

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **CRIMINAL APPEAL No. 95 OF 2010**

% **Reserved on : 1st September, 2010**
Date of decision: 30th September, 2010

SHAHID RIZA @RAJU Petitioner
 Through Mr. Sumeet Verma, Advocate

Versus

STATE Respondents
 Through Mr. Arvind Kumar Gupta, APP for the
 State

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J.:

1. The appellant- Shahid Riza @ Raju, vide impugned judgment dated 27th August 2008, has been convicted under Section 326 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) and by order dated 2nd September, 2009 has been sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs. 25,000 and in default to undergo simple imprisonment for a period of one year.

2. Learned trial court has held that on 22nd January, 2007, the appellant had thrown acid on the person of his wife- Shabana Parveen, the complainant at their house, due to which the complainant had suffered 30% to 35% burn injuries.

3. The allegations in brief are that on 22nd January, 2007 at about 7.30 pm, the appellant, husband of the complainant, came home and he got entangled in a heated argument with his wife-complainant when the appellant started abusing the complainant's father. The appellant threatened the complainant that he had made arrangement for her and pulling her by her hair he poured acid on her face from a bottle that he took out from his pocket. The acid burnt the face of the complainant and also injured their one and a half years old daughter Shahin who was in her

lap. The complainant raised an alarm upon which her father came there but the accused fled from the back gate of the house. FIR No.42/2007 was lodged on the basis of this incident at P.S. Khajuri Khas. The appellant was arrested and chargesheet was filed in the court after investigation.

4. In order to prove and establish its case, the prosecution had examined eleven witnesses. Shabana Parveen (PW-1) the complainant and wife of the appellant herein deposed that on the evening of 22nd January, 2007 the appellant had come home in a drunken state and started abusing her father and on her answering back, burnt her and her daughter by pouring acid on the complainant. She has stated that by the time her father arrived on the scene the appellant had run away. She has stated that she and her daughter were medically treated in a hospital thereafter. She had correctly identified clothes that she and her daughter were wearing at the time of the incident.

5. Shabbir Ahmed (PW-2), father of Shabana Parveen (PW-1) has corroborated the testimony of PW1 on all material aspects. He deposed that by the time he reached the house of his daughter hearing her cries, the appellant had fled away. He had correctly recognized the pieces of the quilt and blanket on which acid had fallen that the police had seized after the incident. He had correctly recognized the clothes worn by her daughter and grand-daughter at the time of the incident.

6. Dr. Hitesh Gupta (PW-11) who had prepared the MLC of the complainant stated that he had found 30-35% burn injuries on PW1 and that he referred her to surgical emergency after administering first aid to her. Dr. Tushar Mohan (PW-10) has proved the MLC of the complainant, ExPW 10/A. He has stated that he had examined all the papers of the treatment of Shabana Parveen (PW-1) and as per his opinion the injuries on the complainant were grievous while those on her daughter Shahin were of simple nature.

7. HC Satender Tomar (PW-6), the IO of this case stated that on the day of the incident when he reached the spot he felt the pungent smell of acid. He found that the complainant PW1 and her daughter were admitted and under treatment at GTB Hospital. He recorded the statement of the complainant (Ex.PW-1/A) and that of her father. He collected pieces of quilt and blanket, converted them into pullanda, sealed them and seized them vide memo (Ex.PW2/A). On 23rd January, 2007, he arrested the appellant on being pointed out by Sarfaraz Ahmed, brother of the

complainant. He has stated that the appellant was sent to hospital for medical examination as he had burn marks on his hand. Dr. Praveen (PW-8) has proved the MLC (Ex.PW8/A) of the appellant Shahid Riza. He has stated that the appellant Shahid Riza was examined under his supervision and that injuries sustained by him were multiple burn marks over the dorsum of his right hand and he was referred to surgical emergency.

8. The statement of the appellant was recorded under Section 313. He has stated that he had been falsely implicated in this case and that on 22nd January, 2007, acid was thrown on the complainant by Sarfaraz Ahmed (PW-3) when Shabana Parveen (PW-1), Shabbir Ahmed (PW-2) and Sarfaraz Ahmed (PW-3) were quarrelling over Rs.60,000, that he had given to Shabana Parveen (PW-1) at the time of compromise in the dowry case. He has also stated that when he came forward to save Shabana Parveen (PW-1), his hand got burnt.

9. It is not possible to accept the defence story and the version put up by the appellant that there was a quarrel between Shabana Praveen (PW-1), her father Shabbir Ahmed (PW-2) and her brother Sarfaraz Ahmed (PW-3) over Rs.60,000/- and acid was thrown by Shabbir Ahmed (PW-2) or Sarfaraz Ahmed (PW-3). It may be noted that Shabana Praveen (PW-1), after the incident, was taken to the hospital by Shabbir Ahmed (PW-2) and Sarfaraz Ahmed (PW-3) and not by the appellant. The appellant admits his presence at the time when the acid was poured and Shabana Praveen (PW-1) got injured. In case Shabbir Ahmed (PW-2) and Sarfaraz Ahmed (PW-3) were responsible for the said act – acid burns on Shabana Praveen (PW-1), the appellant would have taken her to the hospital. We also have the statement of Shabana Praveen (PW-1) recorded on 22nd January, 2001 (Exhb.PW-1/A) in which she has blamed the appellant. It is on the basis of this first statement made by Shabana Praveen (PW-1) soon after she was taken to the hospital that the FIR was registered.

10. There is ample evidence on record and is also clear from line of examination of Shabana Parveen (PW-1), father of the complainant Shabbir Ahmed (PW-2), and brother of the complainant Sarfaraz Ahmed (PW-3) that there were matrimonial disputes/discord between the appellant and Shabana Parveen (PW-1). Legal proceedings had been initiated by Shabana Parveen (PW-1) against the appellant. During the pendency of legal proceedings, as per the testimony of Shabbir Ahmed (PW-2), Rs. 60,000 was given to Shabana Parveen (PW-1) at the time of bail in the

dowry case. Thereafter, the matter was settled/ compromised. Shabbir Ahmed (PW-2) has stated that Rs. 60,000 was returned to the appellant when compromise was arrived at and Shabana Parveen (PW-1) joined the company of the appellant and they started residing together. Shabana Parveen (PW-1), in her cross examination, has stated that Rs. 60,000 was paid by way of draft or cheque to her father during the pendency of the dowry case but the said amount was returned.

11. Further in the cross examination of Shabana Parveen (PW-1) it was put to her that she and the appellant wanted Rs. 60,000 from her father for starting business and there was quarrel between her, her father and her brother. During the cross examination of Shabana Parveen (PW-1) the appellant had suggested that there was a quarrel between her, Shabbir Ahmed (PW-2) and Shabbir Ahmed (PW-3) on money matter when the acid was thrown on her face. The suggestion that Shabana Parveen (PW-1) had not seen the assailant who had thrown the acid was denied. It was not suggested to Shabana Parveen (PW-1) that Sarfaraz Ahmed (PW-3) had thrown the acid.

12. It is clear from the testimony of Shabana Parveen (PW-1) and Shabbir Ahmed (PW-2) that Shabbir Ahmed (PW-2) had provided for and given money to the appellant to start his business. Both of them- Shabana Parveen (PW-1) and Shabbir Ahmed (PW-2) have stated that money for purchase of the plot on which House No. C-363, Street No. 7, Second Pusta, Sonia Vihar, Delhi and for construction of the house on it was given to the appellant by Shabbir Ahmed (PW-2). Shabbir Ahmed (PW-2) has stated that he was an income tax payee and used to earn a substantial amount but his income had gone down due to the litigation. The appellant was earlier an employee of Shabbir Ahmed (PW-2). In view of the said evidence it is not possible to accept that there was a quarrel between daughter Shabana Parveen (PW-1), father- Shabbir Ahmed (PW-2) and brother – Sarfaraz Ahmed (PW-3) on account of money matters and Shabbir Ahmed (PW-2) or Sarfaraz Ahmed (PW-3) had caused acid burn injuries on the complainant. There is also evidence on record in the form of statements of Shabana Parveen (PW-1) and Shabbir Ahmed (PW-2) that the appellant had got married for the second time and there were inter se disputes between the parties on this account.

13. Charge in the present case was framed under Section 307 IPC, but the trial court has convicted the appellant under Section 326 IPC. Learned

counsel for the appellant submitted that this has resulted in injustice and the appellant is entitled to acquittal as no charge was framed under Section 326 IPC.

14. To decide this contention, it is relevant to examine the charge framed against the appellant vide Order dated 20th May, 2007, which reads:

“That on 22.1.2007, at about 7.45 pm, at a place inside H.No. C-365, Street No. 7, Second Pusta, Sonia Vihar, Delhi, you threw acid on Sabana Parveen and Shahin and caused acid burns injuries to them with such intention or knowledge and under such circumstance that if by that act you would have caused their death then you would have been guilty of an offence of murder and thereby committed an offence of attempt to murder punishable under section 307 of the Penal Code, and within my cognizance.

And I do hereby direct that you be tried by me for the aforesaid charge.”

15. Section 211 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code, for short) requires that a charge should be precisely stated to ensure that the accused gets a full and fair trial, as per certain well established and well understood principles that accord with our notions of natural justice. However, the Code is a procedural law and has to be interpreted in a manner that it does not frustrate the ends of justice by introduction of hyper technicalities. Section 464 of the Code provides that a finding of a court must not be deemed to be invalid merely on the basis of absence of charge or on the ground of any error, omission or irregularity in the charge, unless failure of justice is occasioned thereby. The Supreme Court in ***Willie (William) Slaney versus State of M.P.*** AIR1956 SC 116 examined similar provisions in the then Code of Criminal Procedure, 1898, and observed that in procedural laws, disregard of certain nature can be fatal to the trial and can invalidate the conviction but certain other procedural aspect may not be fatal and irregularities can be cured and in that event conviction must stand unless the court is satisfied that there was prejudice. Further when the Code has dealt with some aspects, full effect must be given to the said provisions. Courts have to administer justice and justice requires punishment of guilty as much as

protection of the innocent. This essence of the Code should not be lost in technicalities. Principles of natural justice and fair play must be brought to bear, when determining the matter of prejudice as in indulging guilt. The courts are concerned to see whether the accused had fair trial, whether he knew what he was being tried for, whether the main facts ought to be established against him were explained to him fairly and clearly and whether he was given full and fair chance to defend himself. If all these elements are present and no prejudice is shown then the conviction must stand whatever the regularities be, whether traceable to a charge or want of one. This view has been reiterated by the Supreme Court in ***Annareddy Sambasiva Reddy versus State of Andhra Pradesh*** (2009) 12 SCC 546. Reference can also be made to the judgment of the Supreme Court in ***Anil alias Raju Namdev Patil versus Administration of Daman & Diu, Daman and Another*** (2006) 13 SCC 36.

16. This Court in ***Kapoor Singh Rana Versus State of Delhi*** 2005 ILR Delhi (2) 961 had examined the question whether an accused convicted under Section 307 IPC could be convicted by the appellate court under Section 326 IPC. It was noticed that what is punishable under Section 326 IPC is 'causing grievous hurt' and for conviction under Section 307 IPC it has to be established that the accused had committed the offence with the intention of causing death or with the intention of 'causing such bodily injury as would have led to death in the ordinary course'. In the said case, conviction was modified from Section 307 to Section 326 IPC observing:-

“21. The petitioner has been convicted under Section 307 IPC. Counsel for the appellant made an all out effort for getting the appellant acquitted. No effort, however, was made to argue that the offence committed was not an attempt to murder but causing grievous hurt. Nonetheless, it is the duty of this court, even at this stage, to examine what offence is committed by the appellant and what should be the appropriate punishment to be imposed on him. The burns were caused on the face causing loss of eye sight and also disfigurement. The burns were, however, only 15%. There is no evidence that the appellant committed the offence with the intention of causing death or with the

intention of causing such bodily injury as would have led to death in the ordinary course. Usually when acid is thrown on the face of someone the intention behind the act is to cause disfigurement rather than to cause death. There is nothing on record to show that the appellant had any knowledge that he was likely to cause death by his act. Under these facts and circumstances the ingredients of the offence under Section 326 for causing grievous hurt by means of any corrosive substance are found. We accordingly convict the appellant under Section 326 of the IPC.

22. The punishment for causing grievous hurt under Section 326 can also go up to life as in the case of an offence of attempt to murder punishable under Section 307 IPC. Undoubtedly, the damage caused by the offence to the victim was severe. Yet we feel that the sentence of imprisonment for life is not warranted in the case. Instead we think it appropriate to impose a sentence of imprisonment for seven years along with fine of Rs.30,000/- and in default of payment of fine simple imprisonment for a period of one year. We further direct that fine, if recovered, be paid to the victim's mother, Satya. The appellant shall be entitled to adjustment of the period already undergone by him in custody during investigation and trial as provided under Section 428 Cr.P.C."

17. In the present case, the charge as framed against the appellant is reproduced above. The allegation against the appellant is that he had thrown acid on Shabana Praveen (PW-1) and Shahin and had caused acid burn injuries to them. It was further alleged that there was intention or knowledge that this act would have caused death. This was the second part of the charge. The injury suffered by the complainant (PW-1) is a part of the charge. Learned trial court has held that second part of the charge i.e. intention of knowledge to commit murder has not been established beyond doubt but the first part of the charge has been proved i.e. the accused had thrown acid on Shabana Praveen (PW-1) and Shahin and caused acid burn injuries to them. The injuries suffered by the complainant-Shabana Praveen (PW-1) and Shahin have been established beyond

doubt. For the purpose of Section 464 of the Code, the content of the charge as framed in factual matrix in each case has to be seen and examined to decide whether any prejudice has been caused to the accused. In view of the charge framed, cross examination of the witnesses, statement of the appellant under Section 313 IPC, it is apparent that there has been no miscarriage of justice. The appellant was fully aware and conscious of the facts, the allegations against him and the case he had to meet. There was no confusion or doubt in the mind of the appellant as to the nature of the charge leveled and the allegations which he had to meet. The appellant had made concerted effort to cross examine the witnesses and the role assigned to him and his participation in the crime. It cannot therefore be said that the appellant has been denied a fair trial and full chance to defend himself as no charge was specifically framed under Section 326 IPC. One has to look at the substance and not technicalities to be satisfied that there was a fair trial and the appellant was made aware and had knowledge as to what he was being tried for and the main allegation against him was brought to his notice and explained. The conviction is therefore covered by Section 464 of the Code.

18. Photographs of Shabana Parveen (PW-1) placed on record show permanent disfigurement on her face. Keeping in view the nature and manner of commission of the offence, the relationship of the appellant with the victim, the intention and the consequences thereof, the sentence of seven years rigorous imprisonment is maintained. The appellant has also been directed to pay fine of Rs.25,000/- and in default thereof, suffer simple imprisonment of one year. Out of this fine amount, Rs.20,000/- is to be paid to the complainant-Shabana Parveen (PW-1) as compensation. On the question of sentence also, I do not see any reason to interfere.

Appeal is dismissed.

(SANJIV KHANNA)
JUDGE

SEPTEMBER 30, 2010
Vijeyeta/P