

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.94 of 2004**

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Langar Bhagat, son of Late Abhichand Bhagat, Resident of Village
Chintamanpur, P.S. Mahesi, District- East Champaran

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Acts/Sections/Rules:

- *Sections 307 and 324 of the Indian Penal Code*

Cases referred:

- *Jage Ram and Others Vs. State of Haryana, as reported in [(2015) 11 SCC 366]*
- *Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, as reported in [(1973) 2 SCC 793]*
- *Balraje @ Trimbak Vs. State of Maharashtra as reported in [(2010) 6 SCC 673]*
- *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujrat, as reported in [(1983) 3 SCC 217]*

Appeal - filed against judgment of conviction whereby the concerned Trial Court has convicted the appellant/convict for the offence punishable under Section 307 of the Indian Penal Code.

Held - The place of occurrence was a room and it was mid-night, there was no source of light and in such background, identification of appellant by persons who are not acquainted with appellant appears doubtful. Informant/victim herself categorically stated that she was not acquainted with appellant/convict and her eye remains closed during occurrence and she came to know about the fact that appellant threw acid upon her from another witness. - Aluminium pot (through which he poured acid upon victim) and appellant were handed over to local chowkidaar immediately after the occurrence in their courtyard (aangan) but said aluminium pot, was never seized or sent for

chemical/forensic examination. - Investigation Officer in this case categorically deposed that the prosecution witnesses stated during investigation that appellant/convict was arrested in morning, while he was attending field work. Therefore, on the point of immediate arrest after occurrence, in courtyard of informant, witnesses are not appearing wholly reliable, even they are injured witnesses. - IO further denied to collect black material found sprayed on the ground at the place of occurrence and sent same for chemical/forensic examination, as to ascertain whether it was acid or not. In want of chemical examination alleged thrown water like substance cannot even categorised as corrosive substance within meaning of Section 326 of IPC, only on the basis of injury, beyond doubt. (Para 29)

The depositions of doctor is nowhere suggesting that her injury was of such nature, which was dangerous to life, therefore intention or knowledge as act of appellant may likely to cause death, is absent from the facts as surfaced during the trial. (Para 30)

Appeal is allowed. (Para 31)

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Appearance :

For the Appellant/s : Mr. Ravi Bhardwaj, *Amicus Curiea*

For the Respondent/s : Ms. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 08-07-2024

This appeal has been preferred by the

appellant/convict under Section 374(2) of the Code of

Criminal Procedure (hereinafter referred to as 'the Code')

challenging the judgment of conviction dated 10.01.2004

and order of sentence dated 13.01.2004 passed by learned

2nd Additional Sessions Judge, Motihari, East Champaran in

Sessions Trial No. 112/106 of 2003, whereby the concerned

Trial Court has convicted the appellant/convict for the

offence punishable under Section 307 of the Indian Penal



Code (for short 'IPC') and he has been sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 3,000/- and in default of payment of fine, further undergo rigorous imprisonment for six months for the offence punishable under Section 307 of the IPC.

2. The case of prosecution it appears through written information, as lodged by informant namely Kanti Devi/P.W. 5, that while she was sleeping in her house after having dinner alongwith her sister-in-law namely Krishna Kumari/P.W. 7, appellant/convict entered her room which was doorless and threw some water like substance on her face causing burning sensation, which also damaged her eyes and also caused injury on right arm of her sister-in-law/P.W. 7. It is further stated that before pouring said water like substance, which was in aluminum bowl in the hands of appellant/convict it was said by him "he is throwing acid on her face as she was not accepting his advancement". It appears out of narration that immediately after throwing water like substance appellant/convict ran away from the spot and later on apprehended by villagers, who assaulted



him. Informant stated that aforesaid assault was made with intention to kill and also to disfigure her face. Informant while supplying reason for the present occurrence stated that appellant/convict had illicit relations with her cousin mother-in-law namely Meera Devi and has also showed sexual advancement towards her on several occasion and for that even offered money. She was brought to hospital by her husband and sister-in-law/P.W. 7 at Mehshi Hospital, where her present statement was recorded by Sub-Inspector M.K. Singh.

3. On the basis of aforesaid fardbeyan, the police registered a case as Maheshi P.S. Case No. 60 of 2002 dated 16.06.2002 for the offence under Sections 324 and 307 of the IPC, where after the investigation, the police submitted charge-sheet on 30.06.2002.

4. The learned Jurisdictional Magistrate after perusal of record and materials collected during the course of investigation, took cognizance for the offences under Sections 324 and 307 of the IPC and committed case to the court of Sessions on 11.02.2003, for trial.



5. The learned trial court on the basis of materials collected during investigation, framed charge against the appellant/convict and other co-accused persons on 20.05.2003 for the offence under Sections 307 IPC, which he plead “not guilty” and claimed trial.

6. To substantiate its case, the prosecution has examined altogether nine witnesses. They are:-

Prosecution Witnesses Nos(s).	Name
P.W. 1	Bhikhari Bhagat (neighbour and agnate of the informant’s husband)
P.W. 2	Janki Devi (mother-in-law of informant)
P.W. 3	Sushila Devi (wife of P.W. 1)
P.W. 4	Satya Narain Bhagat (husband of informant)
P.W. 5	Kanti Devi (informant/victim)
P.W. 6	Binda Bhagat (father-in-law of informant)
P.W. 7	Krishna Kumari (sister-in-law of informant)
P.W. 8	SI Raj Narain Bhagat (I.O. of this case)



P.W. 9	Dr. Devendra Kumar Sharma
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7. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Fardbeyan of the informant.
Exhibit-2	Photo copy of injury report of P.W. 7.
Exhibit-2/a	Photo copy of injury report of P.W. 5/informant.

8. On the basis of evidence as surfaced during the trial, the learned trial court has examined the appellant/accused under Section 313 of the Code, where he completely denied his involvement by denying the incriminating evidences surfaced during the trial and stated that he was implicated with this case falsely and claimed his complete innocence.

9. Two defence witnesses were also examined by appellant/convict during the trial in his defence and further two documents were also exhibited in support of the defence. They are :-



Defence Witnesses Nos(s).	Name
D.W. 1	Ram Narain Prasad
D.W. 2	Prithvi Nath Chaurasia

Exhibit No(s).	List of documents
Exhibit-A	Injury Report of Langar Bhagat.
Exhibit-B	Photocopy of FIR Maheshi P.S. Case No. 95 of 2003.

10. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

11. Hence, the present appeal.

Argument on behalf of the appellant/convict:

12. Mr. Ravi Bhardwaj, learned *Amicus Curiae* while, assisting Court submitted that that conviction of appellant/convict as recorded by learned Trial Court appears bad in eyes of law for the reason as from the depositions available on record "intention to cause death", cannot be gathered safely which is prime consideration to make out a case under Section 307 of the IPC. In this context it is



submitted that informant/P.W. 5, who herself is author of FIR stated through her written information exhibited as Exhibit No. 1 that appellant/convict, threw acid on her face for the reason that he wanted to disfigure her face. It is pointed out that from the said single conversation it is apparent that intention was to disfigure the face of the informant and not to kill her. It is pointed out that there are several contradictions appearing out of depositions of P.W. 5 & P.W. 7, where they are claiming to be injured witness of the occurrence. IO was examined as P.W. 8 in this case. It is pointed out by taking note of contradictions as surfaced during the trial, it is unsafe to accept testimony of P.W. 5 & P.W. 7 as they are not appearing "wholly reliable" as to secure conviction.

13. Arguing further learned *amicus* submitted that arrest of appellant/convict as stated by P.W. 1 & P.W. 2 appears from the courtyard of the house of victim immediately after the occurrence but from the depositions of P.W. 8, IO of this case, it appears that appellant/convict was arrested in the early morning i.e., about 6:00 AM from the



field by co-villagers. It is further emphasized by learned *amicus* that in view of deposition of P.W. 8, aluminum bowl containing alleged acid was not seized nor any sample was collected during the course of investigation.

14. It is further submitted by Mr. Bhardwaj, learned *amicus* that as far injury of the victim is concerned he pointed out that no injury report was exhibited before Trial Court and it was only the copy of injury report, therefore it cannot be said in true sense that "injury" was proved during the trial, so as to accept it in evidence. It is further pointed out that injury as caused by appellant/convict, was not of such nature, which may likely to cause death of informant/P.W. 5.

15. While concluding argument, it is submitted by learned *amicus* that Sub-Inspector of Police who recorded statement of P.W. 5/informant, while injured was admitted in Mehshi Hospital was not examined during the trial and therefore, it cannot be said that the contents of FIR were proved during the trial and on this score alone the judgment of conviction as recorded by learned trial court is fit to be set



aside.

16. Travelling over the argument further, learned *amicus* relied upon the legal reports of Hon'ble Supreme Court as passed in the matter of **Jage Ram and Others Vs. State of Haryana**, as reported in **[(2015) 11 SCC 366]** and also in the matter of **Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra**, as reported in **[(1973) 2 SCC 793]**.

Argument on behalf of learned APP

17. Mrs. Anita Kumari Singh, learned APP appearing on behalf of the State submitted while opposing the present criminal appeal that to understand the nature of injury, observation of learned trial court, while examining P.W. 5/victim cannot be ignored, where it appears that court observed that "her face was badly burnt and was looking horrible". It is also submitted by learned APP, that in view of depositions of the injured witnesses i.e., P.W. 5 & P.W. 7 and also by taking note of the depositions of P.W. 9 magnitude of attack and intention can be gathered easily. It is pointed out that provision for acid attack was not available



at that point of time, therefore charge was framed under Section 307 of the IPC.

18. While travelling over the argument, learned APP submitted that informant is a rustic villager, therefore minor contradictions are surfaced in her depositions and merely on the ground of minor contradictions, conviction as recorded by learned trial court cannot be viewed with doubt. It is also submitted by learned APP that as the occurrence took place inside the house at about 12:30 AM, therefore prosecution witnesses as family members is quite normal in this case. It cannot be rejected outrightly on the ground of interested witnesses.

19. While concluding the argument further, learned APP relied upon the legal reports of Hon'ble Supreme Court as passed in the matter of **Balraje @ Trimbak Vs. State of Maharashtra** as reported in **[(2010) 6 SCC 673]** and also in the matter of **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujrat**, as reported in **[(1983) 3 SCC 217]**.

20. I have perused the trial court records carefully



and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

21. As to re-appreciate the evidences, while disposing the present appeal, it is apposite to discuss the evidences available on record, which are as under :-

22. P.W. 5 Kanti Devi, who is the informant and victim of the present case. She supported the date and time of occurrence and deposed through her examination-in-chief that at the time of the occurrence she was sleeping alongwith her sister-in-law namely Krishna Kumari (P.W. 7). She categorically deposed that alleged acid like substance was thrown upon her and her sister-in-law (P.W. 7) by appellant/convict and on their alarm her mother-in-law, father-in-law, cousin, father-in-law and her husband came over there and apprehended appellant/convict, from where he was taken to police station. She also went upto police station and narrated about the occurrence to SHO, who reduced her complaint into writing and read it to her and upon getting it correct she put her thumb impression on it.



She went to Mehshi Hospital after lodging her complaint in Mehshi Police Station. Court while recording her examination-in-chief observed that her face was found burnt badly. She failed to depose regarding the motive behind throwing acid on her face by appellant/convict. It is deposed by her that at the time of occurrence her sister-in-law (P.W. 7) told her that person, who threw acid was appellant/convict namely Langar Bhagat. She identified appellant/convict during trial. She failed to identify appellant/convict just after the occurrence as her eyes were damaged during the occurrence.

22.1. On cross-examination, P.W. 5/victim stated that she could not open her eyes after the alleged acid attack. She also stated that she came to know everything from her family members.

23. P.W. 7 Krishna Kumari, who is sister-in-law of informant/P.W. 5 and also injured eye-witness of the occurrence, who received injury on her right arm due to acid thrown by appellant/convict. She deposed that upon her cry her uncle, aunt, father, brother and mother came over there



and apprehended appellant/convict Langar Bhagat and handed over him to local chowkidar. She further deposed that appellant/convict was brought to police station by chowkidar.

23.1. On cross-examination she stated that while she was sleeping with P.W. 5 appellant/convict entered into her house. She noticed appellant/convict when he threw acid. While throwing acid appellant/convict was in the right side of her bhabhi/P.W. 5. Appellant/convict threw acid from a distance of one span i.e., 8-9 inches. He was not equipped with any arms. Acid was in aluminum pot and it was with him, when he was apprehended by family members. She stated before police that appellant/convict threw acid on the eyes of her *bhabhi*/P.W. 5. She stated before police that her brother, mother and uncle apprehended appellant/convict Langar Bhagat. She denied suggestion that Langar Bhagat (appellant) was arrested next day from an open field and thereafter he was handed over to the police. She also denied suggestion that victim/P.W. 5 was in love affairs with appellant/convict and for that reason he was implicated



falsely with the present case.

24. P.W. 1 Bhikhari Bhagat, P.W. 2 Janki Devi, P.W. 3 Sushila Devi, P.W. 4 Satya Narain Bhagat & P.W. 6 Binda Bhagat narrated almost in same manner as it was stated by P.W. 5 Kanti Devi and P.W. 7 Krishna Kumari in their examination-in-chief regarding occurrence.

24.1. P.W. 1 Bhikhari Bhagat on cross-examination stated that when they apprehended appellant/convict a pot was in his hand. He stated to police regarding said pot.

24.2. P.W. 2 Janki Devi in her cross-examination stated that on the date of occurrence it was a dark night. She also stated that appellant/convict was apprehended in their courtyard (*aangan*). She further stated that co-villagers also arrived at the place of occurrence and they also helped in apprehending appellant/convict. It was stated by her that police never visited place of occurrence. She categorically stated that both aluminum pot and appellant/convict were handed over to the police. She stated that the appellant/convict was in love affairs with her own



sister-in-law but for that they were not unhappy. She denied to lodge false case.

24.3. P.W. 3 Sushila Devi in her cross-examination stated that night of the occurrence was a dark night. She deposed that aluminum pot was in the hand of appellant/convict. She helped in apprehending appellant/convict. She denied suggestion to lodge false case as appellant/convict was in illicit relation with her sister-in-law.

24.4. P.W. 4 Satya Narain Bhagat, who is the husband of P.W. 5/victim and stated in his cross-examination that police visited his house on the next day of the occurrence. He stated that her wife was not in position to give statement at police station, therefore, she was brought to Mehshi Hospital from police station. He denied about illicit relation of appellant/convict with his aunt Meera Devi.

24.5. P.W. 6 Binda Bhagat, who stated to be eye-witness of the occurrence stated in his cross-examination that appellant/convict threw acid on the face of his daughter-in-law (P.W. 5) and on arm of his daughter



(P.W. 7). This statement appears in contradiction of his earlier statement that he came to the place of occurrence upon the cry of his daughter-in-law/P.W. 5 and daughter/P.W. 7. He stated to apprehend appellant/convict Langar Bhagat in their courtyard (*aangan*), itself. He denied to suggestion as to depose falsely because appellant/convict was in illicit relation with female family members.

25. P.W. 8 Sub-Inspector Raj Narain Bhagat

stated that he was posted on 16.06.2002 at Mehshi Police Station, where *fardbeyan* of informant/P.W. 5 was recorded by SHO Nagendra Kumar Singh. He identified his writing being colleague and upon his identification *fardbeyan* was exhibited as Exhibit No. 1. He also identified the hand writing on the formal FIR which upon identification was exhibited as Exhibit No. 2. He recorded statement of injured in PHC, Mehshi. He also recorded statement of P.W. 7 Krishna Kumari at same hospital. He also recorded the statement Satya Narain Bhagat in hospital, itself. He described the place of occurrence after visit. He obtained injury report of both P.W. 5 and P.W. 7.



25.1. Upon his cross-examination he deposed that he visited the place of occurrence on 16.06.2002. He categorically stated that at the place of occurrence, he found some black substance, but it was not in position to collect and further sent for chemical/forensic examination. He stated that when he was given investigation of this case, at that time appellant/convict was in police custody of Mehshi Police Station. He denied that Bhikhari Bhagat never gave his statement before him that when he reached to the place of occurrence appellant/convict was present there. He also denied that Bhikhari Bhagat never made any such statement to him during the investigation that he apprehended appellant/convict with Binda Bhagat, Janki Devi, Sushila Devi and Bhikhari Bhagat. He also stated that Janki Devi never made any statement before him during investigation that she saw Langar Bhagat throwing acid in the light of earthen lamp (*diya*). He also denied that Janki Devi never stated that Langar Bhagat was arrested in their courtyard. He also stated that Sushila Devi never made statement before him that after hearing cry she woke up and went to the room of



P.W. 5/Kanti Devi & P.W. 7/Krishna Kumari. He also stated that P.W. 3 never stated that appellant/convict poured acid on P.W. 5 and P.W. 7. He also deposed that P.W. 3 never stated that appellant/convict was apprehended by her sister-in-law and P.W. 6 before her. He stated that P.W. 3 never stated before him that appellant/convict had a pot, which he gave to chowkidar. He further deposed that P.W. 4 never stated that appellant/convict was apprehended by him and other family members. P.W. 4 never stated that he slept in orchard alone. P.W. 6 stated that he along with his wife and son slept in cowshed. P.W. 6 ran towards house after hearing cry of her daughter-in-law. P.W. 6 never stated that he saw appellant/convict throwing acid on P.W. 5 and P.W. 7. Bindu Bhagat/P.W. 6 never stated that appellant/convict was apprehended by family members in the courtyard. Krishna Devi never stated that appellant/convict has pot in his hands when he was apprehended. Krishna Devi never stated that her brother, mother, uncle and aunt apprehend appellant/convict in courtyard. He categorically stated that during investigation, prosecution witnesses stated that



appellant/convict was arrested from the field at about 6:00 AM, with the help of co-villagers. He also recorded the statement of appellant/convict during the investigation, who claimed his innocence and stated that due to land related dispute, which is pending since 1976 with informant, he was implicated falsely with the present case.

26. P.W. 9 Dr. Devendra Kumar Sharma, who in his examination-in-chief stated that it was acid burn case caused by lead acid water, used in batteries. He examined P.W. 5 Kanti Devi & P.W. 7 Krishna Kumari immediately after the occurrence i.e., at 1:30 AM. He found red swelling on the arm and neck area of injured Krishna Kumari and similar red swelling was also found on the neck heading towards face of Kanti Devi, she was suffering with severe eye pain. The color of her eyes became white but some vision was there. Her face was disfigured.

27. It would be apposite to reproduce the judgments as cited by learned *amicus*.

27.1. In **Jage Ram Case (supra)** para nos. 12, 13 and 14, which reads as under:-



12. For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc.

13. In *State of M.P. v. Kashiram*



[*State of M.P. v. Kashiram*, (2009) 4 SCC 26 : (2009) 2 SCC (Cri) 40 : AIR 2009 SC 1642] , the scope of intention for attracting conviction under Section 307 IPC was elaborated and it was held as under: (SCC pp. 29-30, paras 12-13)

"12. ... '13. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

14. This position was highlighted in *State of Maharashtra v. Balram Bama Patil* [*State of Maharashtra v. Balram Bama Patil*, (1983) 2 SCC 28 : 1983



SCC (Cri) 320] , *Girija Shankar v. State of U.P.* [*Girija Shankar v. State of U.P.*, (2004) 3 SCC 793 : 2004 SCC (Cri) 863] and *R. Prakash v. State of Karnataka* [*R. Prakash v. State of Karnataka*, (2004) 9 SCC 27 : 2004 SCC (Cri) 1408].

16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury.'

See *State of M.P. v. Saleem* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC pp. 559-60, paras 13-14 and 16.

13. '6. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court



to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [*Sevaka Perumal v. State of T.N.*, (1991) 3 SCC 471 : 1991 SCC (Cri) 724] ' (*Saleem case* [*Saleem case*, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329] , SCC p. 558, para 6)"

14. Having regard to the weapon used for causing the head injuries to Sukhbir, nature of injuries, situs of the injuries and the severity of the blows, the courts below recorded concurrent findings convicting the second appellant under Section 307 IPC. In our considered view, the conviction of the second appellant Rajbir alias Raju under Section 307 IPC is unassailable.

27.2. In Shivaji Sahabrao Bobade Case

(supra) para no. 8, which reads as under:-

8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive



habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to



this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naivete and clever equivocation, manipulated conformity and ingenious untruthfulness of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the Court of first instance. Nor can we make a fetish of the trial Judge's psychic insight.

28. It would be apposite to reproduce the judgments as cited by learned APP.

28.1. In **Balraje @ Trimbak Case (supra)** para nos. 29 and 30, which reads as under:-

29. Law is fairly well settled that



even if acquittal is recorded in respect of the co-accused on the ground that there were exaggerations and embellishments, yet conviction can be recorded if the evidence is found cogent, credible and truthful in respect of another accused. The mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence.

30. In law, testimony of an injured witness is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of



such evidence.

28.2. In Bharwada Bhoginbhai Hirjibhai
Case (supra) para nos. 5 and 6, which reads as under:-

5.The reasons are obvious :

- “(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.
- (2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.
- (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person’s mind, whereas it might go unnoticed on the part of another.
- (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.
- (5) In regard to exact time of an incident,



or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

6. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore



cannot be annexed with undue importance. More so when the all important "probabilities factor" echoes in favour of the version narrated by the witnesses.

29. From the discussions of aforesaid witnesses, following facts appears, which creates a doubt regarding prosecution case.

(i) The place of occurrence was a room and it was mid-night, there was no source of light and in such background, persons who are not acquainted with accused, therefore his identification appears doubtful. P.W. 5, informant/injured herself categorically stated that she was not acquainted with appellant/convict and her eye remains closed during occurrence and she came to know about the fact that appellant threw acid upon her from P.W. 7 only.

(ii) Almost all prosecution witnesses, including P.W. 5/informant stated that appellant/convict was apprehended immediately after the occurrence in their courtyard (*aangan*) alongwith aluminum pot through which he poured acid upon injured (P.W. 5 & P.W. 7), which was handed over to local chowkidaar alongwith appellant but said



aluminum pot, was never seized or sent for chemical/forensic examination. Investigation Officer/P.W. 8 in this case categorically deposed that the prosecution witnesses stated during investigation that appellant/convict was arrested in morning, while he was attending field work. Therefore, on the point of immediate arrest after occurrence, in courtyard of informant/P.W. 5, witnesses are not appearing wholly reliable, even they are injured witnesses. P.W. 8/IO denied to collect/seize any aluminum pot. He further denied to collect black material found sprayed on the ground at the place of occurrence and sent same for chemical/forensic examination, as to ascertain whether it was acid or not. In want of chemical examination alleged thrown water like substance cannot even categorised as corrosive substance within meaning of Section 326 of IPC, only on the basis of injury, beyond doubt.

30. It appears from the *fardbeyan* exhibited as Exhibit No. 1, that while throwing alleged acid, intention was conveyed by appellant/convict that he wanted to disfigure the face of victim/P.W. 5, without showing any intention to



kill her. The depositions of P.W. 8/doctor is nowhere suggesting that her injury was of such nature, which was dangerous to life, therefore intention or knowledge as act of appellant may likely to cause death, is absent from the facts as surfaced during the trial, *qua*, appellant/convict as to secure his conviction under Section 307 of the IPC.

31. Accordingly, the appeal stands allowed.

32. The impugned judgment of conviction dated 10.01.2004 and order of sentence dated 13.01.2004 passed by learned 2nd Additional Sessions Judge, Motihari, East Champaran in Sessions Trial No. 112/106 of 2003 is, hereby, set aside. The appellant, above-named, is acquitted from the charges levelled against him by giving him benefit of doubt.

33. If the appellant is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case.

34. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.5,000/- (Rupees Five Thousand only) to Mr. Ravi Bharadwaj, learned *Amicus*



Curiae as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

35. Office is directed to send back the lower court records along with a copy of the judgment to the court below forthwith.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.08.2024
Transmission Date	26.08.2024

