

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, SRINAGAR

File No.	D.O. Institution	D.O. Judgment	D.O. Sentence Order
97/S	20.03.2015	17.08.2023	
22.08.2023	26.03.2015		

CNR No: JKSG010001352015

State (UT of J&K) through
Police Station Soura

Versus

1. **Irshad Amin Wani @ Sunny son of Mohammed Amin Wani**
Resident of Wazirbagh, Srinagar
2. **Mohammed Umar Noor son of Noor Mohammed Dar**
Resident of Bemina

...Convicts

Case FIR No. 136 of 2014 of P/S Soura
Offences under Sections 326-A/201/120-B RPC

CORAM: JAWAD AHMED

JO CODE: JK00053

Special Public Prosecutor Mr. Abdul Aziz Teeli for the State (now UT
of J&K).

Advocate Malik Imran and Associates for accused No.1.

Advocate Yawar Khan and Associates for accused No.2.

SENTENCE ORDER

1. By a detailed judgment dated 17.08.2023, the accused persons namely Irshad Amin Wani and Mohammed Umer Noor have been held guilty and stand convicted by this Court for offences punishable under Sections 326-A/201/120-B RPC in case FIR No. 136 of 2014 of P/S Soura.

2. I have heard the learned Special Public Prosecutor and the learned counsels for both the convicts on the quantum of punishment.

3. The learned Special Public Prosecutor submitted during the course of arguments that the court has held the act of the convicts as horrific. This horrific act has caused the permanent disfigurement of the victim's face, precious for every woman particularly to a girl who was just 20 years of age. Mr. Teeli submitted that the victim has lost her

right eye by the inhumane barbaric act of the convicts. He submitted that the parents of the victim have spent a huge amount on the treatment of the victim and yet her restorative treatment is not complete. He submitted that any kind of punishment given to the convicts would not bring the face of the victim back to the position she was possessing before this horrific act. Mr. Teeli submitted that moment by moment and time by time the disfigured face would remind the victim the barbaric and inhumane act of the convicts and she has to live her whole life with this trauma. This horrendous act of the convicts besides physical trauma gives the victim mental trauma and thereby deprive her to enjoy the charm of her life. Whenever, the victim would be looking at the mirror, her disfigured face would remind her the horrific act of the convicts, lower down her morale and give her a feel that her figure would be terrible for others particularly for her parents. Mr. Teeli submitted that the convicts are in jail for 9 years i.e., ever since they have been arrested in this case and if the court awards them only 10 years punishment, they will come out from the jail after one year and there would be no guarantee for the life of the victim, who has been all along pursuing the prosecution of the convicts and it would further make the victim to feel insecure. He submitted that it is the duty of the court to ensure the safety of the victim while awarding punishment to the convicts and shall not provide a chance to the convicts to repeat the offence if they are set free early. The learned Special Public Prosecutor further submitted that in acid attack cases the courts have also to take the larger interest of the society while awarding punishment to the perpetrators of the acid attacks so that no like-minded person in the society dare to indulge in such type of inhumane act. With this view, the larger interest of the society, which is general in nature, shall prevail over the individual interests of the perpetrators. To curb the menace of day-to-day atrocities committed with the woman, it is the duty of the court to send a message to the society while awarding sentence in such type of cases. He submitted that in some countries like Bangladesh, the punishment for acid attackers is capital punishment. Though, need of the hour is that same punishment should have been prescribed in our penal law for acid attackers but nothing less than the maximum

punishment prescribed under the law shall be awarded to the convicts of such cases, otherwise the victims would feel that complete justice has not been done with her. He submitted that apart from awarding the maximum punishment of life imprisonment provided for offence under Section 326-A RPC, the fine imposed should be just and reasonable to meet the medical expenses of the treatment of the victim. He submitted that so far the victim has incurred huge amount on her treatment. He further submitted that she is still under treatment and needs good amount for future treatment as well.

4. Mr. Teeli finally submitted that as per the findings of the court in the judgment, the convicts are responsible for the permanent disfigurement of the victim by throwing acid of corrosive nature on her. In view of such finding, the learned Special Public Prosecutor prayed for maximum punishment of life imprisonment for both the convicts besides fine equivalent to the amount the victim has incurred on her treatment. To buttress his argument Mr. Teeli relied on the judgment of the Hon'ble Supreme Court dated 28, November, 2018 passed in Criminal Appeal No. 1469/2012 titled Suresh Vs State of Karnataka; judgment of the Bombay High Court dated 18.02.2016 in Criminal Appeal No.324 of 2007 titled Shri Kailas Sitaram and Anr. Vs State of Maharashtra and judgment of High Court of Karnataka dated 22.07.2021 in Criminal Appeal No.512/2016(C) titled Mahesha Vs State.

5. The victim, who was present in the court at the time of argument on the quantum of punishment, with permission of the court, narrated the struggles and hardships of the trauma which she has undergone for last round about 9 years i.e ever since the convicts had thrown acid on her. She stated that she was a bright student, topper in the class and had chosen her career in the field of law but, the horrific act of the convicts shattered all her hopes and dreams which she had dreamt for her career. Her photographs before this ghastly act speak itself how better matrimonial journey, she would have had but, after this act nobody is ready to marry her. Her matrimonial options have got completely vanished. This lifelong trauma is not only for her but, even for her parents. He stated that she as on date has undergone 28 surgeries and duration of every surgery was ranging between 9 hours to

72 hours. Her flesh has been taken from different parts of her body and grafted on her face by a plastic surgery, because the bones of her forehead and nose as well as her right eye were all exposed, which have been grafted by plastic surgeries. Her father, who had his own small business but, this horrific act has not only made him jobless but, he has suffered two heart attacks and developed many ailments. Whatever her parents had saved for her marriage, they disposed of everything besides the property to meet the expenses of her treatment. As on date her father has spent Rs 37,16,508/- on her treatment. She does not know how much amount they need for her further treatment. She stated that she has been provided Rs. three lakhs interim compensation by the District Legal Services Authority, Srinagar and Rs sixteen lakhs by the Government of J&K. She produced the medical record and bills/vouchers. She further stated that even from the Central Jail the convict No.1 sends her messages, lastly, he had sent her a message through an advocate from Anantnag. In such messages the convict No.1, While accepting his guilt, wanted her to compromise with him and for that he also threatened her. She stated that by the act of the convicts she has become the story of every home. She produced her photographs before the occurrence and after occurrence to make her point as to how beautiful she was before the occurrence and now to what extent her face has got disfigured. She stated that though, nothing can bring the glory of her physique back but, if the convicts, responsible for making her life a living hell, are given the maximum punishment prescribed under law, she would feel that justice has been done with her, otherwise apart from living the life with the miseries, she would feel that even the court has not done the complete justice with her.

6. The victim submitted that for the act the convicts have done with her, she would like that they should be hanged for this act but, for her misfortune that is not the punishment provided for the offence for which they have been convicted. However, she being a student of law would feel complete justice has been done with if the convicts are awarded the maximum punishment prescribed under law for the offences for which they have been convicted, so that it also becomes a

lesson for the like-minded persons in the society and no other girl should suffer like she has suffered.

7. The learned counsel for the convict No.1 Advocate Malik Imran submitted during the course of arguments that convict No.1, Irshad Amin Wani, was of tender age at the time of occurrence and had no understanding of the act for which the convicts have been held guilty by the court. However, he submitted that during the last almost nine years in detention, convict No.1 has got reformed. During these 9 years, he has completed three degrees from the jail. He has no previous criminal antecedents. He is the first offender having one brother and old parents at his home, her mother is also ailing. He submitted that while awarding sentence, the court should consider these mitigating circumstances which demand a lesser punishment for convict No.1 and prayed for a lesser punishment for convict No.1.

8. The learned counsel for the convict No.2, Advocate Yawar Khan, submitted during the course of arguments that the court cannot be driven by emotions but, while awarding punishment to the convicts, the court is required to look into the mitigating circumstances of both victim as well as the convicts. The court while awarding sentence has to adopt the reformatory approach. The convicts are to be treated like a type of sick persons, who need treatment so as to bring them back to the benefit of the society. He submitted that the age of the convict No.2, Umer Noor, at the time of the occurrence was just 19 ½ to 20 years. He was in his adolescent age, not knowing the repercussions of the act for which he has been held guilty. He submitted that the convicts are not the hardcore criminals. They have no criminal background. Their behavior in the jail has been quite satisfactory. They have been helping other inmates in the jail suggestive of the fact that they have got reformed. These circumstances demand that the convicts should be awarded the minimum punishment prescribed for the offences for which they have been convicted. He prayed for minimum punishment for convict No. 2.

9. The convicts, who were present during the course of arguments on the quantum, were also given chance to make their submissions, if they intend to say anything about the quantum of punishment. Both the

convicts submitted that they are young and their behavior in the jail has remained quite satisfactory. They have been rendering help to other inmates in the jail. They also submitted that their family background, as put-forth by their counsel during the course of arguments, may be considered while awarding sentence to them and prayed for the minimum punishment.

10. I have considered the arguments of both the sides on the quantum of punishment as well as the submissions made by the victim and the convicts.

11. The great jurist, **Lord Denning**, while appearing before the Royal Commission expressed the following view on the object of punishment:

“Punishment is the way in which the society expresses its denunciation of wrongdoing and in order to maintain respect of law, it is essential that punishment inflicted for grave crimes should reflected revulsion felt by the great majority of the citizens. For them it is a mistake to consider the object of punishment as being deterrent or reformatory or preventive and nothing else. The truth is that some crimes are so outrageous that society insists on adequate punishment because the wrong doer deserves it, irrespective of whether it is deterrent or not.”

12. In **Mahesh Vs. State of M.P, reported in (1987) 3 SCC 80**, the Hon’ble Supreme Court while considering the death sentence observed as under:

“It will be a mockery of Justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justice system of this country suspect. The common man will lose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon.”

13. In **State of Karnataka V/s Joseph Rodrigues, 2006 SCC online Kar 494**, the Hon’ble High Court of Karnataka has observed as under:

“Even otherwise, the Court cannot shut its eyes to obnoxious growing tendency of young persons like accused resorting to use corrosive substances like acid for throwing on girls,

causing not only severe physical damage but, also mental trauma to young girls. In most of the cases the victim dies because of severe burns or even septicemia or even if luckily survives, it will only be a grotesque disfigured person, who even if survive lives with mangled flesh, hideous zombie like appearance and often blind if acid is splashed on face and suffer a fate worse than death”.

14. In the case of ***State of M.R. Vs. Bala alias Balram, reported in (2005) 8 SCC 1***, the Hon’ble Supreme Court observed as under:

“The rationale for advocating the award of punishment commensurate with the gravity of the offence and its impact on society, is to ensure that a civilized society does not revert to the days of “eye for an eye and tooth for tooth”. Not awarding a just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted”.

15. In the case of ***Ravji Vs. State of Rajasthan, reported in (1996) 2 SCC 175***, the Hon’ble Supreme held that:

“It is the nature and gravity of the crime and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual but also against the society to which the criminal and the victim belong”.

16. While considering the quantum of sentence to be awarded to the convicts, the law enunciated in the aforesaid judgments by the Hon’ble Apex Court and the High Courts are required to be kept in mind.

17. In the instant case the horrific acid attack by the convicts on the victim in furtherance of the criminal conspiracy is an uncivilized and heartless crime committed by the convicts on a young, innocent and defenseless girl(victim) in the morning on 11th of December, 2014 while she was moving towards her college. The morning of 11th of December, 2014 became a darkest and blackest morning of her life, when by the

horrific act of the convicts, all hopes and dreams of her future got lost. The horrific act of the convicts was not a spontaneous act where it could have been said that they had no time to think over the repercussions of such act. The evidence has proved that 5 days before the occurrence, the convicts had made the preparation for the act when they went to a shop called Gulistan Company, Kupwara and purchased the acid from said shop against a proper bill in the name of convict No.1 for amount of Rs 450/-. This proves that it was a well thought of, well planned and an organized act of the convicts. It has also come in the evidence of PW-18 that when he had made the statement before the investigating agency that the convicts had purchased acid from his shop against a proper bill, thereafter, the fathers of both the convicts harassed him for making statement against the convicts. These are aggravating circumstances to be taken note of, while awarding the sentence to the convicts.

18. There are photographs of the victim on record. During the course of arguments on quantum, the victim produced her some more photographs before and after the occurrence. These photographs of the victim before and after the incident speak itself the extent of damage caused by the horrific act of the convicts on the face of the victim by using a corrosive substance. It has not only caused physical trauma to the victim but, mental trauma as well. Her photographs after the incident but, before repairs by skin grafting, reveal that the impact of the corrosive substance was such that the bones of her head, nose, around right eye and part of her right face had got exposed. Despite 28 surgeries she has undergone, as on date, the damage has not got repaired nor there are chances of its full repair.

19. It has been argued by the counsel for the convicts that the convicts are young, so a lenient view may be taken while awarding sentence to them so that they are reformed and are brought back to the society. If this argument is accepted then what would happen to the victim, a young girl who was possessing of a beautiful physique before the occurrence. She has now to carry the hideously disfigured face all along her life, who has lost hope forever to lead a normal life including the loss of chance of marriage etc., for none of her fault. No one can imagine the plight of the poor parents of the victim, every day they have to look

at the mangled face of their only daughter. They have also to live their life with this emotional trauma.

20. The court understands the potential for rehabilitation and personal growth of the young convicts. However, this understanding has to be balanced against the irreversible damage inflicted by them upon the victim. The scars left on the face and psyche of the victim would serve as a haunting reminder of the brutal act, forever altering the trajectory of her life. When the loss and trauma suffered by the victim is compared with the mitigating circumstances and the "chance" of rehabilitation of the convicts, the tangible loss and life-long emotional trauma suffered by the victim by the horrible act committed by the convicts far out-weighs any hypothetical chance of rehabilitation of the convicts. Someone capable of holding such harmful and hateful mentality and the capability to conspire and willingly go through with it over a matter as trivial as envy and jealousy cannot be trusted to be reintegrated into the society. In such circumstances, the court is compelled to prioritize the sufferings of the victim as against the convicts' potential for change and need to take a resolute stance against the convicts.

21. In all the three judgments cited by the Special Public Prosecutor, the sentence awarded to the convicts in such type of cases is life imprisonment. In one case titled Suresh Vs State of Karnataka, the accused was in custody for 13 years, where the Supreme Court rejected the plea of reducing the life imprisonment to a lesser sentence. In another case, having almost the identical facts as that of the present case, the trial court had awarded 7 years imprisonment with fine of Rs 2000/-. However, in the appeal the Bombay High Court held that the sentence awarded by the trial court is too meager and inadequate and enhanced it to life imprisonment by holding that the life imprisonment can do the real justice to the victim and enhanced the fine from Rs. 10000 to Two lakhs. In another judgment titled Mehashwar Vs State of Maharashtra, a Division Bench of the Karnataka High Court in a case of almost identical nature, upheld the sentence of life imprisonment and fine of Rs 10 lakh awarded to the convict for the offence under Section

326-A IPC. In all these cases the convicts were the first offenders with no criminal back ground.

22. The victim has produced the prescriptions and bills of her treatment. As on date she has undergone 28 surgeries and has incurred expenses of Rs 37,16,508/- on her treatment. It cannot be over looked that the acid victims need to undergo series of plastic surgeries. The court cannot lose sight of the fact that such restorative surgeries cost a fortune. In terms of proviso to Section 326-A RPC, the fine imposed on the convicts shall have to be just and reasonable to meet the medical expenses of the victim. During the course of argument on quantum of punishment, the victim stated that as on date, she has received 3 lakhs from legal Aid as interim compensation and also Rs 16 lakhs from the Government. However, she has spent much more than the financial assistance provided to her till date either from the legal Aid or by the Government on her treatment.

23. After careful consideration of the submissions made by both the sides and having regard to the nature of the attack, the permanent disfiguration caused to the victim by the use of corrosive substance by the convicts in furtherance of criminal conspiracy and the impact of the disfiguration on the future life of the victim both physical and emotional, I find that the convicts do not deserve leniency and no other punishment except the maximum punishment of life imprisonment prescribed under law for their act can do the real and complete justice to the victim.

24. Therefore, the convicts are hereby sentenced to 10 years of imprisonment and fine of Rs 25,000/- each for the offence punishable under Section 120-B RPC, in default of payment of fine they shall undergo further imprisonment for one year. The convicts are sentenced to suffer imprisonment for life and fine of Rs 5 lakhs each for commission of offence punishable under Section 326-A RPC read with Section 120-B RPC. The execution of this sentence shall be subject to the confirmation by the Hon'ble High Court in terms of Section 376 CrPC Svt, 1989. The fine, when recovered, shall be paid to the victim in terms of proviso 1 and 2 of Section 326-A RPC. In default of payment of fine, the convicts shall undergo rigorous imprisonment for three years. The

convicts are also sentenced to imprisonment for 3 years for offence punishable under Section 201 RPC read with 120-B RPC with fine of Rs 10,000/- each and in default of such fine they shall undergo further imprisonment for six months. The sentence awarded to the convicts for different offences shall run concurrently.

25. In view of the huge amount the victim has incurred on her treatment and the amount which is required for her further treatment, I deem it appropriate to recommend the case of the victim to the Member Secretary, J&K Legal Service Authority to award the maximum compensation to the victim in terms of the J&K Victim Compensation Scheme, 2019, of course subject to the adjustment of the interim compensation already paid to her under the scheme.

26. The entire record of the case be submitted before the Hon'ble High Court in terms of Section 374 CrPC svt. 1989 for confirmation of the sentence of life imprisonment awarded to the convicts for offence punishable under Section 326-A read with section 120-B RPC.

27. The convicts namely Irshad Amin Wani and Umer Noor have been apprised about their right to prefer an appeal against the judgment of conviction and the sentence order, if they are desire to do so. The copy of the finding (Judgment) and the sentence order be provided to the convicts free of cost.

Announced
22.08.2023
(IAS)

(Jawad Ahmed)
Principal Sessions Judge,
Srinagar