

Hakim & Anr vs The State (Nct) Of Delhi on 13 October, 2022

Author: Mukta Gupta

Bench: Mukta Gupta

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 02nd September
Pronounced on: 13th October

+ CRL.A. 209/2020
HAKIM & ANR

..... A
Represented by: Mr. Mahabir S.
Adv. with Ms.
Singh and Ms.
Kumar, Advocates

STATE (NCT OF DELHI)

versus R
Represented by: Mr. Prithu G.
the State

+ CRL.A. 365/2021
GYANI

..... A
Represented by: Mr. Chirag J.
Ajay Kr. Upadhyay
Shubham Chand
Roshan Kumar
Rajan Tiwari,

STATE(NCT OF DELHI)

versus R
Represented by: Mr. Prithu G.
the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

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By:MANISH KUMAR
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CRL.A. 209/2020 & CRL.A. 365/2021

JUDGMENT

ANISH DAYAL, J.

- These appeals assail the impugned judgment dated 23rd December, 2019 of the learned Trial Court convicting all three appellants for offence punishable under 326A/34 IPC and order on

sentence dated 29th January, 2019 awarding each of the appellants sentence as under:

(i) Appellants Hakim and Umesh were sentenced to rigorous imprisonment for life and a fine of Rs.1,00,000/- each, simple imprisonment for a period of one year in default of payment of fine.

(ii) Appellant Gyani was sentenced to rigorous imprisonment for ten years and a fine of Rs.50,000/-, simple imprisonment for a period of six months in default of payment of fine.

The victim was held as entitled to compensation under Section 357 Cr.P.C. and out of total fine of Rs.2,50,000/-, an amount of Rs.1,25,000/- was to be paid to the victim as compensation.

The Incident

2. As per the case of the prosecution on 08th June, 2014 at about 11:30 p.m., complainant Bablu came to PS Govind Nagar, Mathura, U.P. and gave a written complaint. As per the complaint at about 8:00 p.m. on that day, his wife Meera Devi was returning to her house after a temple visit ("darshan" of Galteshwari Mahadev) and on the way back, near Govind Nagar Railway crossing, the three appellants met her and threatened her.

They told her that she will have to face the consequences of the report which she had lodged earlier with the police. While appellant Hakim and Gyani held Meera Devi, Umesh poured acid over her and ran away. The victim started screaming in agony and many persons gathered around. The complainant's sister-in-law (Bhabhi) Rajjo Devi, who was with her but 10-15 paces behind her, took the victim and got her admitted to the Government Hospital, Mathura where her condition was quite serious. Based upon the complaint, FIR No.130/2014 was registered and the investigation was carried out by SI P.K. Malik. After visiting the hospital where the victim was admitted to the burns ward, SI P.K. Malik along with Constable Vivek Kumar came to the gate of the hospital, when a secret information was received that appellant Umesh was present at Govardhan Chauraha on Agra-Delhi Highway and was waiting for some vehicle. Upon reaching the chauraha (cross-road), appellant Umesh was arrested. On 11th June, 2014, SI P.K. Malik recorded the statement of the PW-6, sister-in-law Rajjo. Efforts were made to arrest appellant Hakim (who was the father of Umesh) and Gyani by raiding their houses but Hakim was not found at home and the house of Gyani was found locked. Despite subsequent raids, the accused Hakim and Gyani could not be found, however, they surrendered subsequently on 15th June, 2016. In the meantime, pursuant to inquiries with the family, the police came to know that the victim had been shifted to Bharatpur to another hospital and would be discharged after 3-4 days. On 9th June, 2014, the statement of the victim was recorded and on completion of the investigation, the IO filed the charge-

sheet on 22nd June, 2014 against all three appellants under Section 326A IPC. Cognizance was taken and the case was committed to the court of Sessions and charges under Section 326A/34 IPC were framed to which they pleaded not guilty and claimed trial. The prosecution examined 14 witnesses, statements of the appellants were recorded under Section 313 Cr.P.C. and the appellants

examined 3 witnesses in defence. It may be noted that on a petition filed by the complainant, the Hon'ble Supreme Court of India vide order dated 01st September, 2015 transferred the present case from Mathura to Delhi.

Submissions by the Appellants

3. Senior counsel appearing on behalf of the appellants contended that the learned Trial Court had overlooked facts and evidence on record and passed an order in a mechanical manner since there were many contradictions and inconsistencies in the version of the prosecution. He contended that the appellants had no reason and motive to commit the alleged offence whereas the complainant and the victim had strong reasons and motives to falsely implicate the appellants since Umesh was counsel in a criminal case against the family members of the complainant and victim; and just a few days before the alleged incident, he had registered a criminal case against one Manohar and Bhola who were family members of the complainant and victim. It was further contended that while the FIR was lodged at about 11:30 p.m. at the instance of the complainant PW-2 Bablu, Umesh had already been detained in PS Govind Nagar, Mathura and this fact shows that a false case had been registered against the appellants. Besides, the exact place of occurrence as per the site plan is different from what was stated by PW-4, the victim Meera. As per the statement of PW-6, Rajjo, she had reached the spot after some time thereby not being an eyewitness to the alleged incident. The IO of the case inspected the place of occurrence only on 19th July, 2014 after a long delay from the alleged date of the incident and this shows that the investigation was extremely sloppy and the benefit of the same should go to the accused. The learned senior counsel for the appellants extensively deliberated upon the long sequence of medical assistance which the victim was purported to have received from the local hospital at Mathura, Prabha Hospital Agra and then at a hospital at Bharatpur. Thereafter, she was hospitalized in Swarna Jayanti Samudaik Hospital, Mathura from 28th June, 2014 to 04th August, 2014 and then further was examined at an eye centre, Mathura and at Aligarh in the meantime, as per the case of the prosecution. The senior counsel contended that it is not possible that when she was hospitalized at Mathura for a period of about one and a half months then how she could take treatment from several doctors of other hospitals in Aligarh and Mathura at the same time. The allegation on behalf of the appellants was that the victim and her family were desperately trying to procure medical documents in her favour in order to falsely implicate the appellants. Also, as per the FIR, MLC and statements of witnesses under Section 161 Cr.P.C. there was no eye injury on the eye of the victim and therefore the defect in her eye was not the result of the alleged incident. The victim and the family had connived with various hospitals in Aligarh and Mathura in order to create a case of eye defect on the basis of false and fabricated documents and this was evident from the testimony of DW-2 who stated that the left eye of the victim was already defective and he had seen her prior to the incident. A plea of alibi is raised in favour of appellant Umesh on the basis that he was present at an engagement ceremony of his friend Narendra at the time of the alleged incident and this fact was purportedly supported by DW- 1 who was also present at that programme. The senior counsel for the appellants presented copy of a handbook titled „Standard Operating Procedures- A Forensic Guide for Crime Investigators published by LNJP, National Institute of Criminology and Forensic Science, Delhi issued by Ministry of Home Affairs, New Delhi. It was contended that there is a standard operating procedure which ought to be followed by the police for investigating an offence under Section 326A

IPC but it was not followed in this case. Neither was the alleged substance sent for examination to prove that it was a certain kind of acid nor were the clothes of the victim seized for further investigation, therefore, the ingredients of Section 326A IPC were not established. The prosecution was unable to prove that the alleged substance used by the appellants was acid. The senior counsel for the appellants also contended that without prejudice to the case of the defence of not guilty, Section 326 IPC covers a case of voluntarily causing grievous hurt by dangerous means which includes corrosive substance and therefore it was not necessary that the appellant should be held guilty under Section 326A. In addition, reliance was also placed on Section 325 IPC for voluntarily causing grievous hurt, which as per the appellants could have been the worst case against them, if the substance alleged to have been used was not proven to be either corrosive or acid in nature and would therefore neither fall within Section 326 or Section 326A. Further, no public person's testimony was taken by the police and it was not investigated whether by the alleged throwing of the acid, other people would have also received burns. In addition to the above, submissions were advanced on behalf of appellant Gyani who was the son of a friend of Umesh and that he was a young boy who was not involved in any manner with the other appellants.

Senior counsel for the appellants drew the attention of this Court to the following judgements in support of the plea:

- i. State of U.P. v. Wasif Haider, (2019) 2 SCC 303 ii. Sunil Kundu v. State of Jharkhand, (2013) 4 SCC 422 iii. Karan Singh v. State of Haryana, (2013) 12 SCC 529 iv. Kailash Gour v. State of Assam, (2012) 2 SCC 34 v. Nishi Ranjan Majumder v. State of Tripura, MANU/TR/0162/2020 Submissions by the Prosecution
4. The learned Additional Public Prosecutor (APP) countered the submissions of the appellant by submitting that PW-6 was a fair witness and that she could have easily witnessed the whole incident from about 10 paces away. PW-2's testimony that Rajjo was not there at that time is hearsay since PW-2 himself was in Faridabad at that time. PW-4, the victim was severely injured in this attack and the MLC stated that she had about 15 percent chemical burns. The learned APP contended that even if chemical burns were not proved, at least "burns" stood proved.

Signing Date:13.10.2022 16:33:36 Further by the medical evidence of PW-10, PW-12 and PW-14, it was evident that she had severe damage in the eye and had lost sight upto 90 percent. Countering the testimony of DW-2 that the victim had a prior eye defect, the learned APP drew attention to the Aadhar Card of the victim which was part of the record, which showed that she did not wear any goggles and her eyes were fine in the picture. The plea of alibi of appellant Umesh was vehemently contested by the learned APP on the basis that an assessment of the testimony of DW-1 and DW-3 in this regard would show material contradictions since DW-1 said there were 300 guests, while DW-3 said there were 50 guests in that event. Further, space of 150 square yards in the parking lot where the said event was held could not possibly accommodate 300 odd guests and therefore this indicated that the testimonies of the defence witnesses were planted and fabricated in order to help the accused. As regards motive, it was fairly clear that the victim had been harassed by the appellant Umesh on prior occasions and she had lodged a complaint against him on 4 th June, 2014 itself. The

learned APP further drew attention to the language of Section 326A drawing support from the provisions of Section 326B as well to contend that acid includes corrosive substance or of a burning nature. Reference was also made to the Law Commission Report No.226 dated July, 2009 which led to the addition of Section 326A in the IPC. The learned APP relied on the following judgments in support:

- a) Maqbool v. State of U.P., (2019) 11 SCC 395
- b) State of M.P. v. Chhaakki Lal, (2019) 12 SCC 326
- c) Mahesha v. State, MANU/KA/3120/2021
- d) Narayan Chetanram Chaudhary v. State of Maharashtra, (2000) 8 SCC 457
- e) State of U.P. v. Naresh, (2011) 4 SCC 324
- f) Vinubhai Haribhai Malaviya v. State of Gujarat, (2019) 17 SCC 1
- g) Nankaunoo v. State of U.P., (2016) 3 SCC 317 The Evidence

5. The evidence relevant and necessary for the assessment of this case is inter alia as under:

5.1 PW-4, the injured victim Meera deposed that she was married for the last about 20 years to Bablu Sharma (PW-2) and had four children, two sons and two daughters and that she was working in a private company and used to go to her office at about 06:00 a.m. and returned back at about 04:00 p.m. About 4-5 months prior to the present incident, appellant Umesh and Gyani used to come and sit at the door of her house and they used to have vulgar conversations with each other and tried to do "hasi mazak" with her which she resisted. However, both Umesh and Gyani ignored her objections and continued to sit there and have vulgar conversations. She stated that one day Umesh had asked her what her monthly earnings were and she replied that she was happy with whatever she was earning and was satisfied.

Thereupon, Umesh said that she was wasting time doing petty jobs and being young and beautiful could do good jobs and that he could get her a good job offer. When PW-4 asked him as to what was the nature of the job, he mentioned that she would be required to meet one or two persons in a month and would end up earning Rs.1-2,00,000/- month. PW-4 objected to this kind of conversation and told him not to say such things in the future and also narrated this to her husband PW-2 as well as the wife and mother of appellant Umesh about this indecency. Umesh became angry with her and complained about having narrated such conversations to his wife and mother and threatened her that she would have to pay for having destroyed his reputation. On 31 st May, 2014 at about 10:00 p.m., the three appellants along with Jagdish, Ravi and Amit entered her house at Mathura and beat her up and her children and threatened to kill her and her family members and

also throw acid on her. After hurling abuses at her, they went away from the house and threatened her not to file any complaints against them. Since it was night and she was frightened, she did not lodge any complaint on that night however on the next day on 01st June, 2014 she went to police chowki at Krishna Nagar to lodge a complaint. She stated that no inquiry or investigation was ever carried out post her complaint and when she returned to the house all the appellants taunted her about her inability to do anything against them and further threatened her. On 04th June, 2014 she went to the office of SSP and lodged a report with the office of SSP of the incident of 31 st May, 2014 and also personally narrated the incident before the SSP. The SPP however directed her to go to chowki Krishna Nagar whereupon she was again told by the Daroga that she should return to her house and they would carry out necessary actions. She mentioned that she did not know of any action taken pursuant to a complaint even then. On 08 th June, 2014 when she was returning from the temple with her sister-in-law PW-6 at about 07:30 p.m., they reached near the railway crossing at Govind Nagar where the bridge was under construction and work was in progress. At that moment, PW-6 told her she want to ease herself and she kept on walking a bit ahead and was about 15-20 paces ahead having crossed three railway lines and then going towards a kaccha rasta towards Laxmi Nagar. She found all three appellants standing there on way, they stopped her, abused her and told her that she would have to pay for the fact that she lodged a complaint with the SSP. They threatened to pour acid over her and kill her and when she tried to run away they followed her and chased her. Thereupon, appellant Gyani and Hakim got her and Umesh poured acid over her. PW-6 who was just nearby reached and raised an alarm and all the appellants ran away. She felt extreme burning sensation and fell down and PW- 6 raised a hue and cry but nobody came to her rescue. PW-6 picked her up and brought her on the road when she became unconscious. On regaining consciousness, she found herself admitted in a Government Hospital, Mathura in a serious condition and thereafter, she was shifted to Swarna Jayanti Hospital, Mathura where she was refused admission and was taken by her family to Prabha Hospital, Mathura where she was there for one night. The next morning Prabha Hospital, Mathura referred her to Prabha Hospital, Agra where again she remained there for one day and since they could not afford the treatment, the family members shifted her to Balbir Hospital, Bharatpur where she was treated for about 7-8 days. She stated that she had been informed by PS Govind Nagar to join the investigation and therefore she along with her brother Bishambar Dayal went to PS Govind Nagar and gave her statement to the police and showed the place of the incident. Thereafter, she was admitted to Swarna Jayanti Hospital, Mathura since she was quite unwell. PW-4 showed to the learned Trial Court her condition which the Court records that she had removed her goggles and the left eye was damaged permanently and there was scaring of skin of the face due to burn by the acid. After being in Swarna Jayanti Hospital, Mathura for about one month, PW-4 stated that she was referred to AIIMS Hospital for treatment of the eye injury and she has been operated four times in AIIMS, Delhi for it, as well as in Safdarjung Hospital, Delhi for her burn injuries, and these treatments continued even at the date of the deposition. She testified that the appellants had threatened her family members and trying to force of compromise for which her family members had refused. Appellants had earlier filed a false case against her brother-in-law Manohar and his son Bhola in Mathura and yet another false case against another brother-in-law Sanju in Mathura and yet another case of rape against sons of her husband's elder brother which was filed by one Gaurav, friend of the appellant Umesh. In her cross-examination, she stated that they had started living at Jawahar Colony, Faridabad after the incident despite residing at Laxmi Nagar, Mathura for about 20 years. In her cross-examination, she

stated that she did not know the type of container in which the acid was brought by the appellants. She further stated that the appellant Gyani used to reside near a house about 3-4 galis away and used to often visit the house of Umesh. She further denied the suggestion that she had self-inflicted her injuries. She said that the fact of the acid was told to her by the doctors and at the time of incident. She denied the suggestion that her left eye was already defective prior to the incident or that she was changing hospitals in order to create a false record of her injuries to implicate the appellants.

5.2 PW-6, Smt. Rajjo, sister-in-law of PW-2, husband of PW-4 testified that she had accompanied PW-4 on 08th June, 2014 to the temple and they were returning at about 7-7:30 p.m. when she went to ease herself. PW-4 was about 10 paces ahead of her when she saw appellants Gyani and Hakim catching hold of PW-4 and Umesh was carrying a "dibba". She heard PW-4 shouting and feeling a burning sensation and when she reached all appellants ran from the spot. In her cross-examination, she stated that she had heard the appellants threatening PW-4 that they will not leave her alive as she had made a report against them with SSP, Mathura. She further confirmed that Umesh was an advocate and that there used to be verbal altercations and verbal abuses between the two families. She mentioned that at the time of the incident, PW-2, Bablu was in Delhi and a message was sent to him through the children on phone.

5.3 PW-2, Bablu Sharma, husband of PW-4 victim, was the complainant who deposed that he could identify all three appellants in Court and had come to know of the incident with his wife and rushed back to Mathura that night. He had the complaint written on his behalf by Ashok Kumar Verma who was a neighbour, on his dictation since he stated that he was educated till 4th class only and could not write and read Hindi. In his cross-examination he confirmed that on 31st May, 2014 all the appellants had entered his house and beat him and his family, they were all drunk and abused them. On the next morning, he had gone to the PS to lodge a report accompanied by PW-4 and the children. However, on 03rd June, 2014 appellant Umesh lodged an FIR under Sections 452/504/506 IPC at Chowki, Krishna Nagar against his brother Manohar and his son Bhola. He also confirmed that they had gone to the office of SSP on 04th June, 2014 since the local police was not listening to them and not making any investigation. On 08th June, 2014 at the time of the incident, he was in Faridabad to buy some goods to be supplied in Mathura and when informed by his sister-in-law about the incident, he reached Mathura at about 10:00 p.m. by taking a local train at 08:00 p.m. from Faridabad and went directly to the hospital.

5.4 PW-5, Dr. Upadhyay, Medical Superintendent at District Hospital, Mathura stated that on the day of the incident at about 08:50 p.m. the victim had come to the hospital brought in by PW-

6. Upon examining her, he observed that she had chemical burns on the whole left side face, neck, back of the left side chest, left shoulder with upper arm. She was referred to surgeon for expert opinion and he had opined that she was suffering from about 15 percent chemical burns and had also prepared the MLC which is exhibited as Ex. PW-5/A. He stated that he did not find any injury on the eye of the victim and he said that he could not tell the nature of the chemical used since that was not his expertise.

5.5 PW-8, Dr. B.K. Singh who was at Prabha Hospital, Agra deposed in respect of the record of the victim who had been admitted to the ICU Department as a case of acid burn injury on 09 th June, 2014 and under his treatment, he deposed that she was having acid burns over face and back of the neck. There was a consultation with the plastic surgeon and she was treated accordingly but referred for the higher centre for further management.

5.6 PW-9, Dr. Goyal from Swarna Jayanti Samudaik Hospital, Mathura deposed in respect of the record of PW-4 who was admitted in the said hospital in the Emergency Burns Department on 28th June, 2014 as an old case of acid burn involving 15-20 percent acid burn. As per PW-9, she was discharged from the hospital on 04th August, 2014 and was referred to AIIMS Hospital, Ophthalmology Department. The admission record of that hospital was exhibited as Ex. PW-9/B.

5.7 PW-10, Dr. Jain, Eye Specialist at Sunayan Eye Centre, Mathura deposed that he had examined PW-4 on 25th July, 2014 with a history of acid burn and again on 30th July, 2014. As per his opinion, there was a deep corneal infiltration, the condition of the eye was not good and it had severe infection and pus. She was referred to AIIMS or Shroff Charity Eye Hospital, Delhi. The prescription by PW-10 was exhibited as Ex. PW-10/A and Ex. PW-10/B.

5.8 PW-12, Dr. Preetpal Singh, the Doctor at Gandhi Eye Hospital, Aligarh deposed that PW-4 had come to the hospital with an alleged history of acid attack and was diagnosed with left eye corneal ulcer with skin burn and left eye lower ectropion.

5.9 PW-11, Dr. Ahuja from the Ahuja Eye Centre, Aligarh deposed that he had examined PW-4 on 01st August, 2014 and she had a chemical injury on the left eye and severe corneal chemical burn and she was referred to Shroff Charity Eye Centre, Daryaganj.

5.10 PW-14, Dr. Gaur of the R.P. Centre, AIIMS, New Delhi deposed that PW-4 was admitted in the hospital four times between 08 th August, 2014 till 26th December, 2015 for various durations with a history of chemical injury. He testified that at the time of presentation, the victim had a loss of vision in her left eye due to chemical injury which had caused damage to the cornea along with ectropion of both upper and lower eyelids. She was operated in the left eye with a corneal transplant and skin grafting and the ectropion surgery was repeated thrice subsequently. As per PW-14, the victim was 30 percent handicapped as per blindless guidelines and as per his opinion, there was no vision in the left eye to the extent of about 90 percent. And that in laymen terms, the patient could be said to be a one-eyed person. The documents of the hospital were exhibited as Ex. PW-14/A. Analysis

6. Having perused in detail, the evidence on record and on appreciation of the submissions by counsel for all parties, this Court is of the considered opinion that the prosecution has been able to prove the guilt of the appellants beyond reasonable doubt, for inter alia the following reasons:

6.1 It is quite evident from the consistent testimonies of the victim PW-4 herself and PW-6 who was nearby that the three identified appellants had accosted PW-4 near the railway lines and had thrown a substance at her which led to a serious medical condition for PW-4 ultimately resulting in severe burns on the face and neck and a loss of almost 90 percent vision in her left eye. Both PW-4 and PW-6 knew the

appellants since they used to live in the vicinity and in fact, had accosted PW-4 on earlier occasions. As regards the contention of the appellants that PW-6 was not an eye witness and therefore her testimony could not be credible, it is noted that PW-6 had testified that she was only 10 paces away from PW-4 when the incident occurred and not only that she heard PW-4 shouting but also could see the appellants assaulting PW-4 and thereafter running from the spot. PW-4 had also stated that PW-6 was only about 15-20 paces away from the spot of the incident and therefore there is consistency in both their testimonies. Notwithstanding the fact that PW-4 herself was an injured victim and her testimony ought to be given serious credence (reliance was made by the learned APP for high credibility to be given to the testimony of an injured witness on State of U.P. v. Naresh, (2011) 4 SCC 324), PW-6 has also fully corroborated the sequence of events which are cogent and consistent. Minor inconsistencies in the testimonies, which are not material are to be ignored, as rightly pointed out by the learned APP relying upon Narayan Chetanram Chaudhary v.

State of Maharashtra, (2000) 8 SCC 457.

6.2 As regards the contention of the appellants that there was no proof that the substance which was thrown on PW-4 was an acid or even any corrosive substance, the testimonies of all the medical personnel inter alia PW-5, PW-8, PW-9, PW-10, PW-11, PW-12 and PW-14 (discussed above) are clearly and categorically dispositive of the fact that PW-4 had suffered serious chemical burns which had resulted in a severe deformity of the face including loss of almost complete vision in her left eye. In this regard, this Court is not inclined to accept the detailed submissions made by the senior counsel for the appellants that the police ought to have followed a standard operating procedure which according to him was part of a document issued by LNJN, National Institute of Criminology and Forensic Science, Delhi. A perusal of the document would show that the preface itself states that "This book on Standard Operating Procedure (SOP) is for ready reference only and doesn't claim the absolute necessity or correctness of the prescribed procedure." Besides no support has been furnished with regard to the mandatory nature of these guidelines and that they have to be followed in every such matter by the police. As per the senior counsel for the appellants the police ought to have followed these procedures and sent the acid for examination. It is quite evident from the sequence of events and as per the testimonies of eyewitness and the victim that the three appellants assaulted PW-4 and two of them held her while appellant Umesh threw a substance on her face from a container (dibba). Considering that this incident was happening at railway lines and the appellants ran away after the assault, the question of recovering any part of the substance, to examine it, does not arise. There would be no substantive residue lying there of the substance for the police to recover and examine. In any event, the nature of the substance is clearly of acidic/corrosive/burning nature as is evident from the medical testimonies of the doctors who examined the victim then and in subsequent years. In particular PW-5 who was the Emergency Medical Officer at District Hospital, Mathura where PW-4 was taken first on the same night observed that she was having "chemical burns" on the left side face, neck, back, shoulder and upper arm. This is clearly dispositive of the fact that the substance was thrown on PW-4 from the left side and had caused a severe chemical burn. Subsequent testimonies of the other medical personnel who had examined her on

various occasions in the subsequent months and years would also testify that she was a known case of acid burn. The fact that the burnt clothes were not recovered and seized by the police is not a factor which could dilute the foundational fact that an injury of this nature is not possible to be self-inflicted by any individual on himself or herself.

6.3 The reliance of the senior counsel for the appellants on the provision of Section 326A to state that the fact of the acid has to be proved in order to bring a conviction under this provision is misplaced. This Court notes that the Section is predicated upon the following:

- (i) permanent or partial damage or deformity or burns caused to any part of the body of a person or causing grievous hurt;
- (ii) by throwing acid or administering acid or using any other means;
- (iii) with the intent or with the knowledge that it is likely to cause such injuries or hurt.

Therefore, it is clear that Section 326A covers a situation where partial or permanent damage/deformity/burn/grievous hurt to any part of the body can not only be caused by an acid but by "any other means".

6.4 Notwithstanding the expansion in Section 326A itself of the nature of substance by the use of the phrase "any other means", the legislature has in fact in a subsequent provision Explanation 1 of Section 326B itself provided meaning to the word "acid" used in Section 326A. "Acid", as per the said Explanation, includes any substance which has acidic or corrosive character of burning nature capable of causing bodily injury leading to scarce or disfigurement or temporary or permanent disability. Therefore by this provision, it is quite evident that the legislature has included in the meaning of "acid" two clear and categorical aspects: first, any substance with an acidic/corrosive/burning nature; and second, that it has the capability of causing bodily injury leading to scars or disfigurement or temporary or permanent disability. The word "acid" therefore as used in Section 326A is not merely restricted to substances which are classically/scientifically termed as acids but extends and includes all those substances which have acidic/corrosive/burning nature and are capable of causing scarring/disfigurement/temporary or permanent disability. This is notwithstanding the fact that by including "any other means", the legislature has intended to apply Section 326A to a larger set of substances/methods which may cause such injuries to the person.

6.5 Section 326A and Section 326B alongwith the explanations are produced hereunder for ease of reference:

"326A. Voluntarily causing grievous hurt by use of acid, etc.-- Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the

intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim: Provided further that any fine imposed under this section shall be paid to the victim.

326B. Voluntarily throwing or attempting to throw acid.--Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.--For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability. Explanation 2.--For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible."

6.6 Applying these provisions to the facts and circumstances of the case, it is quite evident that this case squarely falls within the rubric of Section 326A IPC. Permanent/partial damage had been caused to PW-4's face and the eye and she had "burns" on parts of her body. Further, it is not necessary, as has been canvassed by the appellants, to determine the exact substance which was used in the assault, but it was enough that it satisfied the twin conditions as envisaged in the definitional provision of Explanation 1 of Section 326A i.e. that of being acidic/corrosive/burning nature fact and that it was capable of causing scarring/disfigurement/temporary or permanent disability. Both these elements stand conclusively proved by a bare perusal of the detailed medical record of the victim.

6.7 Even the division bench of Bombay High Court in Kavita Nityanand Shetty v. State of Maharashtra, 2021 SCC OnLine Bom 3336, a Writ Petition regarding compensation to a victim of burn injuries caused due to pouring of corrosive substance, while advertizing to Section 326-A and Section 326-B IPC, has noted in para 23 as under:

"23. From the above, the legislative intent is quite clear. Legislature has not intended to confine the rigours of sections 326A and 326B only to throwing or attempting to throw or administering or attempt to administer acid. It could be by using any other means with the intent of causing or with the knowledge that by such act, serious injury or hurt will be caused to the victim. Further the word „acid“ has not been given a strict meaning confined to its chemical formula or definition. It could be any

substance which has acidic or corrosive character or of burning nature which is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability."

6.8 As regards the contention of the appellants that the victim had tried to fabricate a case by going from hospital to hospital, this Court is of the view that this contention is absolutely baseless and untenable. It is wholly contrary to the detailed medical report which makes it evident that PW-4 having suffered a case of an acid attack had to run from pillar to post, from hospital to hospital, from emergency attention to surgery, from corneal implants to corrective surgery in at least half a dozen hospitals just to repair the damage done to her from the attack. It is impossible to accept that any person would go through such tremendous pain and intense medical process just in order to implicate somebody falsely for an assault. This theory is so far fetched that it deserves to be rejected at the very threshold. It is also evident from the testimony of PW-4 and PW-2, husband that because they were not in a good economic condition, they could not afford the treatment at certain private hospitals and therefore had to be referred from one hospital to the other.

6.9 Moreover, a perusal of the kind of medical attention that she had to receive, as tabulated under, would itself lead to a conclusion that there was no scope or situation for creating false implication and false documentation:

S. No. Duration/ Treatment/ Testimony/ Exhibits

1. Govt. Hospital, Mathura Admitted on the incident night- 08.06.2014 Observation/ Treatment: Chemical Burn Injuries- 15% Chemical burns - Referred to surgeon Testimony: PW-5, Dr Vimal Udadhyay

2. Swarna Jyanti Hospital, Mathura Refused admission on incident night- 08.06.2014 after discharge from Govt. Hospital, Mathura Testimony: PW-4, Victim and PW-2, Babloo

3. Prabha Hospital, Mathura Admitted on the incident night- 08.06.2014 for 1 night Observation/ Treatment: Referred to Prabha Hospital, Agra Testimony: PW-4, Victim and PW-2, Babloo

4. Prabha Hospital, Agra Admitted on 09.06.2014 Observation/ Treatment: Acid burn over face and back of the neck and back- Consulted plastic surgeon- Referred to Higher Centre Testimony: PW-8, Dr. B.K. Singh

5. Balbir Hospital, Bharatpur Admitted for 7-8 Days Testimony: PW-6, Victim

6. Swarna Jyanti Hospital, Mathura Admitted on 28.06.2014 to 04.08.2014 Observation/ Treatment: Old case of acid burn- 15 to 20% acid burn- referred to Ophthalmology Dept. at AIIMS Testimony: PW-9, Dr. Jai Prakash

7. Sunayan Eye Centre, Mathura Treatment on 25.07.2014 and 30.07.2014
Observation/ Treatment: Acid burn on both lids burn with lower lidcicatricial ectropion with corneal ulcer- severe infection and pus- referred to AIIMS or Shroff Eye Hospital, Delhi.

Testimony: PW-10, Dr. Mukesh Kumar

8. Ahuja Eye Centre, Aligarh Treatment on 01.08.2014 Observation/ Treatment: Chemical injury on left eye- severe corneal chemical burn- further surgery and change of cornea- referred to Shroff Eye Hospital, Delhi. Testimony: PW-11, Dr. Anupam Ahuja

9. Gandhi Eye Hospital, Aligarh Treatment on 01.08.2014 Observation/ Treatment: Diagnosed left eyecornialulcer with skin burn and there was left eye lowerectropion- eye injury due to acid burn- Referred to JN Medical College Testimony: PW-12, Dr. Pritpal Singh

10. AIIMS, Delhi Admitted 4 time for treatment between 08.08.2014 till 26.12.2015 Observation/ Treatment: 4 times treatment- loss of vision in left eye due to chemical injury- operated in the left eye- 30% handicapped- no vision in left eye upto 90% Testimony: PW-14, Dr. Nripen Gaur

11. Safdarjung Hospital, Delhi Treatment on various dates between 08.08.2014 till 16.04.2015 Observation/ Treatment: 15% chemical burns Testimony: PW-13, Dr. Lukesh Patil 6.10 As regards the contention of the appellants that the investigation was botched up and therefore the accused ought to get the benefit of doubt, this Court is of the view having seen the record that the appellants cannot have the advantage of this plea considering that there seems to be considerable merit in the testimonies of PW-4 and PW-2 that the appellants, particularly appellant Umesh who was a lawyer, wielded influence over the police in that jurisdiction and that on more than a couple of occasions despite the complaints of PW-4/PW-2, the police did not take any action on prior occasions. On a petition by the victim the investigation was transferred, by the Hon'ble Supreme Court, from Mathura to Delhi vide Order dated 1st September, 2015 in Babloo Sharma @Bablu V. State of U.P. & Ors. [Transfer Petition (Crl) No. 176 of 2015]. In any event, minor omissions in the investigation are not material to completely dislodge the case of the prosecution, as rightly pointed out by the learned APP relying upon State of M.P. v. Chhaakki Lal, (2019) 12 SCC 326.

6.11 The plea of alibi on behalf of appellant Umesh cannot be accepted considering that besides the testimonies of DW-1 and DW-3 no further corroborative evidence has been presented like a photograph to show the presence of appellant Umesh at the time of the incident at the engagement ceremony of his friend. Besides the submissions of the learned APP in this regard are acceptable to this Court where severe inconsistencies have been noted in the testimonies of DW-1 and DW-3. Whereas DW-1 stated there were 300-400 people at the said event, DW-3 stated there were just about 50-60 people in the programme.

6.12 As regards the statement recorded under Section 313 Cr.P.C.

appellants Hakim and Gyani stated that they were present at their home at the time of the incident for which no corroborative evidence has been presented by the defence.

6.13 It is evident that the victim and her family suffered on various accounts due to the persistent threat by appellant Umesh accompanied by appellant Gyani on various occasions. It is evident from the testimonies of PW-4, in particular relating to the incident of 31st May, 2014 and the lewd suggestions by the appellant Umesh about her and the proposal for prostitution, that the victim and her family had consistently been under threat of appellant Umesh and others. A bare perusal of the dates of the complaint by the victim prior to the incident and cases being registered by appellant Umesh against them and their family would show that each time a counter blast and a pressure tactic was being employed by appellant Umesh to force the victim and her family to submit. For instance, when the victim went to PS Govind Nagar to lodge a complaint on 1st June 2014 for the incident of 31st May, 2014 when the appellant Umesh with others barged into their house and threatened, abused and assaulted them, appellant Umesh on 3rd June, 2014 filed FIR 484/2014 under Sections 452,504, 506 IPC at PS Chowki Krishna Nagar (as per PW-2) against victim's devar Manohar and his son Bhola. Even after the incident, as per the testimony of PW-4, Umesh got filed through Gudia @Gulshan a false case in Mathura against victim's devar Sanju and later through his friend Gaurav filed a false case of rape against sons of victim's jeth.

6.14 It is also noted, as per the testimonies on record, that the victim and her family translocated themselves to Faridabad post the incident after having lived for her 20 years in Mathura, seemingly due to fear that had been perpetrated by the appellants and his accomplices over the victim and her family in order to withdraw or compromise the case.

6.15 On the issue of acid attacks of this nature and the context in which they occur, this Court would like to underscore some parts of the Law Commission Report No. 226 dated July 2009 (presented by the learned APP in his submissions) which gives a background of the legislative intention behind the insertion of Section 326A in IPC and the severity and complexity of acid attack cases in society.

"Furthermore, an acid attack has long-lasting consequences on the life of the victim who faces perpetual torture, permanent damage and other problems for the rest of her life. Victims normally feel worthless, afraid and modified and become social outcasts because of their appearance. They may become too traumatized and embarrassed to walk out of their house and carry out simple tasks let alone get married, have children, get a job, go to school, etc. Even if they are willing to pursue a normal life, there is no guarantee that society itself will treat them as normal human beings given their appearance and disabilities after an attack. They may not be able to work, or be able to find a job, and thus perpetually struggle to survive.

It has been contended by those working for these victims that the Criminal law relating to grievous hurts in Sections 320, 322, 325 and 326 of the Indian Penal Code (I.P.C) is insufficient to deal with the phenomenon of acid attacks.

.....

1. We therefore propose that a new section 326A be added to the Indian Penal Code. The proposed Section 326 A will read as follows-

326 A. (i) Hurt by acid attack- Whoever burns or maims or disfigures or disables any part or parts of the body of a person or causes grievous hurt by throwing acid on or administering acid to that person, with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punishable with imprisonment of either description which shall not be less than 10 years but which may extend to life and with fine which may extend to Rs. 10 Lakhs.

Provided that any fine levied under this section shall be given to the person on whom acid has been thrown or administered.

CLASSIFICATION OF OFFENCE Minimum Imprisonment of 10 years extendable upto imprisonment for life and fine--cognizable-- non-bailable--triable by court of session--non- compoundable.

(ii) Intentionally throwing or administering acid-

Whoever throws acid on, or administers acid to, any person with the intention of causing burns or maiming or disfiguring or disabling or causing grievous hurt to that person shall be liable to imprisonment of either description for a term not less than 5 years but which may extend to 10 years and with fine which may extend to Rs. 5 Lakh.

CLASSIFICATION OF OFFENCE Minimum Imprisonment of 5 years extendable upto 10 years and fine-- cognizable-- non-bailable-- triable by court of session--non- compoundable.

2. We further propose, for the reasons stated above, that in cases of acid attack a presumption be incorporated in the Indian Evidence Act as Section 114B. The proposed Section 114B of the Indian Evidence Act shall read as under.

Section 114 B: Presumption as to acid attack- If a person has thrown acid on, or administered acid to, another person the court shall presume that such an act has been done with the intention of causing, or with the knowledge that such an act is likely to cause such hurt or injury as is mentioned in Section 326 A of the Indian Penal Code.

3. We propose that a law known as "Criminal Injuries Compensation Act" be enacted as a separate Law by the government. This law should provide both interim and final monetary compensation to victims of certain acts of violence like Rape, Sexual Assault, Acid Attacks etc. and should provide for their medical and other expenses relating to rehabilitation, loss of earnings etc. Any compensation already received by the victim can be taken into account while computing compensation under this Act.

4. We further recommend that the distribution and sale of acid be strictly regulated and the sale of Acid across shop counters be banned.

.....

Hydrochloric, Sulphuric and other acids all have a catastrophic effect on human flesh. These corrosive substances cause the skin tissue to melt. The bones of victims become exposed and sometimes the acid dissolves the bones too. Permanent scars as can be seen in Hasina's case disfigure a human being's body for life. Furthermore, if acid enters the eyes of the victim during an attack, as is common in acid attack cases, it damages these vital organs permanently. Many acid attack survivors have lost the use of one or both eyes."

(emphasis added) 6.16 It may be useful to note the difference between what was proposed by the Law Commission for a new Section 326A and what was finally inserted by the Parliament. The Parliament has gone a step further than what was proposed by the Law Commission and expanded its scope and reach both as to causative aspects and to the rehabilitative aspects for the victim. The differences are underscored for ease of reference.

Proposed

Actual

326 A. (i) Hurt by acid attack-

326A. Voluntarily causing
Whoever burns or maims or grievous hurt by use of ac
disfigures or disables any part
etc--- Whoever
or parts of the body of a permanent or partial damag

person or causes grievous hurt or deformity to, or burns or by throwing acid on or maims or disfigures or administering acid to that disables, any part or parts of person, with the intention of the body of a person or causes causing or with the knowledge grievous hurt by throwing acid that he is likely to cause such on or by administering acid to injury or hurt, shall be that person, or by using any punishable with imprisonment other means with the intention of either description which of causing or with the shall not be less than 10 years knowledge that he is likely to but which may extend to life cause such injury or hurt, shall and with fine which may be punished with imprisonment extend to Rs. 10 Lakhs. of either description for a term which shall not be less than ten Provided that any fine levied years but which may extend to under this section shall be imprisonment for life, and with given to the person on whom fine:

acid has been thrown or administered. Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

6.17 It may be useful to refer to the following extracts from Chapter 2 of the Law Commission Report No.226 dated July, 2009 to appreciate the gravity of an offence of an acid attack (or the like) on a victim and the extreme and extensive impact it has

on the life and livelihood of a victim:

"While very little data is available on acid attacks in India some studies have reported an increasing trend in cases relating to acid attack. According to a study 174 cases of acid attack were reported in India in 2000.

These cases showed the kind of injuries that victims of acid attack suffered. The injuries range from burns to permanent disfigurement to death. In many acid attacks the victim suffers a slow and painful death

Acid attack survivors are physically, psychologically and socially traumatized. The physical extents of their injuries are deep, permanent and have a direct impact on their psychological well-being and social functionality.

As a result of disfigurement and disability victims are permanently debilitated and are forced to give up their lives, their work, their education.

.....

Acid attacks are seen as one of the most vicious crimes as it causes perpetual suffering to the victim. As acid melts flesh and even the bones of a person, it causes an unparalleled degree of pain to the victim and leaves her mutilated and scarred as well as giving permanent disabilities at times such as blindness. Victims face lifetime physical, social, psychological and economic consequences.

Some of the well-known effects of acid are as under:

Acids are corrosive substances that will cause visible necrosis (death) of human skin tissue and will even corrode a metal in higher concentration. They can cause serious poisoning, burning and serious injury can result from exposure to strong acids.

Commonly available acids include Sulphuric acid, Hydrochloric acid Hydrofluoric acid, Phospaic acid etc. Acids are used in laboratories and factories/industries.

In an acid attack the skin is the main organ of contact. The effects of acid on the skin may include redness, and burns. In severe cases, it could lead to shock and death. Some other effects include permanent hair loss and scaring. If inhaled in large quantity it can also lead to pulmonary disorders."

6.18 Further, Chapter 2 of the Law Commission Report No.226 dated July, 2009 discusses in detail the consequences of an acid attack, including injuries and physical consequences, treatment, psychological consequences, social and economic consequences in detail.

Conclusion

7. In light of the above discussion and analysis, this Court finds that the guilt of the appellants for the offence punishable under Section 326A/34 IPC has been proved beyond reasonable doubt and duly supported by evidence on record. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

8. The learned Trial Court has already directed that amount of Rs.

1,25,000/- be paid to the victim out of total fine of Rs. 2,50,000/-, collectively imposed on the appellants. This Court directs that the full amount of the fine paid by the appellants be paid to the victim as compensation. Taking into account the facts and circumstances of the case, this Court recommends that the victim is entitled to compensation of at least Rs. 5,00,000/- (Rupees Five Lacs Only). Depending on what is finally paid as fine by the appellants and compensation received by the victim, this Court directs that the balance amount (out of total compensation of Rs. 5,00,000/-) be paid to the victim under Uttar Pradesh Victim Compensation Scheme, 2014 (as amended from time to time by the Government of Uttar Pradesh). Accordingly, a copy of this judgment be sent to the Secretary, State Legal Services Authority, Uttar Pradesh for information and necessary action. This direction to the Uttar Pradesh authorities is necessitated as the offence was committed in Mathura, State of Uttar Pradesh, and the victim ought to be compensated pursuant to directions by the Hon'ble Supreme Court in *Laxmi v. Union of India*, (2014) 4 SCC 427 and consequent regulations by the State Government in whose jurisdiction the crime was committed.

9. Appeals are accordingly dismissed. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellants and updation of records.

10. In view of the disposal of the appeals, all pending applications are rendered infructuous.

(ANISH DAYAL) JUDGE (MUKTA GUPTA) JUDGE OCTOBER 13, 2022/"mk"