first A-1 has been arrested, and further supposedly, *"at the instance of A-1"*, A-2 was arrested, as has been stated by the prosecution.[59]

(¶ 48.) As is the well-known position of law, an injured witness would never try to falsely implicate a wrong accused, while letting the real perpetrator escape.[60] Applying this principle

[55] Statement of Facts, para 2.
[56] Ibid.
[57] Statement of Facts, para 3.
[58] Ibid.
[59] Statement of Facts, para 3.
[60] Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259; State of U.P. v. Kishan Chand, (2004) 7 SCC 629; Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Krishan v. State of Haryana (2006) 12 SCC 459; Ramlagan Singh v. State of Bihar, 1972 SC 2593; Malkhan Singh & Anr. v. State of Uttar Pradesh, AIR 1975 SC 12; Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 957; Appabhai & Anr. v. State of Gujarat, AIR 1988 SC 696; Bonkya

to the present case runs contrary to the evidence adduced by the prosecution in this case. When the victim was so sure that her perpetrator was A-2, her first indicator should have been toward him and subsequently toward A-1.

(¶ 49.) However, the contradictory testimony of the victim is clearly inferred from the fact that A-1 was taken into cognizance by the police;[61] possibly by causing the victim to deliberate upon whom she had had recent rivalry with, thereby causing the victim such confusion wherein she misunderstood a flimsy quarrel to have the gravity of perpetrating such a heinous crime,[62] which resulted in a false implication upon A-1 and A-2.

(¶ 50.) Further, it has already been established by the accused A-1 and the prosecution itself that A-1 was not present at the scene of crime. Despite this fact, if A-1 has been arrested first, it clearly indicates that some suggestion has been implanted in the victim's mind that the acid attack is in some way connected to the quarrel between the victim and A-1 a month before the incident.

(¶ 51.) The police have subsequently dragged A-2 in the case.[63] The victim's statement has not directly implicated A-2. All the above circumstances are sufficient to prove that the accused A-1 and A-2 are not the assailants, as the requirement of beyond reasonable doubt,[64] a high standard of burden of proof as required in criminal cases has not been met in the present case.

(¶ 52.) Further, upon the contention of the respondent as to the non-leading of defence evidence by the accused, it has been stated that the silence of the accused can be of no avail to the prosecution, for such conduct of silence can never be permitted to become a substitute for the proof by the prosecution.[65] Moreover, the accused is never required to prove his case beyond doubt. It is enough for him to show preponderance of probabilities in his favour.[66]

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alias Bharat Shivaji Mane & Ors. v. State of Maharashtra, (1995) 6 SCC 447; Bhag Singh & Ors. (supra); Mohar & Anr. v. State of Uttar Pradesh (2002) 7 SCC 606; Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Vishnu & Ors. v. State of Rajasthan (2009) 10 SCC 477; Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh, AIR 2009 SC 2261 and Balraje alias Trimbak v. State of Maharashtra (2010) 6 SCC 673.

[61] Statement of Facts, para 3.

[62] Statement of Facts, para 1 r/w para 6.

[63] Statement of Facts, para 3.

[64] Harish Chandra v. Rex, 1950 ALJ 220; Vijayee Singh v. State of U.P., AIR 1990 SC 1459; Krishnan Assari Velayudhan Asari v. Parmeshwaran Pilllai Madhwan Pillai, AIR 1989 Ker. 163; Jarnail Singh v. State of Punjab, AIR 1996 SC 755.

[65] Wingly v. State of Madhya Pradesh, AIR 1954 SC 15.

[66] Krishna v. State of U.P., AIR 2007 SC 2452 at p. 2455.

(3.3) Reliance cannot be placed on the sole testimony of the victim in the present case.

(¶ 53.) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case. However, such weightage can only be accorded to a sterling witness and the victim has not been placed on that pedestal.

(¶ 54.) The victim lacks the capacity to be a sterling witness, as she is not the sole eye-witness to the incident. There was another injured witness PW-5, who has clearly denied the possibility of A-2 being the assailant.[67]

(¶ 55.) Further, the incident took place on a December evening near the victim's house. The streets must have been filled with people; all kinds of people. There are people going back home from their office on the streets, children playing in the neighbourhood, hawkers attending their customers and many more people. How come not one of them has been produced to give evidence that they saw A-2 standing there, waiting for an opportunity to throw acid, or further, why didn't anyone disclose observing him absconding after the incident?

(¶ 56.) There is no eye-witness to even testify that they saw A-2 anywhere near the places from where the articles such as clothes and a plastic bottle were found. All of these circumstances point against the testimony of the victim.

(¶ 57.) No medical evidence has been provided by the victim to the court about her vision being lost solely due to the acid attack. She may have had poor eyesight even before the incident, thereby corroborating the statement that she could not have identified the assailant.

(¶ 58.) Lastly, the victim has not given any medical evidence to prove that she lost her vision solely due to this incident.[68] It is a sincere plea of the appellants that there exists a reasonable doubt that the victim might have lacked perfect vision even prior to the acid attack, due to which she has refrained from adducing medical evidence that she lost both her eyes solely due to the acid attack.[69]

(¶ 59.) Further, if the victim did really lack the ability to see clearly, a defence from her end would have been that she did indeed wear her spectacles at the time of the incident, thereby facilitating her to identify her perpetrator with utmost clarity.

[67] Statement of Facts, para 3.
[68] Statement of Facts, para 6.
[69] Ibid.

(¶ 60.) However, the victim in the present case had not worn any spectacles; which is indicated by the fact that the victim's eyes were entirely burnt due to the acid, as a result of which the victim completely lost her existing eyesight. Had the victim worn her spectacles at the time of the incident, her specs would have served as a protective barrier to her eyes, thereby saving them from complete damage.

(¶ 61.) A-2 had never met the victim. He never visited his sister's hotel. So, there is no way the victim could have recognized him. Thus, even if we assume for a moment that did want to attack the victim in pursuance of her threat, A-2 would have never supported A-1 in pursuing the crime. Rather, A-2, being a respectable man in the society, would have shown his sister the right path and would not have allowed her to commit such a heinous crime.

In light of the aforementioned reasons, it is humbly submitted that the prosecution has failed in proving beyond reasonable doubt that A-2 was the assailant responsible for the attack.

IV. THAT THE INVESTIGATION CARRIED OUT BY THE PROSECUTION IS COMPRISED OF MATERIAL DEFECTS THAT HAVE NOT BEEN SCRUTINIZED BY THE TRIAL COURT.

(¶ 62.) If the defects in investigation are such as to cast a reasonable doubt in the prosecution case, the accused is entitled to acquittal.[70]

(¶ 63.) The auto driver Parvez Alam denied having seen A-2 throwing acid on the victim.

(¶ 64.) A-1 was arrested first, and at her instance A-2 was arrested. Firstly, no evidence given to the police is admissible. So, this may have been a mere tale concocted by the police. Secondly, the evidence in the form of a plastic bottle may have also been planted by the police themselves to finish the investigation sooner.

(¶ 65.) Thirdly, if the victim's statement was clear as to who was her perpetrator, then A-2 should have been arrested first. But the present case suggests that the police have tried to find a motive for the crime and in doing so, they captured A-1 for the flimsy fight and then somehow ended up arresting even her brother A-2.

(¶ 66.) The acid poured on the victim has been proved to be Sulphuric Acid.[71] The plastic bottle recovered does not mention it contained Sulphuric Acid. It could contain anything else.[72] Further, no fingerprints of A-1 or A-2 have been reported on it. Also, no injuries from acid on the hands of A-1 or A-2. Glass was never recovered. The biased investigation of the police to wrap up the case soon has led to faulty investigation. It has given the real perpetrator enough time to erase his traces.

(¶ 67.) The police have also reported a *'Disclosure Statement'* supposedly from A-2, which won't be admissible. Further, the word *'recover'* has been used and not *'discovered'*. Recovery is when the police find something by themselves and discovery is when the police find evidence with the help of accused, which they otherwise would not have been able to find.

(¶ 68.) The evidence recovered have all been from busy public places. There is no eye witness to even state that A-2 was found near the area or that he was witnessed throwing the glass or the plastic bottle in the place that it was later found in.

[70] Ganga Singh v. State of M.P., AIR 2013 SC 3008 at p. 3013.
[71] Statement of Facts, para 2.
[72] Statement of Facts, para 3.

(¶ 69.) Had the police really recovered evidence from the words of A-2, the glass which forms the main evidence in this case would not have been still missing; despite such *"disclosure".*

(¶ 70.) The police have supposedly *'recovered'* 1 shawl, 1 jeans and pant; why would A-2 have disposed both bottom wear and no top clothing? Again, this is a case of tampering of evidence. No connection of these have been connected to A-2. Further, even this statement suggests that no gloves have been recovered so, meaning that the fingerprints ought to have been found of the accused persons and yet; they have not been submitted as evidence before the court.

(¶ 71.) Where no attempt was made by the prosecution to prove that discovered articles belonged to the accuse and that there was also further no evidence of motive, it was held to be a clear case of benefit of doubt.[73]

(¶ 72.) Doctor preparing MLC could not be examined due to alleged *'non-availability'*.

(¶ 73.) PW-5 denied seeing anyone throwing acid on his auto or A-2 being responsible for the same, by being the perpetrator. However, it is the cardinal principle of evaluation of evidence that 'He may tell lies but circumstances do not'. He also received injuries on his right and left palm, left shoulder and left side of neck. He arrived at the hospital immediately at 07:50 p.m. and immediately after the incident, thus giving him no time for deliberation or embellishment to concoct a story.

(¶ 74.) It is to be noted that the testimony of the injured witness PW-5 was recorded on the same day that the acid attack occurred. The attack occurred at 7:00 p.m. on 19th December, 2004 and PW-5's testimony was taken a 7:50 p.m. The Hon'ble Supreme Court has stated that a prompt and immediate recording of testimony is ideal as it expels the possibility for any possible concoction of a false version.[74]

(¶ 75.) Thus, the impression of the incident was fresh in the mind of PW-5 when his testimony was taken and in his full conscience, he refused to identify the assailant as A-2. There was no time for concoction of any story by the witness, as has been falsely alleged by the prosecution.

(¶ 76.) An Act of Acid attack is so grievous that it burns severely. So, when it fell on the auto driver, even he gained the status of an injured witness. So even he would want to implicate with fierceness the real perpetrator. And his position might indicate that he has seen his

[73] Mani v. State of Tamil Nadu, AIR 2008 SC 1021 at p. 1025.
[74] Ravinder Kumar and Anr. v. State of Punjab, AIR 2001 SC 3570; State of Punjab v. Gurmit Singh and ors, 1996 SCC (2) 384; Zahoor v. State of U.P., 1991 Suppl. (1) SCC 372; Tara Singh v. State of Punjab, AIR 1991 SC 63; Jamna v. State of U.P., 1994 (1) SCC 185.

perpetrator who caused wrongful loss to him; because of whom even he would have lifelong visible scars. Being employed as an auto driver, he would have to work on a daily basis to earn money for himself as well as his family. Thus, when he is rendered ill and is not able to go to work and fails to earn for his family, grave loss has been caused to him and he would not let the accused scot free.[75]

(¶ 77.) In Abdul Sayed v. State of Madhya Pradesh,[76] Hon'ble Supreme Court laid down:

"The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone."[77]

(¶ 78.) Further, his loyalty toward his Madam is proven by the fact that he was her regular auto driver and that he always picked her up and dropped her safely to her destination. That was why the victim relied on him, being a hotel dancer felt safe and secure in his auto and that is why boarded him regularly. So, she became a regular customer for him and even he earned regular income for his family. Therefore, the driver would never break her confidence and leave someone who has done her wrong and let him/ her escape scot free.

(¶ 79.) The injuries he received indicate that he had seen the perpetrator and tried to block the acid from falling on him. It is this defence posture he was in that explain the acid injuries sustained by him. Thus, even so, if he does not accuse A-2, then it is to be taken at its word as he himself would not want to spare his perpetrator.

[75] Ramlagan Singh v. State of Bihar, 1972 SC 2593; Malkhan Singh & Anr. v. State of Uttar Pradesh, AIR 1975 SC 12; Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 957; Appabhai & Anr. v. State of Gujarat, AIR 1988 SC 696; Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra, (1995) 6 SCC 447; Bhag Singh & Ors. (supra); Mohar & Anr. v. State of Uttar Pradesh (2002) 7 SCC 606; Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Vishnu & Ors. v. State of Rajasthan (2009) 10 SCC 477; Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh, AIR 2009 SC 2261 and Balraje alias Trimbak v. State of Maharashtra (2010) 6 SCC 673.

[76] (2010) 10 SCC 259.

[77] State of U.P. v. Kishan Chand, (2004) 7 SCC 629; Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Krishan v. State of Haryana (2006) 12 SCC 459.

(¶ 80.) Lastly, the accused is never required to prove his case beyond doubt. It is enough for him to show preponderance of probabilities in his favour.[78] The appellants have sufficiently exhausted the multifarious scenarios through which they could establish their innocence.

(¶ 81.) <u>Presumption of innocence is a human right. Such a legal principle cannot be thrown aside under any situation.</u>[79]

(¶ 82.) It is no one's case that the victim poured acid on herself or that the incident was an accident. It is certain that someone threw acid on the victim. **JUST NOT THE ACCUSED**.

(¶ 83.) In criminal cases, the presumption is that the accused is innocent till the contrary is established. It is often said that it is better that ten guilty men should escape than that one innocent man should suffer. Greatest possible care should be taken by the Court in convicting the accused. If there is an element of reasonable doubt as to the guilt of the accused, the benefit of that doubt must go to him.[80]

(¶ 84.) It is humbly submitted by the accused that they sympathize with the victim. But the accused also request the Hon'ble Court and the victim to not punish innocent persons unconnected to the crime.

(¶ 85.) The victim has no doubt suffered an incorrigible loss. However, the accused persons A-1 and A-2 are innocent and shall be subjected to unmitigated brutality if they were convicted for an offence, they never committed in the first place. It is the principle followed by Indian Courts for decades together stating that it is better to let a doubtful accused free rather than convict an innocent man unjustly.

(¶ 86.) The trial court judgment was passed on 15/01/2011. This indicates that more than 6 years have passed since the incident and even today, the real culprit has not been found. A lot of mental agony has been caused to all those involved.

(¶ 87.) The accused have family responsibilities and their financially unsound to pay the compensation. The very fact that A-1 worked as a dancer in a bar indicates that she has had financial troubles and thus cannot afford to pay such a heavy amount claimed. Further, even the condition of A-2, her brother can be determined from the very presumption that if he were

[78] Krishna v. State of U.P., AIR 2007 SC 2452 at p. 2455.
[79] Harendra Sarkar v. State of Karnataka, AIR 2008 SC 2467 at p. 2471; Zahira Habibullah H. Sheikh v. State of Gujarat, (2004) 4 SCC 158.
[80] Sarvan Singh v. State of Punjab, AIR 1957 SC 637; Raj Kumar Singh v. State of Rajasthan, AIR 2013 SC 3150 at p. 3156; Sujit Biswas v. State of Assam, AIR 2013 SC 3817 at p. 3821.

in a financially sound condition, again he wouldn't have to let A-1, his beloved sister work in a bar; thereby proving that they both are financially inept to provide any further compensation to the victim.

(¶ 88.) Moreover, they have already been convicted and the period that they have been convicted has been difficult for them and their families financially as they are not being employed anywhere due to the persistence of the case.

(¶ 89.) Accused are young and have a future and must not be punished for something they have not done.

In light of the aforementioned reasons, it is humbly submitted that the investigation carried out by the prosecution is comprised of material defects that have not been scrutinized by the trial court.

PRAYER

In light of the issues raised, arguments advanced and authorities cited, the counsel for the appellants humbly prays that the Hon'ble Court be pleased to adjudge, hold and declare:

1. That the honourable trial court has wrongfully relied upon the sole testimony of the victim by negligently considering her as a sterling witness, thus the appellants deserve to be acquitted.

2. That the quarrel between A-1 and the victim lacks the gravity required to perpetrate a crime as heinous as an acid attack, thereby frustrating the mens rea of the case.

3. That the prosecution has failed in proving beyond reasonable doubt that A-2 was the assailant responsible for the attack.

4. That the investigation carried out by the prosecution is comprised of material defects that have not been scrutinized by the trial court.

And any other relief that the Hon'ble Court may be pleased to grant.

And pass any order that this Hon'ble court may deem fit in the interest of equity, justice and good conscience.

All of which is respectfully submitted.

And for this act of kindness, the counsel for the appellant shall duty bound forever pray

Date:

Place:

Sd/-

Counsels for the Appellants