IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 07.10.2013

CRIMINAL APPEAL No.980/2009

NAEEM KHAN @ GUDDU **..... Appellant**

Through: Ms. Santosh Singh, Advocate with Mr. Rakesh K. Mudgal and Mr. Dinesh Mudgal, Advocates

versus

STATE **..... Respondent**

Through: Mr. Mukesh Gupta, APP
Ms. Aparna Bhat, Advocate with Mr. P. Ramesh Kumar, Advocate for the complainant

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. Acid attack, especially on women, has seen an alarming growth in India. Acid attack or 'vitriolage' is often referred to as a 'crime of passion' fuelled by jealousy and revenge. Acid throwing is the easiest way to hurt a woman and often used as a form of revenge on refusal of sexual advances, proposal of marriage and demands of dowry. Perpetrators of acid attacks intend to disfigure and cause extreme physical and mental suffering to

victims. The present appeal deals with one such unfortunate and ghastly incident where a girl at tender age of 16 years was brutally attacked by acid.

2. By way of the present appeal, the accused Naeem Khan @ Guddu impugns the judgment dated 24.08.2009 passed in Sessions Case No. 28/09 arising out of FIR No. 74/2005 whereby the appellant along with co-accused Rakhi has been convicted under Section 307 read with Section 120B of the Indian Penal Code, 1860(IPC). By an order on sentence dated 15.09.2009, for offence under Section 307 IPC the appellant has been sentenced to undergo rigorous imprisonment for 10 years and fine of Rs 75,000/-. In default of payment of fine, he has to undergo simple imprisonment for one year. For offence under Section 120B IPC, the appellant is to undergo rigorous imprisonment for seven years and fine of Rs 5000/-. In default of payment of fine, he has to undergo simple imprisonment for three months.

3. At the outset, it is noted that co-accused Rakhi who had been convicted by the impugned judgment has accepted her conviction on merits before this court and the same is recorded by the Ld. Single Judge (A.K Pathak,J.) in order the dated 26.05.2011.

4. The prosecution case, in brief, is as under:-

(i) On 22nd April, 2005, at about 10:45 am, DD No. 10 A (Ex. PW-19/A), was registered at police station Tughlak Road, New Delhi upon an information received via intercom that at the traffic light of Humayun Road, some unknown persons have splashed acid (tezab) on a girl from a glass and the PCR van is taking her to the hospital. SI Shiv Shankar (PW-19) was entrusted with the investigation and proceeded to the spot along with Ct. Abhay Singh (PW-6). At the spot, SI Shiv Shanker found certain spots of chemical on the pavement. One broken glass piece and the handkerchief of a lady in burnt condition were also found at the crime scene.

(ii) Thereafter, SI Shiv Shanker (PW-19) came to know that the victim has been removed to RML Hospital. On receipt of the said information, PW-19 proceeded to the hospital where he obtained the MLC (Ex PW-20/A) of injured victim Laxmi. The MLC revealed that the victim had suffered approximately 25% acid burn injuries present over the face, eyes, anterior chest and both arms. It was further revealed that the victim is daughter of Munna Lal (PW-3) and resident of servant quarters in Golf Links. As per medical advice, the injured victim was declared unfit to tender a statement and was removed to the surgical ward for further treatment. The wearing clothes of victim Laxmi consisting of one suit and undergarments were seized vide memo Ex PW-6/B. Thereafter, SI Shiv Shanker (PW-19) proceeded to the spot and got the crime spot photographed. From the spot, a stone piece stained with earth control chemical,

burnt glass pieces and the lady handkerchief were seized vide seizure memo Ex PW-6/A. The articles seized from the road were sent up for forensic examination and according to the CFSL Report (Ex PW-19/M), hydrochloric acid was detected on the same.

(iii) A charge under Section 307 IPC was formulated after observing the deleterious condition of injured victim Laxmi and her MLC (Ex PW-20/A). DD No.10A (Ex PW-19/A) became the *ruqqa* and was despatched on 22.04.2005 at about 12:30 pm which led to the registration of FIR No 74/2005 proved as Ex PW-5/A.

(iv) During investigation, statement of Munna Lal (PW-3), father of the victim Laxmi was recorded by the police on 22.04.2005. PW-3 stated that he was informed that some unknown assailants have thrown acid on his daughter and she had been rushed to the hospital by the police. On reaching the hospital, he found his daughter Laxmi in a severely injured condition and on asking her about the assailants, she revealed that a girl, sitting on the pillion seat of a motorbike, driven by a boy poured acid on her. She also stated to him that both the boy and the girl looked familiar to her and thereafter Laxmi became unconscious.

(v) According to the prosecution, victim Laxmi was declared fit for statement on 24.04.2005 but her statement could not be recorded as on the said date she was suffering from intense pain. However, on 25.04.2005, statement of injured Laxmi was recorded by the police under Section 161 of the Code of Criminal Procedure, 1973 (Cr. P.C) and the same is marked as Ex PW-1/A. In her statement, injured Laxmi stated that she was working as a sales representative at New Janta Book Depot, Khan Market and has studied up to class 8th. She liked a boy named Raj Kamal(PW-4) who was her classmate in school. Another boy named Naeem Khan @ Guddu, the appellant herein, was employed in her neighbourhood. Laxmi stated that her mother before marriage belonged to Muslim religion and therefore, the appellant was a regular visitor in her house. Infact, the entire family of the appellant was acquainted and well known to Laxmi's family as they had known each other for several years. Laxmi further stated the appellant started talking about falling in love with her over the telephone and also sent few SMS's in this regard. The appellant also placed the proposal of marriage before her family but Laxmi resisted the

same because of the large gap between their ages. Thereafter, the appellant started pressurizing Laxmi for marriage and to maintain telephonic ties with him which was either evaded or turned down by her. On 22.04.2005 at about 10:30 am, when she was going towards Khan Market from her house, a motorcycle stopped near her at Hanuman Road. The driver of the motorcycle was wearing black coloured helmet and had a lean body which was similar to that of the appellant. Laxmi further stated that the pillion rider was a woman aged about 28-30 years who alighted from the motorbike and threw acid on her face as a result of which her face and chest were burnt. On Laxmi's effort to save her by raising her hands, the acid burnt her hands as well. She described the complexion of the aforesaid woman to be wheatish, having a flat nose and an old injury mark on the left side of the face. Laxmi stated that she had seen the woman who threw acid on an earlier occasion as well with Imran, the brother of the appellant and her name was either Rakhi or Rekha. On raising alarm, she fled from the scene after sitting on the motorcycle driven by the appellant. On hearing cries, people gathered but no one offered help and later

on a PCR van transported her to the hospital. Laxmi in the end stated that she was fully confident that her attackers consisted of the appellant riding the motorbike and the pillion rider was Rakhi who was a friend of Imran (appellant's brother). She mentioned the motive behind the attack to be her liking for Raj kamal and spurning of marriage proposal of the appellant.

(vi) On injured Laxmi implicating the appellant, the latter was arrested on 26.04.2005 at about 5:00 am from Trilokpuri vide arrest memo Ex PW-7/A. It is further the case of prosecution that after the arrest, the appellant gave a disclosure statement, Ex PW-7/C, pursuant to which an acid bottle was recovered from the bushes near the children's park at Pandara Road. The said bottle was seized vide seizure memo Ex PW-8/A on 26.04.2005.On completion of investigation, the appellant along with co-accused Rakhi and Imran was put to trial for charges under Section 307 IPC read with Section 120 B.

(vii) The prosecution, in order to substantiate its case, examined 22 witnesses. No witnesses were produced in defence. Incriminating circumstances were put to the appellant under

Section 313 Cr. P.C to which false implication was pleaded by him.

(viii) On evaluation of evidence, the trial court came to the conclusion that the appellant was the mastermind behind the brutal attack on Laxmi and accordingly convicted him principally on the basis of the ocular testimony of sole injured witness Laxmi who testified in court as PW-1.

5. It is not in dispute that injured Laxmi was attacked by acid on the fateful morning of 24th May, 2005. The same stands proved by medical evidence. PW-20 Dr. Santosh Kumar proved the MLC (Ex PW-20/A) of Laxmi. He deposed that MLC of Laxmi was prepared by Dr.Shyam Gopal and as per the MLC she had received approximately 25% acid burns over the face, eyes, front of chest and forearm. Laxmi was immediately referred to a burn specialist for a surgical emergency. The nature of injures were opined to be burn and plastic surgery.

6. The counsel for the appellant has questioned the validity of the impugned judgment firstly, on the ground that the name of accused-appellant did not find mention in the initial information received by the police as recorded in DD No. 10A (Ex PW-19/A). The name of the appellant only

cropped up once the statement of PW-1 injured Laxmi was recorded by the police under Section 161 Cr. P.C on 25.04.2005, nearly three days after the incident. In this regard, it has been urged that MLC (Ex PW-20/A) postulates that the victim Laxmi was declared fit to tender a statement on 24.04.2005 at about 5:00 pm but she did not deliver a statement on the said date and instead a statement was recorded on the 25.04.2005 and therefore, there is an enormous possibility that the name of the appellant was imputed as an afterthought and version given by the injured Laxmi was concocted and fabricated.

7. It is further submitted that statement of PW-3 Munna Lal, father of victim Laxmi was recorded by the police on the date on which the incident occurred but the appellant was not implicated in the same.

8. I do not find any substance in the said contention raised on behalf of the appellant. It was PW-1 Laxmi who was attacked by mysterious assailants by pouring acid and she was best person who could have disclosed to the police about the identity or the name of the perpetrators of the crime. PW-1 Laxmi did so on the very first opportunity which came her way when her statement was recorded by the police on 25.04.2005 in which the appellant and co-accused Rakhi were implicated as the authors of the gory act. It may

be true that PW-1 Laxmi refused to give her statement on 24.04.2005 when she was declared fit by the doctor as recorded in her MLC(Ex PW-20/A). The reason for declining to make a statement on the said date was that she was in terrible pain because of the acid burn injuries suffered by her on her face and chest. On perusal of the MLC, it is ostensible that Laxmi had suffered from approximately 25% burn injuries and the part of her body which suffered most of the brunt was her face and hands. It is believable and in fact merits acceptance that Laxmi must have been in immense pain on 24.04.2005, just two days after the incident and was therefore, not in a position to give her statement because of pain. In the circumstances, plight and agony of a victim who was brutalised by an acid attack causing severe injuries on her face and upper part of the body cannot be lost sight of. In my opinion, reasonable explanation has been furnished by the prosecution for not being able to record the statement of Laxmi on the date she was first declared medically fit do so.

9. As regards initial statement of PW-3 Munna Lal, recorded by the police official on 22.04.2005, it is sufficient to note that he could not have possibly implicated the appellant at the first call as he merely recited what was told to him by his daughter Laxmi, when he met her at the hospital in an

injured condition. From the contents of his statement, which have been noted above, it is apparent that injured Laxmi while enumerating her story fell unconscious mid-way and was not able to narrate about the incident in its entirety. It is probable that the condition of Laxmi (PW-1), keeping in mind the injuries suffered by her, soon after the incident was not sound enough so as to enable her to narrate the entire incident in detail before her father.

DEPOSITION OF SOLE INJURED EYE WITNESS LAXMI (PW-1)

10. The sheet-anchor of the entire prosecution version is the testimony of PW-1 Laxmi. She is an injured eye witnesses who suffered brutal injuries on her face, chest and hands as result of acid being poured on her. PW-1 in examination-in-chief made the following deposition:-

> "On 22.04.2005 I was going to my job place in Khan Market and when I was near the bus stand of Khan Market I was on foot one lady by the name of Rakhi came there along with a boy namely Guddu. Rakhi put her hand on my face and I was pushed on the road. Rakhi put acid which was in a glass on my face and body. They both came on a bike. Bike was driven by Guddu after putting acid on me the glass was put on the road and they both ran away on the bike. I did not note down the number of the bike.
>
> Court Q. Do you know any of the above named two persons before this incident?"
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> Ans. I know Guddu. He used to visit my house. He was known by my family also.

> To my assessment acid thrown to me because Guddu was not liking my friendship with one Raj Kawal. Guddu was asking me to marry him but I refused. I raised noise at the place of incident but nobody came there. Somebody called the PCR and I was taken to the hospital RML by the police where I was admitted and I was given treatment. My statement was recorded by the police on the same day at RML hospital. My signatures were obtained which is Ex PW 1/A which bears my signatures at point A. I am under treatment from Apollo Hospital."

11. On being subjected to extensive cross examination on behalf of the accused-appellant, PW-1 Laxmi admitted that the she knew the appellant from about two and a half years prior to the incident and he was on visiting terms in her house. She admitted that the appellant and his family were invited to her house for her birthday function on 1.06.2004. She denied attending the birthday function of appellant's bhanja. PW-1 further admitted that her mother before marriage practiced Muslim faith but at present she is Hindu. PW-1 denied that her mother wanted her to marry in a muslim family. She stated that as no proposal from her side for marriage was extended to the appellant's family and hence there was no question of denial from appellant's family. PW-1 admitted that at the time of the incident she was having a love affair with Raj Kamal (PW-4) and she knew Raj Kamal from her school days as both of them were studying in the same school.

12. On further cross examination, PW-1 denied that factum of quarrel taking place between the appellant and PW-4 Raj Kamal or that PW-4 had beaten the appellant on any occasion. She further denied that PW-4 had threatened to spoil her face with acid in case she keeps any contact with the appellant. PW-1 denied that any money transaction took place between her and PW-4 Raj Kamal. She never threatened PW-4 for any kind of pecuniary gains.

13. When cross examined on the aspect of the incident, PW-1 stated that she left her house at 10:30 am but did not remember the time when she reached Humayun Road. She stated that the incident took place at about 10:45 am near the bus stand, Khan Market. She admitted that at the site of the incident, the appellant and co-accused Rakhi were standing. She admitted stating before the police officials that Rakhi put hand on her face and pushed her on the road. PW-1 further stated that the acid was carried by co-accused in a glass and after throwing the acid, the said glass was thrown on the road. She stated that the motorcycle came near to her but could not remember the exact distance. She denied the suggestion about not having seen the face of the motor driver. PW-1 clarified that she saw the face of the appellant while he was talking to co-accused Rakhi and the appellant was wearing a helmet

without a visor. She admitted that said fact was not told by her to the police as she was in a serious condition having suffered major burn injuries and was being stated by her for the first time in cross examination. She could not disclose the said fact to the police even thereafter as the she remained under medical treatment for approximately 21/2 years.

14. PW-1 admitted that she did not remember the exact date when her statement was recorded by police. Her statement was recorded in the hospital but she did not remember whether her family members were present at the time of recording her statement. PW-1 admitted telling her father that acid was thrown on her by the appellant and co-accused Rakhi. She denied that the appellant and Rakhi were not standing and talking at the place of the incident. She was unconscious when she reached the hospital. She admitted that the appellant visited her at the hospital but did not remember if he had brought food for her. She categorically denied that acid was not thrown on her by the appellant and co-accused Rakhi.

15. With respect to the deposition of the PW-1, it is contended on behalf of the appellant that there are glaring and major contradictions in the testimony of PW-1 Laxmi before the court and her statement, Ex PW1/A, recorded by the police in the hospital. It is further submitted that the

statement made by injured PW-1 before court comprises of embellishments and an entirely new version has been introduced in the same which was not stated by her before the police. It is pointed out that PW-1 in her statement under Section 161 Cr.P.C did not mention that co-accused Rakhi had poured acid from the glass and the same has been deposed by her in court. Therefore, the trial court erred in placing reliance upon the testimony of sole injured eye witness PW-1 Laxmi whose statement is shaky and unworthy of credence.

16. With respect to identification of the appellant, it has been contended that PW-1 Laxmi had not even seen the face of the appellant at the time of incident as she in her statement recorded under Section 161 Cr.P.C has stated that the motorbike was driven by a person wearing a black helmet. However, in her testimony before the court she deposed that the person driving the motorbike was wearing a helmet but without the visor. According the counsel for the appellant, there is marked improvement in the testimony of PW-1 Laxmi before the court in comparison to what was stated by her soon after the incident and hence her entire testimony is liable to be rejected on the said premise as this shakes the core prosecution case.

17. It is further contended that despite the fact that the incident occurred in broad day light, no independent public witnesses have been joined in either investigation or produced at the time of trial. It is further submitted that one Arun who informed PW-3 Munna Lal about the mishap having taken place with PW-1 was also not interrogated by the police.

18. I have gone through the testimony of PW-1 Laxmi in detail. She is an injured eye witnesses who suffered brutal injuries on her face, chest and hands as result of acid being splashed on her. The evidence of an injured witness has to be accorded great weightage and in this regard observations of the Supreme Court in the following decisions are apposite.

19. In ***State of M.P. v. Mansingh,*** (2003) 10 SCC 414**,** the Supreme Court observed:-

> "The evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report,that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence."
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> (emphasis supplied)

In ***Abdul Sayeed v. State of M.P.,***(2010) 10 SCC 259, the Supreme Court held:-

"**28.** The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh* v. *State of Bihar* [(1973) 3 SCC 881 : 1973 SCC (Cri) 563 : AIR 1972 SC 2593] , *Malkhan Singh* v. *State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12] , *Machhi Singh* v. *State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] , *Appabhai* v. *State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] , *Bonkya* v. *State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113] , *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163] , *Mohar* v. *State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606*b-c*), *Dinesh Kumar* v. *State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472] , *Vishnu* v. *State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] , *AnnareddySambasiva Reddy* v. *State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje* v. *State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211].

29. While deciding this issue, a similar view was taken in *Jarnail Singh* v. *State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

> "*28.* Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor.

His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *ShivalingappaKallayanappa* v. *State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P.* v. *Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan* v. *State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go

unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

(emphasis supplied)

Similarly in ***State of Uttar Pradesh v. Naresh,*** (2011) 4 SCC 324, evidentiary value to be attached to the statement of an injured witness was expressed in the following words:-

"**27.** The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. (Vide *Jarnail Singh* v. *State of Punjab* [(2009) 9 SCC 719:(2010) 1 SCC (Cri) 107] , *Balraje* v. *State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] and *Abdul Sayeed* v. *State of M.P.* [(2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262]"

(emphasis supplied)

20. On analysing the testimony of PW-1 Laxmi on the touchstone of law laid down by various decisions of the Supreme Court, I am of the considered opinion that the submissions advanced by the counsel for the appellant deserve to be rejected.

21. As noted above, PW-1 was severely injured in the incident and her entire face was burnt. In her statement under Section 161 Cr.P.C, Laxmi was certain that the author of the crime was the appellant. She stuck to her statement before the court as well with conviction. Despite being subjected to lengthy cross examination, I do not find that any major contradiction or material improvement in her testimony before the court to what was deposed by her before the police official has been elicited by the appellant. She narrated the incident vividly before the police and categorically implicated the appellant. It is probable that PW-1 might have missed to narrate finer details as regards co-accused carrying a glass etc., before the police but the same is acceptable as she was cruelly injured by splashing of acid and must have been in a state of shock soon after the incident. I find her testimony trustworthy and believable. No new version has been introduced by PW-1 before the court so as shake or discredit the core prosecution case. Minor variations are bound to occur in testimony of a witness on account of time

lapse or mental shock, and in the present case, the entire face and hands of PW-1 Laxmi were damaged by reprehensibly pouring acid on her. In this behalf the observation of the Supreme Court in ***Narayan Chetanram Chaudhary v. State of Maharashtra*, (2000) 8 SCC 457** are pertinent:-

> **42.** Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness. In this regard this Court in *State of H.P.* v. *Lekh Raj* [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : (1999) 9 ST 155] (in which one of us was a party), dealing with discrepancies, contradictions and omissions held: (SCC pp. 258-59, paras 7-8)
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> > "Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while

narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese* v. *State of Kerala* [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In *Jagdish* v. *State of M.P.* [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan* v. *Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

Referring to and relying upon the earlier judgments of this Court in *State of U.P.* v. *M.K. Anthony* [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , *Tahsildar Singh* v. *State of U.P.* [AIR 1959 SC 1012 : 1959 Cri LJ 1231] , *Appabhai* v. *State of Gujarat* [1988 Supp SCC 241

: 1988 SCC (Cri) 559 : JT (1988) 1 SC 249] and *Rammi* v. *State of M.P.* [(1999) 8 SCC 649 : JT (1999) 7 SC 247] this court in a recent case *Leela Ram* v. *State of Haryana* [(1999) 9 SCC 525 : JT (1999) 8 SC 274] held:

'There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence….

The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.' "

(emphasis supplied)

Similarly, in ***A. Shankar v. State of Karnataka,* (2011) 6 SCC 279,** the Supreme Court observed:-

22. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

23. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "*Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions*." The omissions which amount to contradictions in material particulars i.e. materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. [Vide *State* v. *Saravanan* [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580 : AIR 2009 SC 152] , *Arumugam* v. *State* [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130 : AIR 2009 SC 331] , *MahendraPratap Singh* v. *State of U.P.* [(2009) 11 SCC 334 : (2009) 3 SCC (Cri) 1352] , *Sunil Kumar Sambhudayal Gupta (Dr.)* v. *State of*

Maharashtra [(2010) 13 SCC 657 : (2011) 2 SCC (Cri) 375 : JT (2010) 12 SC 287] , *Vijay* v. *State of M.P.* [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , *State of U.P.* v. *Naresh* [(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] and *BrahmSwaroop* v. *State of U.P.* [(2011) 6 SCC 288 : AIR 2011 SC 280]].

(emphasis supplied)

22. Now adverting to the contention raised regarding the identity of the appellant, I note that PW-1 in her statement under Section 161 Cr.P.C firmly stated the person driving the bike looked familiar and had a lean body. She also stated that the said driver was wearing a helmet and assuredly it was the appellant. It is true that while deposing before the court she mentioned for the first time that the driver of the bike was wearing a helmet without a visor and therefore, she was able to see his face. When confronted with her statement under Section 161 Cr. P. C where it was not so mentioned, PW-1 voluntarily clarified that she could not mention the said detail before the police as she was in a serious condition and admitted stating about the same for the first time in court as after the incident she had been under intensive treatment for 21/2 years. In my opinion reasonable explanation has been furnished by PW-1 for not mentioning about the visor of the helmet. It is natural and believable that PW-1 Laxmi was in an appalling condition soon

after the incident having received significant acid burn injuries on her face, chest and arms and therefore, while deposing before the police she was not able to mention all the finer details. Even if for the sake of argument, I accept the said contention of the appellant and take into consideration only what was deposed by PW-1 in her statement under Section 161 Cr.P.C, I find that PW-1 had identified the appellant from the lean structure of his body as the appellant was not a stranger to her and was continually harassing her on account of being a dejected lover. It is worthwhile to mention that she had seen the appellant on numerous occasions before the attack. In this regard, the Supreme Court in the case of ***Kedar Singh and Others vs. State of Bihar 1999 CriLJ 601*** and ***State of Uttar Pradesh vs. Manoharlal and Others 19811981 Supp. SCC 35*** has held that even in paucity of light or darkness, the Appellants could have very well been identified by their voice, gait, clothes, manner of speaking, etc. I find no reason to disbelieve or reject the entire testimony of PW-1 Laxmi only on this ground as being an injured witness it is highly unlikely that she would be spare her real culprits to falsely implicate the appellant. Even otherwise, nothing significant has emerged from the cross examination of PW-1 regarding her bearing any ill-will or animosity towards the appellants so as to falsely implicate him. In the

circumstances, I see no reason to reject the testimony of PW-1 as being shaky and unreliable.

23. On the aspect of non-joining of public witnesses in investigation or securing their presence at the trial, I note that PW-19 SI Shiv Shanker, the Investigating Officer, has testified in court that the road on which the incident took place had moving traffic and about 10-20 persons were gathered at the spot. He made enquires with the persons present but none of them were aware about the facts barring that they had heard cries of the victim Laxmi. However, I am not impressed with the argument by the appellant's counsel. Though it is true that the incident having taken place near the market around 10:30 am, the prosecution should have attempted to secure public witnesses who had witnessed the incident, but at the same time one cannot lose sight of the ground realities that members of the public are generally insensitive and reluctant to come forward to report and depose about a crime even though it is committed in their presence. In my opinion, even otherwise it will be erroneous to hold that non-examination of a public witness by itself gives rise to an adverse inference against the prosecution or that the testimony of an injured victim, which is otherwise creditworthy, cannot be relied upon unless corroborated by public witnesses. Furthermore,

it is trite law that evident should be weighed and not counted and conviction can be based upon a testimony of sole witness, if found cogent and reliable.

RECOVERY AND DISCLOSURE STATEMENT (Ex PW 7/C) OF THE APPELLANT

24. It is the case of the prosecution that pursuant to the arrest, the appellant made a disclosure statement (Ex PW 7/C). Consequent thereupon, a beer bottle (Ex P10) having stains of acid was recovered by PW-19 SI Shiv Shanker from the bushes near children's park at Pandara Road. The said beer bottle was seized vide Ex PW- 8/A and forensic examination of the same revealed presence of Hydrochloric acid on it.

25. It is contended by the Counsel for the appellant that false evidence in form of beer bottle has been planted on the appellant. It is submitted that the appellant was arrested nearly three days after the incident i.e., on 26.04.2005 and it is highly improbable and unnatural that the appellant would not have destroyed the same before his arrest. It is further alleged that in her statement before police, PW-1 has not mentioned any beer bottle.

26. In this regard Ld. Public Prosecutor has urged that CFSL report (Ex PW-19/M) pertaining to beer bottle Ex P-10 clearly exposes presence of acid

traces on the same and there has been no challenge to the said FSL report by the appellant.

27. In my opinion, recovery of beer bottle (Ex P-10) pursuant to the disclosure statement of the appellant is doubtful. The appellant had ample opportunity before his arrest to destroy the bottle. It is highly suspicious that the appellant after committing the wicked act of throwing the acid on a girl would drop off the beer bottle at a place reasonably near the crime spot. I take note of the fact that as per the forensic examination acid was detected on the beer bottle but that in itself is not sufficient to establish that recovery of beer bottle was made pursuant to the disclosure statement of the appellant.In these circumstances, the possibility of beer bottle with acid stains being implanted cannot be ruled out completely and hence the recovery of the same at the instance of the appellant is disbelieved and rejected.

MOTIVE

28. The motive behind the ghastly act is stated be spurned love and feeling of revenge. As per the prosecution, PW-1 Laxmi was the love interest of the appellant and when she refused the establish any kind of love relationship with the appellant, in order to seek vengeance the appellant through co-

accused Rakhi, who was the wife of appellant's brother Imran, got acid splashed on her. In a nutshell, the appellant was the architect behind the attack on PW-1 Laxmi as he was not able to handle the refusal of his love by her.

29. In order to establish motive, testimony of PW-I Laxmi and PW-4 Raj Kamal is pertinent. PW-1 in her statement under Section 161 CrPC while implicating the appellant clearly stated that acid was thrown on her by Rakhi who acted in connivance with the appellant as PW-1 liked PW-4 Raj Kamal and refused the marriage proposal of the appellant. A similar stand was reiterated by her before court and therefore it emerges that repudiation by PW-1 to marry the appellant irked him and became the motive behind the commission of this offence.

30. PW- 4 Raj Kamal is stated to be the love interest of victim Laxmi. In his testimony he admitted knowing Laxmi since 2003 as both of them were studying in the same school. He also admitted the factum of love relation between them however, he denied knowing the appellant. He stated that PW-1 Laxmi had told him that the appellant also loves her. PW-4 further stated that he had never met the appellant and he was never threatened by the appellant. PW-4 was declared hostile as he resiled from his earlier statement.

31. It has been urged by the Counsel for the appellant that PW-4 Raj Kamal denied having been threatened by the appellant and therefore, there is an apparent contradiction between the testimony of PW-4 Raj Kamal and PW-1 Laxmi.

32. Though PW-4 turned hostile, his testimony corroborates the fact that PW-1Laxmi was in love with him and both of them shared a relationship. This lends credence to the testimony of PW-1 Laxmi that she rebuffed the marriage proposal of the appellant for the reason that PW-4 was her romantic interest.In view of the above, it is established beyond doubt that the appellant bore a grudge against PW-1 Laxmi on account of rejection of his proposal for marriage.

CONDUCT OF THE ACCUSED

33. The Learned Counsel for the Appellant has urged that conduct of the appellant subsequent to the acid attack was inconsistent with the conduct of an accused. It is submitted that PW-1 Laxmi has herself admitted that the appellant came to visit her at the hospital after the incident took place and hence if the appellant was the culprit of the crime, he would have escaped instead of paying a visit to PW-1 Laxmi.

34. I am not impressed by the said submission. It is plausible that the appellant after committing the heinous act wanted to have a look at the victim in order to assess the damage caused to her and whether she was in a position to implicate him. It is a settled proposition that human behaviour differs from person to person and it cannot be stated with certainty that a person would act in a particular manner in a given situation. The said submission is therefore rejected.

STATEMENT OF THE APPELLANT UNDER SECTION 313 Cr.P.C

35. On being confronted with the incriminating circumstances, the only explanation furnished by the appellant was that he was not involved in the crime and was falsely implicated by PW-1 Laxmi at behest of PW-4 Raj Kamal with whom Laxmi had developed an affair for which reason the appellant refused to marry her. The appellant further stated PW-4 Raj Kamal was arrested by the police on this account.

36. PW-4 Raj Kamal in his testimony before the Court admitted the fact the he was arrested by the police soon after the incident and was kept in police custody for 3 days. It is clear from the testimony of PW-4 that soon after the incident the police suspected him to be author of the crime and therefore, he was taken in to custody. However, when the statement of PW-1

Laxmi was recorded by the police a different story emerged and it was revealed that the appellant was behind the gruesome attack on her. Therefore, it can safely be concluded that PW-4 was not given a clean chit till statement of PW-1 Laxmi was recorded. Furthermore, co-accused Rakhi, as noted above, has accepted her conviction and no evidence has appeared on record to show that she had any link with PW-4 Raj Kamal. On the contrary, there is substantial evidence to indicate that Rakhi was the wife of the brother of the appellant and was connected with him. Also, nothing has emerged in the cross examination of PW-1 Laxmi which proves that the appellant was being falsely implicated. It is, in my opinion, extremely difficult to believe that PW-1 Laxmi would spare her real assailant and falsely implicate the name of the appellant as the person who had thrown acid on her. It also does not appeal to reason that PW-4 Raj Kamal would throw acid on his love interest Laxmi so as to disfigure her face in such an inhuman manner.

37. In view of the aforesaid discussion, on the basis of cogent and reliable testimony of injured eye-witness Laxmi, I find that the appellant in conspiracy with co-accused Rakhi is guilty of throwing acid on victim Laxmi and thereby causing her grievous injuries.

38. The only question which remains to be answered is whether the conviction of the appellant under Section 307 IPC can be sustained. Furthermore, depending upon the finding of offence committed, quantum of sentence imposed upon the petitioner also needs to be considered.

39. The Counsel for the appellant has urged that the appellant did not have either the intention or knowledge to cause death of victim Laxmi and hence charge under Section 307 IPC for attempt to murder cannot be sustained against the appellant. It is contended that in the absence of medical evidence showing that throwing acid on face and eyes of the injured would have caused death, proper conviction would be under Section 326 of IPC and not under Section 307 of IPC.

40. On the aspect of sentencing, it is alternatively submitted that even if the conviction of the appellant is upheld under Section 307 IPC, the trial court erred in imposing 10 year of rigorous imprisonment on the appellant as it was co-accused Rakhi who poured acid on the victim and not the appellant. The appellant is a young offender and the possibility of reformation cannot be ignored and therefore, leniency may be shown on the quantum of sentence.

41. The provision of Section 307 IPC reads as under:

> '307. *Attempt to murder*.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.'

In the case of ***Sachin Jana &Anr v. State of West Bengal (2008) 3 SCC 390***, the Supreme Court while dealing with a similar situation where acid was thrown on a person observed:-

> "To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. <u>It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the</u>

penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

(emphasis supplied)

42. It is a settled proposition that in the offence under Section 307 of IPC, all the ingredients of offence of murder are present, except the death of the victim, As such, where the ingredients of Section 300 of IPC are lacking in the case, accused cannot be convicted under Section 307 of IPC. It is also settled law that for applying Section 307 of IPC, it is not necessary that the injury capable of causing death should have been acutely inflicted. Section 307 IPC requires an enquiry into the intention and knowledge of the accused and whether or not by his act, he intended to cause death which would amount to murder as defined in Section 300 IPC. It depends upon the facts and circumstances of each case whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death. The nature of weapon used, the intention expressed by the accused at the time of the act, the motive, the nature and size of the injuries, the parts of the body of the victim where injuries were caused and the severity of the blow or blows are also relevant factors to find out intention/ knowledge.

43. In the instant case, the appellant was frustrated and anguished on refusal of his love by victim Laxmi and had through his close associate got hydrochloric acid poured mercilessly on the face and chest of the victim. The act was a calculated and pre-planned one as he had roped in Rakhi to do the job. That the consequence of pouring Hydrochloric acid on the head is likely to cause death must be known to him or can be inferred and as such in my view, the offence clearly falls under the category of attempt to murder punishable under Section 307 of IPC and not under Section 326 of IPC. Even otherwise, this Court cannot shut its eyes to obnoxious and growing tendency of young persons like accused resorting to the use of corrosive substances like acid for throwing on girls, causing not only severe physical damage but also mental trauma to young girls and such practices have to be curbed with heavy hands. In most of the cases the victim dies because of severe burns or even septicemia or even if luckily survives, it will only be a grotesque disfigured person.

44. In view of the above discussion, the appellant is guilty of an offence punishable under s. 307IPC.

45. Adverting to the question of quantum of punishment, it is worthwhile to state that justice demands that the Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime.

The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

46. The victim Laxmi, in the instant case, was at a very tender age of 16 years when one rash and dreadful act of the appellant disrupted her entire normal life causing her and her family immense physical and mental trauma. By one stroke the appellant has made her face hideous and victim Laxmi has to live with this physical and mental injury all her life for no fault of hers. One has to consider the plight of the poor parents who would have been broken seeing the mangled face of their beloved daughter. It is high time that such acts are rewarded with commensurate punishment.

47. In the facts of present case, I feel that that the punishment imposed by the trial court is appropriate and there is no scope for any leniency to be shown towards the dastardly act committed at the behest of the appellant.

COMPENSATION

48. The learned Counsel for the appellant has submitted that at the stage of seeking interim bail compensation to the tune of Rs.1 lakh was offered to the victim from the side of the appellant on account of medical expenses and surgeries. However, the same had been rejected by the victim.

49. While hearing the final arguments, another effort was made by me to compensate the victim from the side of the appellant. The learned Counsel appearing on behalf of the victim Laxmi has again refused to the same. She has submitted that the victim does not want to receive any money from the appellant. She further submitted that on account of the acid attack, the entire face of the victim has been badly distorted and she has been subjected to repeated medical treatment/ plastic surgeries on which huge sum of money has been spent.

50. Therefore, the only other facet which requires to be examined is whether any compensation ought to be awarded to the victim Laxmi under Section 357 Cr.P.C.

51. After considering several earlier decisions, recently in ***Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770**, the Supreme Court enunciated the scope and purpose of Section 357 Cr.P.C. in the following words:-

> **"66.** To sum up: while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise

> involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 CrPC would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family."
>
> (emphasis supplied)

52. I note that the though the victim has refused to accept compensation from the appellant, mandate of law under Section 357 (1) (b)Cr.P.C. requires that in advancing the cause of substantial justice, the Courts are required to award appropriate compensation after conducting an enquiry about the status of the accused. I note that vide order dated 12.09.2011, the predecessor of this court had directed the appellant to pay a sum of Rs. 1 lakh to the victim to which the appellant had readily agreed to. This sufficiently indicates that the appellant has the financial capacity to compensate the victim on account of the medical expenses incurred by her in her treatment.

53. It is also worthwhile to note that Section 357A Cr.P.C., which has been inserted by virtue of an amendement brought about in the year 2009, postulates that a victim could approach the Legal Services Committee for seeking appropriate compensation to be paid by the State under the victim compensation scheme applicable to the state where the crime has taken place. I note that presently '*Delhi Victims Compensation Scheme, 2011*' dated 02.02.2012 is applicable to the National Capital Territory of Delhi. The Clause 3 of the said scheme defines "Victim Compensation Fund" as a fund from which the amount of compensation, as decided by the Delhi Legal Services Authority, shall be paid to the victims and their dependent(s) who have suffered loss or injury or require rehabilitation. Clause 5 prescribes the procedure applicable for grant of compensation to victims. Under Clause 5 of the said scheme, the Court under Section 357A (1) and (2) CrPC is empowered to recommend to the Delhi Legal Service Authority, the appropriates cases of victims or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation.

54. In the circumstances, bearing in the mind the mental agony and grievous nature of injuries suffered by the victim, I am of the opinion that victim must be compensated by the appellant and accordingly, the appellant

is directed to pay a sum of Rs 3 lakhs as fine which is to be forwarded to victim Laxmi as compensation under the provision of Section 357(1)(b) Cr.P.C. It is further recommeded that the case of victim Laxmi be considered by the Delhi Legal Services Committee for appropriate compensation which can be paid to her on behalf of the State Government under the victim compensation scheme as applicable to the National Capital territory of Delhi.

55. With above directions, the appeal, being devoid of merit, is hereby dismissed and the order of sentence passed by the trial court is modified to the extent of the fine imposed on the appellant.

SIDDHARTH MRIDUL
(JUDGE)

OCTOBER 07, 2013
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