

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.700 of 2013

Arising Out of PS. Case No.-12 Year-2011 Thana- CHOUTARWA District- West Champaran

Chunnu Chaubey Son of Late Rajendra Chaubey @ Late Yogendra Chaubey
Resident of Basganw Parsauni P.S. Bhairoganj Dist West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Nawal Kishore Singh, Adv Mr. Jitendra Nath Tiwary, Adv Mr. Sanjeeb Kumar Sanju
For the Respondent/s	:	Mr. S.N. Prasad, APP

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
And
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 15-01-2019

Heard Mr. Nawal Kishore Singh, learned counsel
for the appellant and Mr. S.N. Prasad learned APP for the State
on this Criminal Appeal.

2. This appeal has been preferred against the
judgment and order of conviction dated 18.03.2013 and order
of sentence dated 21.03.2013 passed by learned 2nd Addl.
Sessions Judge, Bagaha, West Champaran in Sessions Trial
no. 425 of 2011, arising out of Chautarwa (Bhairoganj) P.S.
Case No. 12 of 2011 whereby the learned trial court convicted
the accused Chunnu Chaubey for the offence punishable under
Sections 324, 326, 448 and 509 of the Indian Penal Code and



sentenced him to undergo life imprisonment and also slapped him with a fine of Rs. 50,000/- and in case of default of payment of fine to further undergo R.I. for one year under Section 326 of the Indian Penal Code and also sentenced him R.I. for three years under Section 324 of the Indian Penal Code, R.I. for one year under Section 448 of the Indian Penal Code and S.I. for one year under Section 509 of the Indian Penal Code.

3. The factual matrix of the case is that Chautarwa (Bhairoganj) P.S. Case No. 12 of 2011 was instituted under Section 448, 324, 326, 307, 509/34 of the Indian Penal Code against Chunnu Chaubey on the basis of fardbeyan of Nishu Kumari D/o Nawal Tiwary recorded by S.I. D.K. Upadhayay of Town P.S. Bettiah on 27.01.2011 at 13:00 hours at M.J.K. Hospital, Bettiah with the allegation, in succinct that in the evening of 26.01.2011 while she along with her sister, namely, Priyanka Kumari was regressing to their house from the shop in village and arrived near the house of a washer-man, Chunnu Chaubey, who was standing there from before started passing lewd comment upon them. They raised protest and warned him to assault by means of slipper. Whereupon he got infuriated and extended threatening to



deface her sister so that she may not be able to go to her marital house. Then both of them regressed to their house. In the night of 26/27/01/2011 she along with her sister Priyanka was sleeping on a chowky (cot) in a room and her elder sister along with her children and her mother were sleeping in another room. Her sister Ranjeeta Devi stepped out of the house to defecate her child and after getting him defecated, she was relishing bonfire on the door. In the meantime, at around 01:00 AM, Chunnu Chaubey along with three other unknown miscreants intruded into her house and poured acid upon them. Resultantly, the face and person of both the sisters and their attire and beds were burnt and both of them got badly injured. She identified the accused Chunnu Chaubey in the occurrence. Responding hulla made by her, her family members and villagers rushed there and rushed them to the hospital. Face of her sister Priyanka Kumari has been badly burnt and her face and other part of the person has also been burnt.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against accused Chunnu Chaubey under Sections 448, 324, 326, 307, 509/34 of I.P.C. keeping the investigation



pending against rest of the accused persons.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of the learned 2nd Addl. Sessions Judge, Bagaha, West Champaran for trial.

6. Charge against accused Chunnu Chaubey was framed under Sections 448, 326, 307 and 509 of the Indian Penal Code. Charge was read over and explained to him by the court to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eleven prosecution witnesses namely, Ranjeeta Devi as PW-1, victim Priyanka as PW-2, informant Nishu Kumari as PW-3, Satyendra Pandey as PW-4, Jay Chandra Pandey as PW-5, Ramakant Tiwary as PW-6, I.O. Bhagirath Prasad as PW-7, Nawal Tiwary as PW-8, Devanti Devi as PW-9, Dr. Sri Kant Dubey, who had examined the victim Priyanka as PW-10 and Dr. K.M.P. Parvey, who had examined the informant Nishu Kumari as PW-11. The prosecution has also filed and proved some documents by way of documentary evidence in the case.



8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be falsely implicated in this case. The accused has also filed handicapped certificate of the accused marked as Ext-A only in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that barring PW-2 and PW-3, who happen to be victim and informant respectively, none of the material witness examined in the case happens to be eye witness of the occurrence. It is also submitted that PW-2 and 3 have stated



that her sister had lit the lamp in the room at the time of occurrence for the purpose of defecating her child, but the informant has not taken such case in her fardbeyan. Hence, the aforesaid statement appears to be improvement made by the witnesses and is not worth credence. It is also submitted that as per the account of PW-2, it was a dark night at the time of occurrence and there was no source of identification at the place of occurrence, hence, it was not possible to identify the accused in such a dark night. It is also submitted that as per the account of witnesses, PW-1 was relishing the bonfire at the door at the time of occurrence, so had the accused intruded into the house, she would have made alarm and had given chase to the accused, but PW-1 has not done so which creates serious doubt about the prosecution case. It is also submitted that thus the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant by adducing convincing, trustworthy and reliable evidence. In alternative, it is submitted by the learned counsel for the appellant that in case of finding the case true by this Court, as the appellant has already undergone custody of eight years, hence, taking sympathetic view his sentence may be reduced to the period of custody already undergone by the appellant.



13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant has fully supported the prosecution case and PW-2 and PW-1, who happen to be victim and the sister of the informant respectively, have also corroborated the prosecution case. The ocular evidence also stands corroborated by the medical evidence. It is also submitted that though in the FIR, the factum of lighting the lamp by PW-1 at the place of occurrence at the time of occurrence as stated by PWs-2 and 3 in their statement has not been adverted, but as admittedly the appellant happens to be neighbour of the prosecution party and well known to it from before, so he has been identified by the informant during the course of occurrence and there was no difficulty in identifying him by the informant even in the dark night as the informant must have been acquainted with the feature of the appellant and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record it appears that to



substantiate its case, the prosecution has examined altogether eight material witnesses in the case. From perusal of testimony of aforesaid witnesses, it appears that out of the aforesaid witnesses, PW-4 (Satyendra Pandey), PW-5 (Jaychandra Pandey), PW-6 (Ramakant Tiwary) PW-8 (Nawal Tiwary) and PW-9 (Devanti Devi) do not happen to be eye witness of the occurrence. As PW-4 (Satyendra Pandey) has stated in his examination-in-chief that he learnt the occurrence on the following day of morning. When he arrived at the door of Nawal Tiwary, he learnt about pouring of acid on the person of Priyanka Kumari and Nishu Kumari. He learnt from Ranjeeta Kumari that Chunnu Chaubey has poured the acid upon them. In paragraph-3 of his cross-examination, he has stated that he met Ranjeeta Kumari on her door at 06:30 AM in the morning. Though, the said witness has claimed to have learnt the factum of pouring of acid on the person of the victim and the informant by Chunnu Chaubey from PW-1(Ranjeeta Devi), but Ranjeeta Devi has not corroborated the factum of divulgence of the aforesaid fact to PW-4. Hence, for want of corroboration, the aforesaid statement of PW-4 is not admissible in evidence even as hearsay witness. PW-5 (Jay Chandra Pandey) has stated in his examination-in-chief itself



that at the time of occurrence, he was sleeping at his house. On hulla, he arrived at the door of Nawal Tiwary and found the people congregated there and the family members of Nawal Tiwary making alarm. He heard that acid has been poured on the person of the daughters of Nawal Tiwary. The people present there, were uttering about pouring acid by Chunnu Chaubey. In paragraph 4 of his cross-examination, he has stated that he had not seen the occurrence. Though, the said witness has claimed to have learnt the occurrence from the people congregated at the place of occurrence, but none of the person present at the place of occurrence at the time of occurrence has come forward in corroboration of the factum of divulgence of the occurrence to PW-5. Hence, the aforesaid statement of PW-5 is not admissible in evidence for want of corroboration even as hearsay witness of the case. PW-6 (Ramakant Tiwary) has stated in his examination-in-chief that while he was regressing after defecation at the time of occurrence, he witnessed Chunnu Chaubey escaping after pouring acid upon the person of Priyanka and Nishu. In paragraph 3 of his cross-examination, he has stated that he was not present at the place of occurrence at the time of occurrence. Thus, the said witness appears to have not



witnessed the occurrence rather had only seen accused escaping from the place of occurrence after the occurrence. PW-8 (Nawal Tiwary), who happens to be father of the victim and the informant has stated in his examination-in-chief that on the date of occurrence, he had gone to Ramnagar Mill taking sugarcane. He was telephonically informed by his wife that Chunnu Chaubey after pouring acid upon Nishu and Priyanka had escaped. On the said information, he rushed to his house and took his both daughters to Bettiah Hospital to accord them treatment. But, from perusal of testimony of PW-9 (Devanti Devi), who happens to be wife of PW-8, it appears that she has not corroborated the factum of divulgence of occurrence to PW-8 telephonically. Hence, for want of corroboration by PW-9, the aforesaid statement of PW-8 is also not admissible in evidence even as hearsay witness. PW-9 (Devanti Devi), who happens to be mother of the deceased has stated in her examination in chief that at the time of occurrence she was sleeping in one room while her three daughters were sleeping in another room and as per the prosecution case itself PW-9 was sleeping in another room at the time of occurrence and PW-3 (Nishu Kumari) has stated in paragraph 12 of her cross-examination that after the



occurrence, her sister and mother (PW-9) arrived in her room and she divulged the occurrence to them. Hence, the aforesaid aspects of the case and statement of PW-3 candidly indicates that PW-9 also does not happen to be eye witness of the occurrence.

15. From perusal of testimony of informant Nishu Kumari (PW-3), it appears that she has supported the prosecution case by giving statement in her examination-in-chief in consonance to the prosecution case by stating that on 26.01.2011 at around 06:30 PM while she and her sister Priyanka were regressing to their house from the shop in village, Chunnu Chaubey, who was hiding at the door of Harikesh Baitha started passing lewd comment upon them. But, as they ignored him, he started passing obscene comment intensively. Then they warned him to assault by means of slipper, whereupon he divulged that his sister has become proudly as her marriage is going to be performed. He would teach a lesson to them so that they may not be able to go to marital house. Then they regressed to their house. In the night of the said date, they were sleeping in their house. Her sister (PW-1) stepped out of the house to defecate her child by litting lamp in the room. In the meantime, Chunnu Chaubey,



who was hiding there from before along with three other accused persons intruded into her room and uncovered *Razai* from their face and poured acid on the person of Priyanka. As she was sleeping beside her, it also fell upon her. They started writhing. Then her mother, sister and villagers rushed there and took them to Bhairoganj railway station and from there they were rushed to M.J.K. hospital in the morning and they underwent treatment there. Entire face, hand and body of Priyanka has been completely burnt and her life has become hell. While her hand neck, forehead and right leg were burnt in the said acid attack. She was subjected to gruelling cross-examination, but from perusal of cross-examination of the said witness, we find nothing cogent and convincing elicited in her cross-examination by the defence having potential to rule out her presence at the place of occurrence at the time of occurrence and witnessing of the occurrence. She has faced the test of cross-examination tenaciously. Moreover, she happens to be victim and injured witness of the case.

16. PW-2 (Priyanka), who happens to be victim of the case has also corroborated the prosecution case by stating in her examination-in-chief in consonance to the prosecution case as adumbrated in the fardbeyan and as stated



by PW-3 in her in her examination-in-chief as adverted by us hereinabove. She has stated in para-4 of her examination-in-chief that she and her sister were treated in Bettiya Hospital. She is still undergoing treatment. She is blind by her both eyes. Her mother has taken her to the court by giving support. The court has also observed her mother standing behind her giving her support. The learned trial court while recording the statement of victim has observed that entire face of the victim including eye has defaced. There was severe burn injury on her person including hand and her both eyes have also been burnt. She was also subjected to gruelling cross-examination, but nothing cogent and convincing has been elicited in her cross-examination having potential to rule out the prosecution case and moreover she happens to be victim and injured witness of the case. Hence, her presence at the place of occurrence at the time of occurrence and sustaining injury by her in acid attack made upon her cannot be ruled out. Though from perusal of testimony of PW-2 (Priyanka), it appears that she had not witnessed the appellant during the occurrence as to the court question as recorded in paragraph 19 of her cross-examination, she has stated that she had not witnessed the accused Chunnu Chaubey pouring acid rather her sister had



witnessed him.

17. From perusal of testimony of PW-1 (Ranjeeta Devi), who happens to be sister of victim (PW-2), it appears that though she has also made an abortive bid to support the prosecution case by stating in her examination-in-chief in consonance to the prosecution case claiming herself to be eye witness of the occurrence and as per account of PW-2 (Priyanka), she has also witnessed the occurrence of pouring acid by the appellant Chunnu Chaubey, but from perusal of testimony of PW-2 and PW-3, it appears that at the time of occurrence, PW-1 (Ranjeeta Devi) had stepped out of the house to defecate her child and after getting her child defecated, she was relishing the bonfire on the door of the house. In the meantime, the appellant intruded into the house and committed the occurrence and informant PW-3 has stated in paragraph 12 of her cross-examination that after the occurrence her *didi* (PW-1) and mother rushed to her room and she divulged the occurrence to them. PW-1 has stated in para-10 of her cross-examination that at the time of occurrence, she was getting her child shitting. Her both the sisters were screaming. She rushed there and found the victims burnt. Aforesaid statement of witnesses indicates the PW-1



had also not witnessed the appellant pouring the acid upon the person of PW-2 and PW-3. Though, PW-1 and PW-2 have not witnessed the appellant pouring acid upon PW-2 and PW-3, but PW-3, who happens to be sister of PW-2 and was sleeping beside her on the same cot and has also sustained acid burn injury in the occurrence as sprinkle of acid had also fallen on her person has fully supported the occurrence of pouring acid upon her sister PW-2 by the appellant.

18. From perusal of testimony of PW-10 Dr. Sri Kant Dubey and PW-11 Dr. K.M.P. Parvey, it appears that the aforesaid doctors have examined the victim Priyanka and the informant Nishu Kumari respectively. PW-10 Dr. Sri Kant Dubey has found second degree burn over face, both eyes and left arm and forearm of victim Priyanka. Injury caused disfigurement of face and improper closing of eyes and has opined the said injury as grievous in nature caused by corrosive liquid. He has proved the injury report of Priyanka marked as Ext-4. PW-11 (Dr. K.M.P. Parvey) has found acid burn injury over forehead, left face, small portion of neck of informant Nishu Kumari caused by corrosive substance (acid) and has opined said injury as simple in nature. In his cross-examination, he has stated that it was acid burn. It may be



sulfuric acid or any kind of acids. He has proved the injury report and supplementary injury report marked as Exts-5 and 5/1 respectively. Thus, from perusal of aforesaid medical evidence of the prosecution, it appears that the ocular evidence of prosecution stands corroborated by the medical evidence as well.

19. From perusal of testimony of I.O. PW-7 (Bhagirath Prasad), it appears that I.O. has also found sprinkle of acid on the chowky (cot) and on the tat which were burnt.

20. Though, as per submission of learned counsel for the appellant, the appellant was handicapped and he has filed the handicapped certificate of the appellant marked as Ext-A in buttress of his aforesaid submission and PW-2 (Priyanka) has also stated in paragraph 13 of her cross-examination that the appellant is handicapped by hand, but the I.O. (PW-7) in paragraph 22 of his cross-examination has candidly stated that both hands of Chunnu Chaubey are functioning swiftly. He cannot be dubbed as handicapped. He has himself examined him and found his both hands active and from perusal of testimony of PW-2, it appears that while recording statement of the said witness, in para-13 of her cross-examination, the court has observed that as per the



version of the accused, he has been afflicted with paralysis, but he is standing in the dock smartly and straight. The aforesaid observation of the court and the statement of the I.O. indicate that the appellant is not handicapped by his hand rather his both hands are active and functioning.

21. It is submitted by learned counsel for the appellant that as per the account of PW-2, it was dark night and the occurrence is of 1:00 PM in the night and there was no source of identification at the place of occurrence. Though the PWs-2 and 3 have tried to make improvement regarding presence of source of identification at the place of occurrence by stating about lighting of the lamp by their sister in the room, but the informant has not stated so in her fardbeyan. Hence, for want of source of identification, it was not possible to identify the appellant in such a dark night. But, the aforesaid submission of learned counsel for the appellant does not appear to be convincing because admittedly the appellant happens to be neighbour of the prosecution party and his house is located after three houses of the informant and on the very date of occurrence, he had extended threatening of defacing the victim in presence of the informant, so the informant must have been acquainted with the feature of the



appellant and she must have identified him even in the dark night properly and without any difficulty. The appellant has also not given any convincing and appreciable explanation as to why the prosecution has falsely implicated him in such a heinous and sordid offence.

22. Thus, from perusal of the aforesaid ocular and medical evidence of the prosecution and in view of the discussion made by us hereinabove, we find that the prosecution has succeeded to substantiate its case beyond all reasonable doubt by adducing consistent, trustworthy, convincing and reliable evidence. Hence, the aforesaid judgment and order of conviction passed by the learned trial court does not warrant any interference by this Court and is accordingly upheld.

23. As it is a case of acid burn and face of the victim has been completely damaged and defaced and she has become blind by both the eyes and as per the witnesses account, she was going to be married within 10-15 days of the occurrence, so in the facts and circumstances of the case, we do not think it proper and appropriate to reduce the sentence of the appellant as awarded by the learned trial court. Accordingly, this Criminal Appeal is dismissed.



24. From perusal of record, it appears that while awarding sentence under different Sections of the I.P.C., the learned trial court has not given any observation as to whether the aforesaid sentences shall run concurrently or consequently. However, as the appellant has been awarded life imprisonment under Section 326 I.P.C., hence, other substantive sentences awarded by the learned trial court under other allied Sections of the I.P.C. is directed to run concurrently.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
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