

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 561 of 2015

Jiten Barman

Versus

The State of West Bengal

For the appellant : Mr. Amitabha Karmakar, Adv.

For the State : Mr. Parthapratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 21.12.2022

Judgment on : 11.01.2023

Ajay Kumar Gupta, J:

1. The instant appeal is directed against the judgment and order dated 15.06.2015 and 18.06.2015 passed by the Additional Sessions Judge, 3rd Court, Tamruk in Sessions Trial No. 3(11)/2014 arising out of Sessions Case No. 299 (June) of 2014 whereby convicting and sentencing the appellant to

suffer rigorous imprisonment for 10 years along with a fine of Rs. 30,000/-, in default, to suffer simple imprisonment for six months for the offence punishable under Section 326A/34 of the Indian Penal Code.

PROSECUTION CASE:

2. Brief facts of the prosecution case is that one Smt. Pampa Barman, the mother and sister of the victims alleged that on 10.08.2013 at night after having dinner her daughter, Sastika Barman and sister, Shampa Barman had been sleeping in the father's house. At about 2 a.m. at night her sister and daughter started shouting loudly. After awakening parents of the complainant immediately switched on the electric light and noticed the face, breast of her sister and the belly, hand and leg of her daughter were burnt extensively with blisters. It was suffocating in the whole room by the essence of carbolic acid. Immediately her sister and daughter were removed to hospital for their treatment. Both were admitted in Tamruk District hospital in serious condition.

3. It was further alleged that Jiten Barman S/o- Dipak Barman of Rajanagar Baharjola, P.S.- Tamruk and his friend Gajen Jana S/o- Naru Jana of Kalapenya P.S.- Nandakumar, District- Purba Medinipur used to tease her sister in various manner while going to school on the road. Jiten Barman used to propose her for marriage. As her sister disagreed with his proposal, Jiten Barman used to express if she does not marry him he would make her condition so that no man of the world would marry her and also expressed that human being would be frightened by seeing her face. As her

sister informed about the incident to her parents, they stopped her from going to school or on the road and promptly arranged for the marriage of her sister. Date was proposed for the visit of bride groom's party from Haur on 11.08.2013 for betrothal. It was her strong belief that coming to know this fact Jiten Barman and his friend Gajen Jana had spoiled the life of her sister and daughter by throwing acid on their persons. She submitted a written complaint to that effect in resulting Tamluk P.S. Case No. 338 of 2013 dated 11.08.2013 had been started under Section 450/326A/307 I.P.C. against the appellant and his friend Gajen Jana.

4. The Officer-in-Charge, Tamluk P.S. initially entrusted the said case for investigation to S.I. Swapan Chabri, who subsequently on his transfer investigation was transferred to another police officer, Sri Maniklal Adak. After completion of investigation, charge sheet was filed against the appellant and Gajen Jana under Section 450/326A/307/34 of the I.P.C.

PROCEEDINGS BEFORE THE TRIAL COURT:

5. The case was committed to the Learned Court of Session after taking cognizance by the Chief Judicial Magistrate as the case was a sessions triable one. Subsequently, the case was transferred to the Learned Additional Sessions Judge, 3rd Court, Tamluk for trial and disposal.

6. Charge was framed under Section 450/326A/307/34 of the I.P.C. against the appellant and Gajen Jana, who were pleaded not guilty and claimed to be tried. In order to prove the case, prosecution examined 12

witnesses and exhibited number of documents as Exhibits 1 to 14 and material Exhibits I and II respectively.

7. Defence of the appellant was that he is innocence and false implication. During questioning by the Court under Section 313 of the Cr.P.C., the appellant made a simple denial, though incriminating materials both oral and documentary were brought to his notice. No evidence adduced from the side of defence.

8. After appreciation of the oral evidence and considering the documents exhibited by the prosecution, the Trial Judge, by impugned judgment and order, convicted and sentenced the appellant as mentioned above. By the selfsame judgment, co-accused Gajen Jana was convicted and sentenced as similar as appellant. However, he has not preferred appealed against his conviction and sentence as revealed from the office report.

Arguments led by the parties:

9. Learned counsel appearing on behalf of the appellant submitted that the trial Court did not appreciate the evidence of the prosecution that none of the witnesses saw them at the place of incident or committing offence as alleged. Victims only suspected that the appellant Jiten Barman and another convict Gajen Jana committed the offence at the said night because they were causing disturbance and teasing Sampa Barman on the way of her school. The appellant Jiten Barman loved her and he wanted to marry her. None of the witnesses explained how they had entered the house where the

incident had taken place. There is no whisper about the entry of the appellant in the house of the victims at night. There is no eye witness as such case is totally based on circumstantial evidence. It is further submitted that witnesses failed to identify the appellant in Court. No T.I. Parade was also held by the prosecution. Strong suspicion by the prosecution case is not sufficient to hold the appellants guilty of the offences alleged. Prosecution also failed to prove with reliable evidence the harassment and teasing of the victim while going to school. Finally it is submitted the Trial Court had convicted and sentenced the appellant on the basis of surmises and conjectures only. Therefore, the order of conviction is required to be set aside.

10. Per contra learned counsel appearing on behalf of the State submitted there was a clear motive for throwing acid on the victims while they sleeping at the residence. Appellant had threatened her prior to the incident if she would not marry him, he would disfigure her in such manner that no man of the world will marry her and every human being would be frightened to see her face. Accordingly, they committed the offence when they came to know that the parents of Sampa Barman had arranged her marriage and date was fixed on 11.08.2013 for her engagement. Medical evidence showed victims' suffered injuries by chemical substance like acid. Therefore, their conviction is correct and requires no interference by this Court. As such appeal is liable to be dismissed.

Appreciation of Evidence:

11. The proper appreciation of evidence is the heart and soul of criminal jurisprudence and is necessary for a just and proper adjudication of the case in hand. Now, let me start the scanning of evidences of P.Ws. in seriatim.

At the very outset, I would like to say on perusal of the entire evidence it reveals P.W.s 1 (Complainant, Pampa Barman), 3 (Pramila Barman, mother of victim Sampa Barman), 4 (Rabindra Nath Barman, father of victim Sampa Barman), 5 (Madan Barman, father of another victim Swastika Barman) and 6 (Swapan Barman uncle of victim Sampa Barman) were declared hostile by the prosecution.

12. P.W. 2 the victim girl narrated the incident that on the said night she was sleeping along with her niece Sastika (daughter of P.W. 1) on the floor of a room. All on a sudden she woke up feeling burning sensation on her face and two hands. Minor Sastika also sustained burn injuries on her belly and legs. They cried out. At that time her mother switched on the light of their room. Soon thereafter her father, mother and uncle rushed to the Janubasan BPHC along with them for treatment and therefrom, both were referred to Tamluk District Hospital. Minor Sastika was admitted in Tamluk hospital for 12 days. She further deposed that she knew the appellant and his friend. Prior to the date of incident, appellant and his friend were causing disturbance and teasing them on the way to their school. Jiten

Barman expressed that he loved her and wanted to marry her. Accordingly, she entertained belief that both were involving in the said incident.

13. P.W. 7, the another victim also deposed in her evidence that she was sleeping in their house. At that time she sustained burn injury from acid in the house of her maternal uncle. She also corroborated that her massi namely Sampa Barman also sustained burn injuries from acid. She was treated in the hospital and had sustained burn injury on her belly. But she failed to identify the appellant and another convict in court. During cross examination she admitted that she suspected that Jiten Barman and Gajen Jana committed the offence in the said night because they were causing disturbance and teasing her on the way to school although she admitted that she never disclosed the fact of disturbance and teasing to her teacher and other students of her school.

14. P.W.8, doctor attached to District Hospital Tamruk deposed that on 11.08.2013 she was posted as surgeon of Purba Medinipur District Hospital, Tamruk. One Swastika Barman, 5 years and 4 months was examined by her and she was admitted in the said hospital under her care. She was referred from Janubasan BPHC. She was admitted at 3.43 a.m. (night). After examination of the patient she found chemical burns on about 20 % of the total body surface area. She was admitted in the hospital and was discharged on 20.08.2013 at 12.15 p.m. in favourable condition. The injury of the patient was from acid. On that day one Sampa Barman, aged about 18 years was also examined by her. She was admitted in the said hospital

under her care at 3.40 a.m. and she was referred from Janubasan BPHC. After examination of said patient she found acid burns about 20 % of the body surface on the face, chest, right axilla and right leg. She was referred by her to eye surgeon for her eye problem. Sampa Barman was admitted in the hospital on 11.08.2013 and she was discharged on 26.08.2013 at 11.00 a.m. in favourable condition. The injury of the patient was from acid. The documents like BHT of aforesaid two patients were noted in six sheets in her own handwriting. She knew the handwriting and signature of said doctor Dr. R.N. Bhanja. BHT for two patients were exhibited & marked as Ext. 4 series and signatures of the doctor were marked by Ext. 4/1 series.

15. P.W 9, Doctor deposed that he examined two patients namely Sampa Barman and Swastika Barman. At the time of examination, Sampa Barman was unconscious and she had injuries on the face, neck and chest by acid injury. Her burn injury was about 28%. The injury was superficial in nature. The patient brought with a history of carbolic acid burn thrown by someone when the patient was sleeping at bed as per statement of patient party. As per history, the time of occurrence was 1.45 a.m. on 11.08.2013. Time of examination was at 2.15 a.m. on 11.08.2013. At the time of examination of Swastika Barman she was semi-conscious and she had injuries of burn on her abdomen about 18 %. The injury was superficial. The patient brought with a history of acid burn over abdomen thrown by someone when the patient was sleeping at bed as per statement given by patient party. As per history, the time of occurrence was 1.45 a.m. on 11.08.2013. Time of examination was at 2.15 a.m. on 11.08.2013. The injury reports of Swastika

Barman and Sampa Barman are marked by Ext. 5 and signature of the doctor is marked by Ext. 5/1. The emergency ticket of Janubasan BPHC with regard to Swastika Barman is marked as Ext. 6 and the signature of the doctor is marked as Ext. 6/1. Emergency ticket of Janubasan BPHC with regard to Sampa Barman is marked as Ext. 7 and the signature of the doctor is marked as Ext. 7/1. Both patients were referred to Tamruk District Hospital for better treatment.

16. The investigating officer examined as P.W. 12. He deposed that on 11.08.2013 he was posted at P.S. Tamruk as S.I. On that day, he was entrusted by the then Officer-in-Charge Arun Kr. Khan to cause investigation of Tamruk P.S. Case No. 338 dated 11.08.2013 under Section 450/326A/307 of the I.P.C. against the accused persons Jiten Barman and Gajen Jana. He identified the handwriting and signature of the Officer-in-Charge Arun Kr. Khan appearing in the formal FIR marked as Ext. 9 and Ext. 9/1 respectively. He visited the place of occurrence and prepared the rough sketch map and index. The said sketch map and index are marked by Ext. 10 and 10/1 respectively. During the course of investigation, he examined witnesses, namely, Pramila Barman, Rabindra Nath Barman, Madan Barman, Swapan Barman, victim girl Sampa Barman, Dr. Basudeb Das, Dr. Tridibesh Banerjee and Pamba Barman and recorded their statements under Section 161 Cr.P.C. He also seized bottle of carbolic acid of 100 ml with little acid, one mosquito net of parrot green colour, one pillow with cover (Gerua colour) with smell of carbolic acid, one green coloured top of Churidar and the lower part of one violet coloured churidar after preparing

seizure list marked as Ext. 11 and signature on the seizure list was marked as Ext. 11/1. He also collected the injury report from Janubasan BPHC and bed head ticket from Tamluk District Hospital. The said documents were marked by Exhibits 4, 4/1, 5, 5/1, 6, 6/1, 7 and 7/1. He also collected call details from the suspect's mobile phones. The call details report containing 18 pages marked as Ext. 12. He also recorded the statement of the father under Section 164 of the Cr.P.C. In the mean time, he was transferred on 20.12.2013 and for that, incomplete C.D. was handed over to the Officer-in-Charge for further investigation. The said incomplete investigation was handed over by the Officer-in-Charge, Tamluk P.S. to the 2nd investigating officer (P.W. 11) for further investigation.

17. P.W. 11 deposed after receiving the C.D, at first, he had gone through the written complaint , FIR , papers and documents those were available and collected by erstwhile investigating officer namely S.I. Swapan Chabri. In course of investigation, he arrested one accused namely Gajen Jana from Kaktia on 14.05.2014 and thereafter he was forwarded before the learned C.J.M., Tamluk. Another accused Jiten Barman surrendered before the learned C.J.M. on 26.05.2014. After completion of investigation he submitted charge sheet under Section 450/326A/307/34 of the I.P.C. against both the accused persons namely, Jiten Barman and Gajen Jana after consultation with the superior officer.

18. From the perusal of the evidence of hostile witnesses i.e. P.W. 1 this Court finds she deposed that the incident occurred at about 1 a.m. (night) in

her father's house at Kaktiya. She was informed about the incident by her mother over phone. Thereafter, at about 2 a.m. (night) she went to her father's house at Kaktiya i.e. place of occurrence. P.W. 1 was told by her mother after hearing a screaming sound she found that Sampa i.e. her sister and Sastika, her daughter who were sleeping on the floor of the room had sustained injuries on their face and belly respectively. She further stated she lodged a written complaint against the appellant and Gajen Jana. Though she admitted in her examination that she knew Gajen Jana and Jiten Barman prior to the date of the incident, she could not identify the appellant. She identified her signature appearing in the seizure list as a witness.

19. P.W. 3 Pramila Barman deposed that victims were sleeping in her house. That night her husband, her daughter Sampa Barman, her grand-daughter Sastika Barman were sleeping with her in the same room. She disclosed that she and her husband were sleeping on a Khat (cot). Her daughter Sampa and grand-daughter Sastika were sleeping on the floor of the room. At about 2 a.m., her daughter Sampa raised a hue and cry. She was crying as she had sustained acid injuries on her face and body. Her grand-daughter Sastika also sustained acid burn injury on her belly. Soon thereafter, Sastika and Sampa were taken to Nonakuri BPHC. The doctors of said BPHC referred them to the District Hospital, Tamluk. Both were in hospital for 20 days. She failed to identify the appellant and the other convict Gajen Jana in Court. She deposed she was never interrogated by the police over the incident.

20. P.Ws. 4, 5 and 6 also deposed in similar lines as P.W. 3 and were unable to identify the appellant and Gajen Jana.

DISCUSSION AND FINDINGS:

21. Upon careful perusal of the evidence and judgment delivered by the trial Court, I find the trial Court had relied on the version of witnesses mainly victims as well as doctors who were examined as P.Ws. 2, 7, 8 and 9. Most of the witnesses had turned hostile.

Even the family members of victims who were present at the place of occurrence did not support the case of the prosecution.

Prosecution case is required to be proved by leading cogent, reliable and credible evidence. From the entire evidence, none of the witnesses could identify the appellant and co-accused as the miscreants. So, this case is not based on direct evidence. Let me see whether the prosecution case may be sustained to on circumstantial evidence.

It is well settled that in a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused.

In **Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh**¹, it was observed that:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

In a later decision in **Sharad Birdhichand Sarda v. State of Maharashtra**², while dealing with circumstantial evidence, it has been held that onus is on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

¹ AIR 1952 SC 343

² AIR 1984 SC 1622

“the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned `must' or `should' and not `may be' established;

the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

the circumstances should be of a conclusive nature and tendency;

they should exclude every possible hypothesis except the one to be proved; and

there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

These aspects were also highlighted in **State of Rajasthan v. Raja Ram (2003 (8) SCC 180), State of Haryana v. Jagbir Singh and Anr. (2003 (11) SCC 261).**

In **Padla Veera Reddy V. State of A.P.**³, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

“(1) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

(2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

In the instant case, only two circumstances have been proved by the prosecution.

³ AIR 1990 SC 79

Firstly, Victims suffered acid burn injuries. This is corroborated by medical documents and evidence of Doctors who treated them; and

Secondly, Jiten Barman and his friend Shri Gajen Jana used to tease victim Sampa Barman in various manner while going to school on the road. Jiten Barman had proposed Sampa Barman for marriage. As she did not accept his proposal, Jiten Barman used to tell her she did not marry him he would make her so ugly so that no man of the world would marry her and also said that every human being would be frightened by her face.

No other evidence is brought on record. None of the witnesses deposed they had seen the appellants at the place of occurrence. Even there are contradictory versions about the actual place of occurrence. P.W. 2 stated they were sleeping on the floor of the room whereas P.W. 9, doctor stated they were sleeping on the bed as per statement given by patient party. Prosecution had declared P.Ws. 1, 3, 4, 5 and 6 as hostile witnesses. Hostile witnesses while supporting substantial portions of the prosecution case failed to identify the appellant in dock.

Victim girls could not state who threw acid on their persons at night in their house, while sleeping. None of the family members, who were very much present in the house, neighbours or persons of the surrounding locality have seen the appellant together or committing offence on the date of the fateful night.

I am fully convinced with the arguments of the learned Advocate though the victims suffered acid burn injuries but who is actual culprit is not brought on record by the prosecution. The victim P.W. 7 failed to identify the appellant. During cross examination she admitted that she suspected that Jiten Barman and Gajen Jana committed the offence in the said night because they were causing disturbance and teasing her on the way to school although she admitted that she never disclosed the fact of disturbance and teasing to her teacher and other students of her school.

Another victim girl examined as P.W. 2 deposed prior to the date of incident, appellant and his friend were causing disturbance and teasing them on the way to their school. Jiten Barman expressed that he loved her and wanted to marry her. Accordingly, she has formed belief that both were involving in the said incident. Both victims had not seen the appellant or his friend at the place of incident or in and around of their house or throwing acid on them. How appellant and his friend entered the room at night where the victims were sleeping and how they threw acid on them is not clear from the prosecution witnesses. Their suspicion or belief do not constitute proof.

On the basis of suspicious circumstances, appellant cannot be held guilty. Suspicion, howsoever high, cannot take the place of proof of guilt. Accordingly, appellant is entitled to the benefit of doubt and ought to be acquitted.

Therefore, I find that prosecution failed to bring home the charges against the appellant beyond the reasonable doubts either by direct or circumstantial evidence.

22. The impugned judgment and order of conviction and sentence is, thus, set aside.

23. The appellant is acquitted of the offence levelled against him.

24. Another convict, Gajen Jana, did not file appeal against the same self-judgment. However, he stands on the same footing with the appellant. Hence, in the interest of justice, he ought to be extended the same relief and acquitted of the charge levelled against him in view of the law declared in **Sahadevan & Anr. Vs. State of Tamil Nadu**⁴ and **Md. Sajjad Vs. State of West Bengal**⁵ as such he is also acquitted of the offence in view of the aforesaid judgments.

25. Accordingly, the appeal is allowed.

26. Appellant as well as co-convict Gajen Jana shall be set at liberty forthwith if they are not wanted in any other case, upon execution of a bond to the satisfaction of the Trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

⁴ (2012) 6 SCC 403

⁵ (2017) 11 SCC 150

27. Lower Court records along with a copy of judgment be sent down at once to the Learned Trial Court for necessary action.

28. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Joymalya Bagchi, J)

(Ajay Kumar Gupta, J)

P. Adak (P.A.)