



2026:AHC:142916

Reserved on 19.05.2026
Delivered on 15.07.2026
AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2810 of 1983

Razzak

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Hari Narayan Singh, P.p. Srivastava, Syed Wajid Ali
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Ms. Vaishali Rai, learned Amicus Curiae for the appellant and Shri Purshottam Maurya, learned AGA for the State.
2. This criminal appeal has been preferred by the appellant Razzak against the judgment and order passed by the learned Sessions Judge, Gorakhpur, in S.T. No. 219 of 1983, whereby the appellant has been convicted and sentenced to undergo three years R.I. under Section 326 IPC.
3. Tersely, the prosecution story is that the appellant and the deceased Gulam Husain resided together on the upper floor of their

double-storeyed house at village Bichhia, the ground floor whereof was in occupation of tenants. It is the case of the prosecution that on 05.09.1981, at about 7 A.M., a quarrel took place between the appellant and his father inside the said upper floor of the building where the two of them were residing together, in the course of which the appellant poured acid upon the person of his father. The occurrence is stated to have taken place within the four walls of the house, in circumstances where independent outsiders were not ordinarily expected to be present. Immediately after the occurrence, the appellant is said to have attempted to flee towards the south but was apprehended on the spot by P.W.-1 Mahatam Singh, with the assistance of Ram Sakal, while he was still running away after pouring the acid on his father. The appellant was thereafter handed over to the police.

4. After registration of the FIR, Investigating Officer has collected the documentary and oral evidences. Ex. Ka.-1 and Ex. Ka.-6 is the FIR, which has been proved by P.W.-1. Ex. Ka.-2 is the injury report of accused Razzaq, which has been proved by P.W.-3. Ex. Ka.-3 is the injury report of Gulam Husain, which has been proved by P.W.-4. Ex. Ka.-4 is the post mortem report of Gulam Husain, which has been proved by P.W.-5. Ex. Ka.-5 is the statement of Gulam Hussain, which has been proved by P.W.-6. Ex. Ka.-7 is the G.D. entry. Ex. Ka.-8 is the panchnama, Ex. Ka.-9 is the

challan, Ex. Ka.-10 is the sketch, Ex. Ka.-11 is the letter for post mortem examination of Gulam Husain, Ex. Ka.-12 is the G.D. entry, Ex. Ka.13 is the site plan, Ex. Ka-14 is the statement of Jiyan and Ex. Ka.-15 is the chargesheet, which have been proved by P.W.-7.

5. The learned Sessions Judge, Gorakhpur has framed the charge against the appellant on 18.06.1983 under Section 302 IPC. In support of their case, the prosecution has examined Mahatam (informant) as P.W.-1, Smt. Jiyan as P.W.-2, who is the eye witness, Dr. U.N. Pandey as P.W.-3, who has examined the injuries of Razzak, Dr. K.K. Dixit as P.W.-4, who has examined the injuries of deceased Gulam Husain, Dr. K.M. Singh as P.W.-5, who has conducted the autopsy on the dead body of Gulam Husain and prepared the post mortem report, S.I. Umesh Chand as P.W.-6, who had recorded the statement of Gulam Husain and Ram Janam Yadav as P.W.-7, who conducted later part of the investigation and submitted charge-sheet. The defence has examined Abdul Nisar as D.W.-1.

6. The grounds of the appeal in brief are that the conviction of the appellant is against the weight of evidence on record and is bad in law. Furthermore, the sentence awarded to the appellant is too severe.

7. P.W.-1 stated in examination-in-chief, in brief, that while going to his field at about 9:00 a.m., he heard an alarm and saw the accused fleeing towards the drain. He and other villagers chased and apprehended the accused. P.W.-1 did not witness the accused throwing acid from the roof. According to the prosecution, the acid was thrown on Gulam Husain during a scuffle. Gulam Husain's body had turned black due to the acid burns, and the accused, Razzaq, had sustained acid splashes on his hand. The injured Gulam Husain was taken to the Medical College by Abdul Nisar, a rickshaw puller. P.W.-1 lodged the FIR.

8. P.W.-2 Smt. Jiyan stated, in examination-in-chief that Razzak is the son of Gulam Husain. My house is situated opposite the entrance of Gulam Husain's house. I do not know when or how Gulam Husain died. He has since passed away.

9. P.W.-3, Dr. U.N. Pandey stated, in examination-in-chief that on 05.09.1981 he examined the accused Razzaq and found simple injuries on his hand, consistent with acid splashes. He opined that the injuries had been caused on 05.09.1981 at about 7:00 a.m. He prepared the injury report and proved the same before the Court.

10. P.W.-4 Dr. K.K. Dixit stated in his examination-in-chief, in brief, that he conducted the medical examination of the deceased, Gulam Husain, and found approximately 60% acid burn injuries involving the face, neck, chest, and upper part of body. He opined

that the injuries were fresh, sustained at about 7:00 a.m. on 05.09.1981, and were caused by acid. According to him, such 60% acid burns were sufficient to endanger life and carried the possibility of causing death. He referred the patient to the Eye Surgeon and Plastic Surgeon for specialized treatment and proved the injury report before the Court.

11. P.W.-5, Dr. K.N. Singh stated in his examination-in-chief, in brief, that he conducted the post-mortem examination and proved the post-mortem report. He found extensive corrosive (acid) burn injuries over almost the entire upper part of body, including the face, front and back of the neck, chest, scalp, both upper limbs, forehead, and eyes. The burns were deep, ulcerated, muscle-deep at places, with blackening and peeling of the skin, and the left eyeball was shrunken due to the burns. The post-mortem recorded multiple extensive burn injuries, including a 20" × 12" burn over the neck and chest, 19" × 8" burn over the right upper limb, 24" × 3½" burn over the left upper limb, 4" × 5" burn over the left frontal region, 17" burn over the scalp, and a 29" × 14" ulcerated burn extending from the back of the neck to the hip, muscle-deep with loss of skin. PW-5 opined that the injuries were caused by acid/corrosive substance, and that the cause of death was septicaemia and exhaustion resulting from the extensive acid burn injuries. He

confirmed that the injuries were sufficient in the ordinary course of nature to cause death.

12. PW-6 S.I. Umesh Chand Upadhyay stated in his examination-in-chief that he recorded the statement of the injured Gulam Husain at the Medical College Hospital on 08.09.1981. He deposed that the deceased Ghulam Hussain had informed him that acid had been thrown on him; however, by inadvertence, the word “liquor (शराब)” was written instead of “acid (तेजाब)” in the Case Diary, which he clarified before the Court. Following Gulam Husain’s death 12–14 days later, the statement was treated as a dying declaration.

13. PW-7, Ram Janam Yadav, Investigating Officer stated in his examination-in-chief, in brief, that he took over the investigation on 17.12.1981 after information regarding the victim’s death was received at the police station. Consequently, the offence was converted from Section 326 IPC to Section 304 IPC on 21.10.1981. He examined the earlier investigation, recorded the statement of Mahatam Singh (P.W.-1), and completed the remaining investigation by preparing and signing the relevant papers.

14. Learned counsel for the appellant submits that the appellant has not committed the offence alleged by the prosecution and has been falsely implicated in the present case. It is contended that the

death of his father was purely accidental. The appellant himself made every effort to save his father's life and, in the process, sustained burn injuries on his hands while trying to rescue him. It is further submitted that the present criminal appeal has remained pending since the year 1983 and that the appellant is now more than 60 years of age. Therefore, even if this Court comes to the conclusion that the appellant is guilty of the offence, he deserves to be extended the benefit of probation in view of the facts and circumstances of the case.

15. Learned AGA vehemently opposed the submissions advanced on behalf of the appellant and supported the findings and judgment of the trial court. It is submitted that the appellant is the real son of the deceased, Gulam Hasan, and no enmity or ulterior motive has been brought on record to suggest that he has been falsely implicated in this case. It is further submitted that during an altercation with the deceased, the appellant intentionally poured acid on the vital parts of the deceased's body, causing grievous burn injuries. The deceased succumbed to the injuries during the course of treatment about 20 days after the incident. It further contended that although the appellant had committed a grave offence amounting to murder or culpable homicide, the trial court adopted a lenient approach by convicting and sentencing him only under Section 326 IPC.

16. It has come on record, and has not been seriously disputed, that the appellant himself also sustained burn injuries by acid during the course of the commission of the offence, which injuries were found to be superficial in nature on examination by P.W.3 Dr. U.N. Pandey, as opposed to the extensive 60% acid burns sustained by the deceased and noted by P.W.4 Dr. K.K. Dixit and P.W.5 Dr. K.N. Singh, who conducted the post-mortem examination. This disparity in the nature and extent of the injuries sustained by the appellant, on the one hand, and the deceased, on the other, is itself a strong pointer to the fact that it was the appellant who was the aggressor and not the reverse, as sought to be suggested. The deceased Gulam Husain did not die instantaneously. He succumbed to his injuries after prolonged medical treatment, death having occurred approximately three weeks after the occurrence, on account of *septicaemia* and exhaustion consequent upon the extensive burn injuries. The accused, in his Section 313 Cr.P.C. statement, admitted that acid was thrown during the scuffle but failed to explain how Gulam Husain sustained the injuries.

17. During the course of investigation, the Investigating Officer, P.W.6 S.I. Umesh Chand Upadhyaya, visited the deceased at the Medical College Hospital on 08.09.1981 and recorded his statement under Section 161 Cr.P.C., which statement clearly implicated the appellant as the person responsible for causing the injuries. Having

regard to the fact that this statement was made by the deceased in relation to the cause of his death and the circumstances thereof, and was followed by his death, it satisfies the requirements of Section 32(1) of the Indian Evidence Act and may be admissible as a dying declaration, notwithstanding that it was not recorded before a Magistrate. The diseased Gulam Husain was unable to speak properly at the time of statement recorded and 161 Cr.P.C. by the investigating officer, but he has specifically stated that some material was thrown by his son Razak over him. So far involvement of the accused is concerned, is not doubtful on the basis of evidence available on the record. It is also pertinent to mention here that the accused Razzak has not hospitalised the deceased to provide the proper medical treatment in order to save the life of his father, the deceased was hospitalised by a third person, though, he was present on the spot at the time of occurrence. The accused Razzak tried to escape from the spot after committing the offence, and he was apprehended by the independent witnesses just some distance away from the place of occurrence. It also clearly transpires the *mala fide* conduct and behaviour of the applicant.

18. The medical evidence on record, taken cumulatively, further discloses that the appellant was aware of the likely consequences of pouring acid upon a human being. Acid is a substance whose corrosive and dangerous nature is a matter of common knowledge.

Its deliberate use on the body of another person, particularly in the manner and to the extent reflected by the injuries sustained by the deceased, is sufficient to impute to the appellant the knowledge that his act was likely to cause death or such bodily injury as was likely to cause death. In these circumstances, the findings recorded by the learned trial court that the appellant did not possess the requisite knowledge to attract the offence of murder or culpable homicide does not, in the considered view of this Court, appear to be correct or sustainable on the basis of facts and circumstances and evidence on record.

19. It is, however, noticed that although the appellant stood charged under Section 302 I.P.C., the trial court proceeded to convict him for the lesser offence punishable under Section 326 I.P.C. (voluntarily causing grievous hurt by dangerous weapons or means). On the basis of evidence fact & circumstances available on the record in totality, it appears that applicant was required to convict under section 304 of IPC on the ground that he had knowledge that what he is doing at the time of commencement of offence against his father by way of pouring the acid over the vital part of the body of deceased. On the basis of observation hereinabove, I am not agree with the findings of the trial court. In this regard, section 326 I.P.C., as it stood applicable, prescribes a mandatory sentence along with imposition of fine and the trial court

was also required to award a proper sentence of imprisonment and fine which is as an integral and mandatory part of a sentence under the said Section. It is seen from the impugned judgment that no such proper sentence was in fact awarded by the trial court. This Court is of the view that the trial court committed material legal error in this regard, in failing to impose the fine mandated by law upon recording a conviction under Section 326 I.P.C. Where the IPC provision prescribes punishment in the form, “...**shall be punished with imprisonment ... and shall also be liable to fine**”, or “...**with imprisonment and fine**”, the trial court is expected to impose fine also. Failure to impose fine amounts to legal error in sentencing.

20. Before parting with the record, this Court considers it necessary to record its deep anguish over the manner in which the learned Trial Judge dealt with the present sessions trial. The accused was charged for the offence punishable under Section 302 IPC on the allegation that he intentionally caused the homicidal death of his own father by pouring acid upon him, resulting in fatal burn injuries. The evidence on record, both ocular and medical, unmistakably required a careful examination with reference to the ingredients of Section 302 or 304 IPC. However, the learned Trial Judge, by a manifest misappreciation of the evidence and a complete failure to apply the settled principles governing the

offence of murder/culpable homicide, recorded a conviction only under Section 326 IPC and imposed a sentence of merely three years' rigorous imprisonment. No legally sustainable reason has been assigned for discarding the charge of murder or for extending such extraordinary and unwarranted leniency. The omission to impose the statutory sentence of fine, which formed an integral part of the punishment prescribed under Section 326 IPC, further reflects patent non-application of mind to the mandatory provisions of law and the settled principles governing sentencing. The cumulative effect of these glaring errors resulted in a serious miscarriage of justice. This Court is conscious that the impugned judgment was rendered more than four decades ago and that the concerned Presiding Officer has, in all probability, demitted judicial office. Nevertheless, the passage of time cannot dilute the duty of this Court to record its disapproval of an adjudication which displays a serious failure to appreciate the evidence, apply the correct legal principles and impose the punishment mandated by law. Judicial discretion is never synonymous with judicial arbitrariness. Sympathy or misplaced leniency has no place where the statute and the evidence demand a reasoned and lawful adjudication. Such lapses have the potential to erode public confidence in the administration of criminal justice. It is, therefore, considered appropriate to observe that every judicial officer trying

criminal cases must exercise the highest degree of care, legal acumen and judicial discipline while recording findings on guilt and imposing sentence. This judgment shall serve as a reminder that failure to discharge these fundamental judicial obligations may invite serious judicial criticism and, where the officer is in service, appropriate administrative consequences in accordance with law.

21. It is informed by the learned A.G.A. that no separate appeal or revision for enhancement of sentence has been preferred by the State against the judgment of the trial court. In the absence of any such appeal by the State, and having regard to the well-settled principle that an appellate court ought not to enhance a sentence, or otherwise alter a finding to the prejudice of the accused. On an appeal preferred by the accused alone, this Court refrains from disturbing the sentence awarded by the trial court or from converting the conviction to one under a higher provision, notwithstanding the observations made hereinabove regarding the correctness of the trial court's reasoning.

22. This Court is further of the view that the trial court, in assigning the benefit, it did to the appellant on the question of sentence, adopted an unduly lenient approach and thereby fell into legal error. The offence in question was committed by the appellant against his own father, within the sanctity of their shared home, and resulted in the latter's death after prolonged suffering.

23. Having regard to the gravity and mode of committing the offence, there is no reasonable ground made out on the record which would justify extending to the appellant the benefit of release on probation of good conduct. The submission made on behalf of the appellant seeking such benefit is, accordingly, rejected.

24. For the reasons recorded above, this Court finds no merit in the appeal insofar as it challenges the finding of guilt recorded against the appellant. The sentence awarded by the learned Sessions Judge, Gorakhpur in S.T. No. 219 of 1983, though found to suffer from a legal infirmity on account of non-imposition of the mandatory fine as sentence under Section 326 I.P.C., is not disturbed, in the absence of any appeal or revision by for enhancement thereof. Therefore, the conviction of the appellant under Section 326 IPC is upheld.

25. The appeal is **dismissed**.

26. The appellant, if on bail, shall surrender within a period of two weeks from today to serve out the remainder of the sentence. The bail bonds are cancelled and sureties, if any, are discharged from their liabilities.

27. If the appellant fails to surrender within stipulated period as above, learned trial court is directed to take immediate legal steps adopting coercive measures including issuance of non-bailable

warrant to take the appellant into custody for execution of sentence in accordance with law.

28. Let a copy of this judgment be transmitted forthwith to the trial court concerned along with trial court record for compliance.

29. The Registrar (Compliance) is also directed to serve a copy of this order within 48 hours by FAX/e-mail to the concerned court through District & Sessions Judge, Gorakhpur for compliance.

30. Let Ms. Vaishali Rai, learned Amicus Curiae, be paid her remuneration as fixed by this Court vide order dated 07.05.2026, within a period of two weeks from today.

(Santosh Rai,J.)

July 15, 2026
Ankit.