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Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR:M.P.Criminal Appeal No. 230 of 2000.Appellants:

(in Jail)

1. Kalu Udiya Alias Arundeeep  
S/o Acchirlal, aged about 23 years,
2. Teru alias Anupdeep, Udiya,  
S/o Acchirlal, aged about 20 years,  
Both R/o Udiya Colony, Ganjpara,  
Durg, Distt. Durg, (M.P.).

Vs.

Respondent:

State of M.P. through:

Police Station-Durg, M.P.

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



Criminal Appeal No.230/2000

Kalu and another

vs.

State of M.P. (C.G.)

JUDGMENT

POST FOR : 30-8-2001.

Sd/-  
R.S. Garg  
Judge

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.230/2000

Kalu and another

vs.

State of M.P. (C.G.)

JUDGMENT

Per Hon.R.S.Garg, J :

Appellants Kalu alias Arundeeep and Teru alias Anupdeep being aggrieved by the judgment dated 18-11-1999 passed in Sessions Trial No.255/99 convicting the appellant Teru under Section 307 IPC to undergo R.I. for seven years and pay fine of Rs.500/- for causing injuries to Smt.Nirmala Bai and under Section 324 IPC for causing injuries to Ku.Damini, Ku.Yashoda, Priyanka, Lata, Ku. Hiru, Hema and Kishan to undergo R.I. for three years and convicting the appellant Kalu under Section 307 read with Section 34 I.P.C. to undergo R.I. for seven years and pay fine of Rs.500/- and under Section 324 read with Section 34 I.P.C. for causing injuries to the above referred persons, sentencing him to undergo R.I. for three years, in default of payment of fine to undergo further R.I. for three months with further direction that the sentences would run consecutively, have filed this appeal.

2. The prosecution case in brief is that on 3-3-1999 Lata w/o Satish Yadav had come to her mother's place on account of Holi. Lata suddenly remembered that she had not bolted the door of her house, therefore, required her younger sister Hema to go to her house and bolt the door. When Hema was coming back after bolting the doors, the appellants with their friends and associates started

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throwing colours on said Hema. Nirmala Bai, mother of Hema, required the accused persons to conduct themselves properly but the accused persons instead of taking the advice, started abusing Nirmala Bai. When Nirmala Bai was sitting at her home with her relations and the young children, appellant Teru came there with a bottle, he was accompanied with Kalu who was carrying a lathi in his hand. The accused persons threatened the complainants and the victims that they would be murdered by acid. Acting in furtherance of their common intention, accused Teru threw acid on Nirmala Bai. The acid caused injuries to Nirmala Bai and seven others. After throwing the acid, Teru and Kalu ran away from the spot. Lata Yadav, daughter of Nirmala Bai, lodged the first information report. After registration of the offence, the police came into action, the victims were sent to the hospital for their medical examination and proper treatment. Nirmala Bai, who had suffered 25% burn injuries on her face, chest and other parts of the body, remained in the hospital for the period between 3-3-1999 to 13-4-1999. On 3-3-1999, Saraswati, Kishan, Damini, Yashoda, Lata, Priyanka, Hiru and Hema were also medically examined. The doctors found that they had suffered burn injuries by some corrosive substance. On the same day, at about 5.30 p.m., the panchnama was prepared and a broken bottle, <sup>50</sup>was also certain earth alleged to be stained with or wet with the acid was seized. The clothes of the victims were seized. The broken bottle, the earth and the clothes were sent for their forensic examination. The Forensic Science Laboratory informed the prosecution agency ~~with~~ that the wet earth was showing ~~the~~ positive

[Redacted]

result to the nitrate test. Accused Kalu was arrested on 8-3-1999 while the accused Teru was arrested on 4-3-1999. After recording the statements of the witnesses and collecting the other material against the accused persons, <sup>on</sup> completion of investigation, the prosecution agency filed the challan against the accused persons. The case was committed to the Court of Sessions for its trial. The accused persons were charged for having committed offences punishable under Sections 307 and 324 IPC and, 307/34 and 324/34 IPC. As they pleaded not guilty, they were put to trial. After recording the statements of the witnesses and giving proper opportunity to the accused persons, the trial court heard the parties, convicted and sentenced the accused persons as referred to above. Being aggrieved by the said findings and the sentences, the appellants have filed this appeal.

3. Smt. Ahuja, learned counsel for the appellants, submits that from the statements of the witnesses it is not proved that the appellants committed the offences. She submits that the appellants were falsely implicated. She also submitted that even after the prosecution case is accepted as ~~xxx~~ it is, it would not make out a case under Section 307 IPC. Placing reliance upon the statements of Dr. A.P. Sawant (P.W.5), she submitted that as the injuries were not dangerous to life, the court below was unjustified in convicting the appellants. She also submitted that the seizure is doubtful. It is further submitted that in relation to the victim Kishan, the appellants could not be convicted because he was asserting that he suffered injuries on the leg while ~~the~~ Dr. Lal Mohd. (P.W.6) stated in the Court that Kishan

[Signature]



had suffered injuries on his hands. She also submitted that the seizure witness was not examined, therefore, the seizure must be disbelieved. She lastly submitted that the accused persons are young boys and as they are not habitual offenders, the jail sentence be reduced to the period already undergone.

4. Opposing the said arguments, Shri Ranveer Singh, learned Govt. Advocate, submits that if Durga Prasad, the seizure witness, has not been examined, the same would not provide any foundation in favour of the appellants because the Officer who had seized the bottle and the wet earth has proved the case. He further submits that the manner in which the two accused persons came to the spot would clearly show that they meant business and the manner in which the appellant Teru threw acid on the body of Nirmala Bai, the same would clearly show that they had the intention to murder them. He further submits that 25% burn injuries on the chest, neck and face of Nirmala Bai would justify the conviction of the appellants under Section 307 and 307/34 IPC. On the question of sentence, he submitted that as many as nine persons suffered the injuries by acid and the manner in which the acid was thrown would provide a foundation even for a further deterrent punishment. He submits that the court below has already shown clamancy in awarding only seven years R.I..

5. The prosecution in support of its case has examined as many as twelve witnesses. The accused persons did not examine any defence witness in support of their defence. P.W.1 Lata, P.W.2 Nirmala, P.W.3 Hema, P.W.4 Bina, P.W.8 Hiru, P.W.9 Kishan and P.W.11

Saraswati were examined as the victims. It is noteworthy that P.W.11 Saraswati turned hostile and did not support the prosecution case. It is also noteworthy that Damini was also not examined in the Court as she was an infant of one year.

6. P.W.1 Lata had clearly stated that she had come to her mother's place to visit her on the day of Holi. The two accused persons started throwing colours on her sister Hema, therefore, Hema required them not to do so. Her mother Nirmala Bai after witnessing the incident required the accused persons to conduct themselves properly, on which accused Teru started abusing them and threatened that he would throw acid on them. When the witness, her sisters and mother were sitting at their home, accused Kalu came with a stick and accused Teru having a bottle in his hand came to their house. Accused Teru threw acid on her mother, her mother suffered injuries on her chest, neck, ear, back and hands. Her daughter Damini also suffered burn injuries by the said acid. She also stated that she had lodged the report. She also testified that Chandni, Priyanka and Hira also suffered burn injuries. She also informed the Court that she suffered burn injuries on her left hand. She had shown her scarred hand to the Court. In the cross-examination, nothing substantial could be brought out. In fact, the cross-examination was that Kalu was not present on the spot. It was suggested to her that accused Kalu had snatched the lathi of her grand-mother.

7. P.W.2 Nirmala Bai is the mother of Lata Yadav and Hema. She had stated in the Court that on the fateful day Hema had gone to the house of Lata to bolt the house.

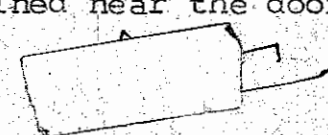


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When she was coming back, accused Teru threw colours on her, on which she scolded the accused and asked him to play Holi with the boys and not with the girls. The accused Teru abused her and thereafter threw acid on her. She had shown her injuries to the Court which fact was recorded by the Court in paragraph 5 of her statements. She further stated that both the brothers had thrown the acid. She also said that her green blouse was also seized. In the cross-examination, she stated that after some time of the first incident the accused persons came to their house and threw acid on them. She also stated that accused Kalu was present with the stick. She however admitted in paragraph 9 that she was unable to remember that she ~~never~~ informed the police about the fact that Kalu was armed with a lathi.

8. P.W.3 Hema had stated before the Court that she was asked by her elder sister Lata to go to her house to bolt the ~~house~~ doors. When she was coming back, accused Teru threw colour on her. On this, her mother Nirmala Bai asked the accused to conduct himself properly and play Holi with the boys, the accused Teru abused her mother. She has further stated that when they were sitting at their house, accused Kalu armed with stick and accused Teru having a bottle in his hand came to their house. She further stated that because of the acid her mother suffered injuries on her neck, chest, etc.. She also stated that Chandni, her sister Lata, Lata's daughter, Hiru and she herself suffered injuries by acid. In the cross-examination, but for few questions, nothing substantial was asked to her. In paragraph 6, she stated that the acid bottle remained near the door of the house in a broken condition.





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9. P.W.4 Bina Bai is yet another daughter of Nirmala and sister of Hema. She had supported the allegations made by Nirmala Bai, Lata and Hema. She had clearly stated before the Court that accused Kalu was armed with a stick while the accused Teru had a bottle of acid in his hands. According to her, the mother and number of others suffered acid injuries. In her cross-examination, no substantial questions were asked.

10. P.W.8 Ku.Hiru, a young girl of 14 years, had supported the prosecution case and had supported the statements of the other witnesses. She clearly stated that after Teru had thrown colour on her sister Hema, her mother asked Teru to play Holi with the boys. According to her, when they were sitting at their house, accused Kalu armed with a stick and accused Teru having a bottle containing acid came to their house, accused Teru threw acid on her mother. The mother suffered serious injuries on her chest, back, ear, neck, etc.. She herself had suffered an injury to her nose. The Court while recording the statements of the witnesses, said remarked that the/acid injury could be seen on the nose of the witness. In her cross-examination again, nothing substantial was asked. The only question asked to her was that accused Kalu was sitting at some distance.

11. Kishan, P.W.9, had stated that when the acid was thrown by accused Teru, he also suffered some injuries on his legs. The witness was unable to say in the Court that which of the accused was carrying the bottle.

12. P.W.11 Saraswati had also suffered the acid injuries but she did not support the prosecution case.

13. The prosecution agency had examined P.W.5 Dr.A.P.

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Sawant to prove the medical reports and the injuries suffered by the victims. According to Dr. Sawant, on 3-3-1999 at about 1.35 noon, Ku. Damini, a girl of one year and Smt. Nirmala Bai came to the hospital. In relation to their arrival and injuries, he sent an information to the police. He had examined Nirmala Bai at about 1.40 p.m.,. He found that the victim had suffered 25% burn injuries on her left chest, left neck, left side of the face and on the back. He has proved his report at Ex.P/4. He has also proved the injury report of Ku. Damini. Ku. Damini had suffered various burn injuries on her back, head and left hand. This infant child had suffered 15% burn injuries, the report is available on the record at Ex.P/5. On the same day, he had examined Yashoda, a young girl of 8 years. She had suffered burn injuries on her right neck, right ear, right hand and right cheek. The injuries were about 7%, the medical report is available on the record at Ex.P/6. Ku. Priyanka, aged about five years, was also examined by him on the same day and in his report Ex.P/7 he found the extent of the burn injuries to be 5%. The injuries were on left calf, back and on the face. He had also examined Lata and found that the extent of the burn injuries was 7%. In his report, Ex.P/8, he had certified that the burn injuries were on the left side of the neck and left upper arm. In the cross-examination, he had stated that he was unable to say that whether the injuries suffered by Nirmala were sufficient to cause death in the ordinary course of nature. He however stated that it can be said by the Surgical Specialist.

14. Smt. Ahuja submitted before the Court that <sup>as</sup> there is difference in the age of the injuries, the prosecution

case must be disbelieved. I am unable to concede to this argument because the doctor has given ~~the~~ different age of the injuries because the victims were examined by him at different time.

15. P.W.6 Dr.Lal Mohd. had examined Saraswati at about 10.15 p.m. and in his report, Ex.P/9, had found that she had suffered number of burn injuries. On the same night, he had examined Kishan and found <sup>burn</sup> some/injuries on his left and right arms. He had also examined Ku.Hiru. In his report, Ex.P/11, he stated that she had suffered burns on her face and the said marks could be of permanent nature; the extent of the burn injuries was 5%. He had also examined Ku.Hema on the same night. He found the extent of the burn injuries to be 4%. The injuries were on her right wrist and on her left cheek. According to him, the facial injury could be of permanent ~~injury~~ nature. In reply to the defence question, he stated that he had not given the age of the injuries in his reports.

16. P.W.7 U.R. Thakur had registered the first information report. In the cross-examination, he admitted that while lodging the report, Smt.Lata did not inform him that accused Kalu was armed with a lathi.

17. P.W.10 A.K. Sakharla had made investigations into the crime. He had prepared the spot map. He had also recovered 25 small pieces of the bottle. He had also seized the wet earth from the spot. He had also recovered and seized certain clothes of the victims. According to him, he had sent the pieces of the glass bottle, the wet earth and the clothes of the victims to the Forensic Science Laboratory. According to him, Ex.P/19 is the report of the Forensic Science Laboratory.

18. A perusal of the report of the Forensic Science Laboratory would show that Article-A, the pieces of the glass bottle, Article-B, which contains the wet earth, Article-C, the full pant, Article-D, the blouse, Article-E, yet another green blouse, each was showing positive re-action to the nitrate test. From this report, it would clearly appear that the bottle contained ~~was~~ nitric acid, the clothes were showing positive test of nitric acid and the glass pieces so also the wet earth were also stained with the nitric acid. In the cross-examination, he admitted that he had recorded the statements of the witnesses as were given by the witnesses. There was no substantial cross-examination.

19. P.W.12 Satish Yadav is husband of Lata Bai. He was not an eye witness but he was informed by the victims.

20. From the statements of the victims, it would clearly appear that accused Teru took an exception to the advices given to him by Smt. Nirmala Bai. He came to the spot with a bottle of acid in his hand and at that time he was accompanied with his brother. There is no difficulty in holding that accused Teru threw acid on Nirmala Bai, as a result of which she suffered 25% burn injuries on her face, neck and the chest. There is no further difficulty in holding that the victim suffered the burn injuries by the nitric acid. The evidence available on the record would clearly show that the accused threw the acid <sup>such as</sup> in a manner that it had caused injuries to number of persons. Nirmala Bai, her daughters, her grand-daughter and the people standing nearby also suffered injuries.

21. I am unable to hold that the court below was unjustified in recording the findings that the accused Teru threw acid which caused injuries to number of persons. The court below was also justified in holding that Kalu was present on the spot and was armed with a stick.

22. Learned counsel for the appellants had submitted <sup>has</sup> that as nobody/said that the injuries were sufficient in the ordinary course of nature to cause death of any of the victim, the court below was unjustified in convicting the appellants under Section 307 and 307/34 I.P.C.. The records show that accused Teru came to the spot with his brother. He had a big acid bottle in his hand. The bottle contained ~~the~~ acid. It had caused 25% burn injuries to Nirmala Bai and injuries to the others. After the bottle was thrown on the ground, the ~~wet~~ earth became wet with the acid. The quantity of the acid in the container would show that the accused had not come to play Holi but had come with an intention to throw acid on Nirmala Bai and while doing so he caused injuries to number of others. The extent of the injuries suffered by Nirmala Bai would certainly justify conviction of the appellant Teru under Section 307 I.P.C.. The conviction of the accused Kalu under Section 307/34 I.P.C. cannot be faulted with. The court below had convicted the accused persons under Section 324 and 324/3 4 I.P.C. without looking into the medical reports. The medical reports clearly show that some of the victims had suffered injuries on their face and the said injuries <sup>As disfigurement</sup> had caused permanent ~~disfigurement~~. Be that as it may, as the State has not filed any appeal against non-conviction of the appellants under Section 326 and



326/34 I.P.C., I am not required to dwell in this issue.

23. So far as the question of quantum of sentence is concerned, I am unable to hold that the court below was unjustified in awarding seven years R.I. to accused Teru. In the opinion of this Court, the court below should have awarded some compensation to the complainants. But unfortunately as the complainants or the State have not filed any appeal for enhancing the sentence or for award of the compensation, I find myself unable to award the compensation.

24. So far as the award of the sentence to accused Kalu is concerned, that certainly suffers with the vice of excessiveness. The prosecution witnesses did not say that accused Kalu knew that accused Teru was to throw <sup>acid in such a</sup> ~~in~~ a manner which was likely to cause such extensive burn injuries to Nirmala Bai and others. Taking into consideration the totality of the circumstances, I am of the opinion that interest of justice would be served if the sentence awarded to the appellant Kalu under Section 307/34 I.P.C. is reduced to the period of three years.

25. So far as the convictions of the appellants under Section 324 and 324/34 I.P.C. are concerned, they do not call for any interference. The sentences awarded under the said count are confirmed. It is however ordered that the sentences awarded to the accused persons shall run concurrently. The imposition of fine and default sentences are also confirmed.

26. The appeal to the extent indicated above is allowed. The accused persons appear to be in jail. They

be required to undergo the remaining sentences.

Sd/-  
R.S. Garg  
Judge

H/-  
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