



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: September 06, 2023*

Pronounced on: April 02, 2024

+ **CRL.A. 273/2014**
STATE

..... Appellant

Through: Mr. Tarang Srivastava, Addl. Public
Prosecutor for State

Versus

AFROZ @ SHARIB & ANR.

..... Respondents

Through: Mr. Manish Kumar Singh, Ms. Nusrat
Hossain, Ms. Tanya Nayyar, Mr. D.
Pal Singh and Mr. Shahbaz Singh,
Advocates

+ **CRL.A. 251/2019**
JHAVERIA SIDDIQUI & ANR.

..... Appellants

Through: Mr. Anuj Kapoor & Ms. Anesh
Dahiya, Advocates

Versus

STATE & ORS.

..... Respondents

Through: Mr. Tarang Srivastava, Addl. Public
Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The above captioned first appeal being Crl.A.273/2014 has been filed by the appellant-State under Section 378 (1) of Cr.P.C. against the impugned judgment and order dated 13.07.2012 passed by learned Court of



Sessions in FIR No.310/2009, for the offences punishable under Sections 324/326/307/34 IPC, registered at Police Station Jamia Nagar, Delhi.

2. Vide above captioned second appeal being Crl.A.251/2019, the appellants-victims have also challenged the impugned judgment and order dated 13.07.2012 passed by learned Court of Sessions in the afore-noted FIR No.310/2009.

3. The facts, as enumerated in these appeals are, that on 14.10.2009 while victim/appellant No.1 along with her sister victim/appellant No.2 was returning home on a rickshaw from the Beauty Parlour where they worked, situated at Shop No.16, Gali No.8 at Gaffar Manzil, and as their rickshaw reached near Akhtar Manzil, they saw two persons sitting on blue coloured motorcycle. One of them, was aged about 30-35 years and was wearing white coloured shirt, blue jeans, Himesh Reshammiya type cap and the other person sitting on the pillion seat, was aged about 40 years and was wearing a helmet. As their rickshaw reached near them, they were attacked by said persons who poured some chemical substance from a big jug on them due to which they felt irritation. Both of them were immediately rushed to the Holy Family Hospital at around 07:30 pm and their injuries were reduced to the Medico Legal Report and they were referred to Safdarjung Hospital.

4. On the next day at around 12:45 am, statement of victim/appellant No.1 was recorded under Section 161 Cr.P.C. and FIR No.310/2009, under Section 324/34 IPC was registered. On the same day, when the Investigating Officer (IO) of the case came to the hospital at around 12:30 PM, appellant No.1 in her summary statement stated that accused Afroz had come to the hospital to threaten her. At the instances of brother- Tarikh (PW5) of the



victim, IO prepared the site-plan and seized the clothes worn by victim/appellant No.2 at Safdarjung Hospital which were severely damaged with acid, but could not recover the clothes of appellant No.1 as they were thrown by the doctor at Holy Family Hospital. On the next day, i.e. 15.10.2009, accused Afroz @ Sharib @ Shahbaz went to Safdarjung Hospital to know what victim/appellant No.1 had stated in her statement and on her pointing out, accused Afroz was arrested.

5. In his disclosure statement, accused Afroz stated that for the last 1 ½ years, injured /appellant No.1-victim had promised to marry him, however, when he came to know that she had already married someone else, he told this fact to co-accused Shabbir. Both of them decided to finish the girl by pouring acid on her.

6. Pursuant to disclosure statement of accused Afroz, the motorcycle used in the alleged incident was recovered. On the next day, i.e. 20.10.2009, on some secret information, accused- Shabbir was also arrested. He was identified by appellant No.1-victim. The disclosure statement of accused Shabbir was recorded and his arrest memo was prepared. During the course of investigation, Sections 326/307/34 IPC were also added. Thereafter, Charge-Sheet under Section 307/34 was filed in the Court.

7. The learned Trial Court vide order dated 02.06.2010 framed charge under Sections 307/34 IPC against both the accused persons, to which they pleaded not guilty and claimed trial.

8. The prosecution in support of its case examined sixteen witnesses in support of its case, including both the victims.



9. Based upon the testimony of witnesses recorded by the prosecution and the defence as well as scientific evidence proved on record, the learned Trial Court vide impugned judgment and order dated 13.07.2012, acquitted the accused of the offences charged with.

10. **The appellant-State, in Crl.A.273/2014,** has challenged the impugned judgment on the ground that the judgment is based on hypothetical presumptions, conjectures and surmises. The appellant-State has averred that the learned Trial Court failed to appreciate that both the victims, i.e. PW-8 and PW-12, have deposed against the accused persons and identified them as the attackers who threw chemical substance on them.

11. The appellant-State has further averred that the learned Trial Court has failed to appreciate the fact that the clothes recovered from accused Shabbir and clothes of victim/appellant No.2 worn at the time of the alleged incident had traces of same acid, i.e. sulphuric acid, and in this regard expert opinion of the FSL in Ex.PW-14/A was proof enough to establish the said fact.

12. The appellant-State has also averred that the learned Trial Court has given much emphasis to the smell of sulphuric acid on the clothes rather than putting reliance upon the report of the FSL in which the expert has stated that traces of sulphuric acid were present even on the clothes of victim.

13. The prosecution has further averred that non-joining of public witnesses or family members of the accused in the investigation, does not in any way weaken the case of prosecution.



14. During the course of hearing, learned Additional Public Prosecutor submitted that the learned Trial Court has failed to appreciate that the contradictions in the statements of PW-8/appellant No.1 who deposed that assailants had thrown acid on them from the front side, while PW-12/appellant No.2 deposed that assailants had thrown acid on them from the back side, could be due to traumatic state of mind of the victims at the time of alleged incident, however, this minor discrepancy cannot rule out the guilt of the accused. Thus, setting aside of impugned judgment and order dated 13.07.2012 passed by the learned Court of Sessions, acquitting the respondents- accused, is sought by the appellant-State.

15. **In Crl.A.251/2019**, the complainants-victims of the FIR in question have challenged the impugned judgment and order on the ground that they were the victims of acid attack and their testimonies were consistent, however, due to minor inconsistencies, their testimony has not been relied upon by the Court. (pdf 33 of Crl.A.251/2019)

16. Reliance is placed upon decision in *State of M.P. Vs. Mansingh* (2003) 10 SCC 414, wherein the Hon'ble Supreme Court has observed that evidence of an injured witness is of great weightage, which proposition has been ignored by the learned Trial Court. The complainants-victims have pleaded that discrepancy in their statements were recorded before the police and before the court, has arisen because when their statements was recorded before the Police, they were severally burnt/injured and were under the state of shock, as much as appellant No.1 (PW-8) had lost her vision but still she could identify the accused Afroz and accused Shabbir by their voice before the Court. Learned counsel appearing on behalf of injured/ victims



submitted that minor variations in their testimony on account of time lapse and mental shock could not have been given weightage by the learned Trial Court.

17. It was averred on behalf of the injured-victims that both of them knew the assailants since their childhood and so could identify them even by their voice and so, their identification before the court could not have been doubted.

18. With regard to victims not taking name of the accused before the doctor at the Holy Family Hospital, the complainants/victims have submitted that when they reached Holy Family Hospital they were burning with grievous injuries and suffering terribly and at that stage the doctors did not ask the name of the attackers. Even thereafter when they were referred to Safdarjung Hospital, their statement was recorded by the police within 4-5 hours of the incident and in such a physical state, they were not in a position to give minute details of the incident to the police though they had named the accused persons. Learned counsel submitted that the Trial Court had erroneously held that the victims saw the accused persons from a distance of 50 yards and due to no street light, identification of accused was improbable.

19. It was further submitted that the learned Trial Court failed to appreciate that the cycle rickshaw was moving and when the motorcycle came close to the rickshaw, the victims saw the accused persons, accused Samar was sitting in front and was wearing a cap and accused Afroz was the pillion rider, who was holding a big jug in his hands and wearing a helmet. Within spurs of moment, acid was thrown on their face. Meaning thereby, at



the time of alleged incident, the victims and accused were very close to each other and so, it is erroneous to hold that identification of accused was not possible.

20. It was submitted on behalf of the victims that appellant No.1 (PW-8) in her statement recorded under Section 161 Cr.P.C. had categorically stated that the accused persons were on motorcycle and accused Afroz was holding a big jug and was wearing a helmet and a cap. However, after having suffered severe injuries on face, chest, neck, back, hands and arms, she was unable to give minute details to police at that time.

21. Reliance was placed upon the Hon'ble Supreme Court's decision in the case of *Kedar Singh and Ors. Vs. State of Bihar 1999 CrLJ 601 and State of Uttar Pradesh Vs. Manoharlal and Ors.* AIR1981 SC 2073 whereby the Hon'ble Supreme Court has observed that even during darkness and less light, the accused can also be identified by voice, gait and manner of speaking.

22. Learned counsel averred that the learned Trial Court failed to appreciate that acid was found on the shirt of the accused Shabbir. The learned Trial Court also did not appreciate that after the alleged incident, accused Afroz had visited the victims at Safdarjung Hospital due to anxiousness to know what statement she had given to the police, from where he was arrested.

23. Further submitted that the learned Trial Court erred in observing that the failure in bringing the rickshaw puller to the court by the complainants, has tainted the case of prosecution and has erroneously held that his non-appearance before the court without any justifiable reason indicate doubts



with regard to allegations of complainants. Also, the learned Trial Court has completely ignored the two threatening letters which were received by the family of victims after the incidents. It is submitted that once letters were taken on record by the court, it was duty of the court to verify the factum of the threats given but the learned Trial Court is silent on this issue.

24. Reliance was placed upon the decision of this Court in the case of *State Vs. Naeem Khan @ Guddu* wherein it has been observed that perpetrators of acid attacks should not be set free. Hence, setting aside of impugned judgment and order dated 13.07.2012 is sought by the appellants.

25. To the contrary, learned counsel appearing on behalf of the accused submitted that the learned Judge has meticulously and judiciously considered every aspect of the case and thereafter, passed the impugned judgment, which calls for no interference by this Court.

26. Learned counsel for respondents –accused submitted that the MLC recorded in the Holy Family Hospital records that the crime was committed by the two unknown persons , however, in *rukka* the victim raised suspicion on accused Shahbaz @ Afroz and in her supplementary statement recorded on 15.10.2009, she named the other accused Shabbir. Learned counsel submitted that it has nowhere been mentioned in *rukka* that the victims had any kind of threat due to which did not name the accused. Even in *rukka* the victims first stated that the person sitting in front was wearing a white shirt, blue jeans and Himesh Reshamiya cap whereas in her supplementary statement she stated that the person at the front was wearing red shirt and helmet without shield.



27. Learned counsel for respondents accused submitted that victims could not have identified the accused in the dark at 07:00 PM, when the sun was already set at 5.52 PM, especially when there was no light whatsoever.

28. With regard to the arrest of accused, learned counsel submitted that accused-Afroz is stated to have been arrested from Safdarjung Hospital, where he could not have gone to threaten her as not only doctors, nurses, family members of victims, but police officials were also present.

29. Also, with regard to arrest of accused Shabbir, constable Krishan Kumar (PW-6) stated that *“key of the shop was brought by the brother of Shabbir”*, contrary to the statement of Tika Ram (PW-16) who stated that *“some boy had brought the key”*.

30. On the aspect of recovery of clothes, victim Samar stated that she was made to wear gown and she was not aware how she was brought to the Safdarjung Hospital and hence, her clothes were not recovered from her.

31. In addition, the FSL report observed that the clothes of Samar and Shabbir were found to contain Sulphuric Acid, whereas the MLC of the Holy Family Hospital observed that Chlorine smell which meant presence of HCl instead of H₂SO₄.

32. Moreover, no public persons were made witnesses either at the time of arrest of the accused or at the time of recovery of motorcycle or the clothes of the victims and accused.

33. Also, brother of victim Jhaveria Tariq stated before the learned Trial Court that while he was going to the parlor of his sister on 14.10.2019, he saw accused persons sitting on a motorcycle, accused Shabbir was sitting on



the front side and accused Afroz on the back side of the motorcycle. When he reached parlor, his sisters were not there and the girl in the shop (Uzma (PW-9), around 06:45 PM informed that his sisters had gone out nearby five minutes ago. His statement is contrary to the averment of victim Jahveria who in her testimony has stated that on the said day, the shop was closed at 07:00 PM; even though Uzma (PW-9) did not utter a word in her statement about meeting Tariq on 14.10.2009 at about 6.30 PM to 7.00 PM.

34. Learned counsel submitted that at the time of recording of statement of the victims before the Court, they were visually impaired and could not identify accused Shabbir and accused Afroz was also identified from his voice, which is a very weak kind of evidence.

35. Lastly, learned counsel for respondents-accused submitted that their acquittal is based upon the merits of the case and these appeals deserve to be rejected.

36. **The submissions advanced by learned counsel for the parties were heard at length and the impugned judgment, testimony of the victims, accused persons and other witnesses recorded as well as other material placed before the learned Trial Court, have been carefully perused by this Court.**

37. There is no doubt that the present case is yet another horrid illustration of how girls of young age have suffered abuse of acid attack for reasons whatsoever, which has left them not only physically impaired for the life time but also scars of physical and emotional trauma will last in their minds and hearts during life time.



38. In respect of the alleged incident, the FIR was initially registered for the offences under Sections 324/326/307/34 IPC against the accused persons and charge-sheet was also filed for the afore-noted offences. The learned Trial Court, vide **Order on Charge dated 02.06.2010** observed as under:-

“Section 307 IPC can be applied when the accused commit an act with intention to cause death or he does an act with the knowledge that it is likely to cause death. This likelihood of causing death is material. If this knowledge can be assigned to a person that act done by him is so eminently dangerous then it must in all probabilities cause death or such bodily injury as is likely to cause death. In such a situation section 307 IPC can be invoked. Accused have thrown acid on the person of complainant Ms. Javeria and her sister. The quantity of acid thrown on the victim can be ascertained from the nature and the gravity of the injuries reflected in the MLC as well as the photographs. It is the timely treatment which they got from the hospital that they were saved. Even if one say that there wa no intention to cause death but the accused can be assigned the knowledge that their act was so eminently dangerous that in all probabilities it could cause death or such bodily injury which was likely to cause death. Therefore, in my considered view taking into account the statement of the complainant and the victim, MLC, the photographs, the FSL report prima facie offence under Section 307 read with Section 34 IPC is made out against both the accused persons.”



39. In view of the above, charges were framed against the accused persons for the offences punishable under Section 307 read with Section 34 IPC. Relevantly, the provisions of Section 307 IPC reads as under:-

“307. Attempt to murder.—

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

40. The provisions of Section 307 IPC prescribe that *if by an act death is caused, the accused shall be guilty of murder, for which accused shall be punished with imprisonment of either for a term, which may extend upto ten years with fine and if hurt is caused, the accused shall be liable to either imprisonment for life or to punishment mentioned above.*

41. There is no dispute to the fact that in the unfortunate incident of throwing acid, appellants-victims, namely, Javeria Siddiqui and Smar Siddiqui had suffered grievous burn injuries, for which they had accused Afroz and Shabbir.

42. **We now proceed to consider the submissions advanced by both the sides on the basis of evidence led before the learned Trial Court as well as other material placed on record.**



43. **PW-1 ASI Sant Pal** is the Investigating Officer who upon receipt of call from Holy Family Hospital with regard to admission of two injured girls had reached the Safdarjung Hospital. In his deposition, he stated that he had collected MLC of both the victims namely Jhaveria and Samar and recorded statement of Samar as Ex.PW-1/A and statement of Jhaveria as PW-1/B. He prepared *rukka* Ex.PW-1/C and collected clothes of Samar vide seizure memo Ex.PWE-1/D. He thereafter went to the Holy Family Hospital from where both the injured were referred to the Safdarjung Hospital. He inquired about clothes of Jhaveria, was informed by the doctor that the same were thrown in the dustbin. This witness also stated that he met brother of Jhaveria, namely, Taariq in Holy Family Hospital who told him that at about 07:00 PM, he had gone to the shop of his sister in Gali No.8 and on his way, while passing through Akhtar Manzil, he had seen accused Afroz and Shabbir on blue colour motor-cycle and accused Afroz was holding a jug in his hand.

44. Further stated that at about 04:40 PM, victim Jhaveria told him that a boy standing there named Afroz had asked her if she had made any statement against him and threatened if she did, he would commit severe act with her. He further deposed that he arrested Afroz in Safdarjung Hospital at the instance of Jhaveria and recorded his disclosure statement Ex.PW-1/F and arrested him vide Arrest Memo Ex.PW-1/G.

45. On his pointing out, the point out memo Ex.PW-1/H was prepared and motor-cycle make 'Passion blue colour' was recovered which was deposited in *Malkhana*. On 16.10.2009, he produced accused Afroz in Court and took



one day's police remand of the accused. On the next date, the accused was sent to the judicial custody.

46. During his cross-examination, PW-1 stated that he had recorded statement of Jhaveria first and thereafter, of victim Samar at Safdarjung Hospital. Victim Jhaveria had deposed about the make up (*huliya*) of the assailants. He had inquired from the local people at the spot regarding the incident but no one deposed and also those persons had not disclosed their names and addresses. He accepted that no notice was served to any person to join the investigation. He also deposed that the rickshaw-puller in which the victim was stated to be travelling could not be found. This witness also stated that the brother of the victim, while he met him at Holy Family Hospital, had told him the motor-cycle number but he had not endorsed the same on any paper.

47. **PW-2 Constable Lokesh Kumar** who along with SI Tika Ram, IO of the case had gone in search of accused Shabbir. He deposed that on 20.10.2009, on receipt of a secret information, he along with SI Tika Ram went to Gali No.20, Zakir Nagar where the secret informer pointed out towards Shabbir as the boy who had thrown acid on two girls. He was apprehended and arrested vide memo Ex.PW-2/A, thereafter taken for medical examination.

48. This witness in his cross-examination stated that he had arrested the accused at about 06:45 PM and it was solely on the basis of secret informer as they had no photograph or sketch of accused Shabbir Ali.

49. **PW-3 Constable Mahipal Singh** is the official witness who had taken the samples to the FSL Rohini.



50. **PW-4 Dr. Mala Saini** is the Senior CMO at Holy Family Hospital, New Delhi who in her examination-in-chief stated that the injuries mentioned in MLC Ex.PW-4/A could be possible due to chemical acid. She had deposed that on behalf of Dr. Rajnikant Shastri who has left the Holy Family Hospital and had examined Samar with burning pain all over her body on 14.10.2009. She further deposed that the MLC report Ex.PW-4/C bore signatures of Dr. Rajnikant Shastri at point A and she could identify it. She also stated that the MLC of victim Jhaveria was also prepared by Dr. Rajnikant Shastri wherein it was submitted that there was burning pain all over her body and she was unable to see.

51. In her cross-examination, she stated that she had given the opinion on the basis of MLC Ex.PW-4/C and Ex.PW-4/D and discharge summary Ex.PW-4/B. She also stated that the chlorine smell mentioned in the MLC could be due to presence of hydrochloric acid, however, no chemical or acid was sent along with the request of opinion by the police.

52. **PW-5 Taariq** is brother of victim Jhaveria who stated that while passing through Akhtar Manzil on 14.09.2010 accused Shabbir and Afroz were standing on a motor-cycle which was parked. He further deposed that Shabbir was sitting in front side and Afroz at the back side on motorcycle. Afroz had a jug in his hand. He also deposed that when he searched his sister Jhaveria and Samar in the beauty parlour, he found that they had already left. While he was at his home, he received a telephonic call from Holy Family Hospital that some accident was happened with his both the sisters. He further deposed that after first aid to his sisters, they had taken them to Safdarjung Hospital where he left his sister Bushra and came back to Zakir



Nagar where he received the call that police was looking for Jhaveria's clothes and so he went to Holy Family Hospital in search of her clothes. He stated that he was told by sisters that Shabbir and Afroz had thrown acid on them.

53. In his cross-examination, he stated that the police officer had recorded his statement, however, he had not signed any paper. He also stated that he had seen the accused persons standing in a residential area, however, it is a deserted place and he had not seen anybody else except them on the road. He was not aware when the police officials had seized motor-cycle on Afroz. He also stated that on 14.10.2009, some unknown person had called him to the Holy Family Hospital informing him that his sisters were admitted to Holy Family Hospital as they were attacked by some persons while they were coming on rickshaw and, therefore, he got suspicion about the act of accused Afroz, however, he admitted that he had not informed the police till 07:30 PM and also did not tell the police about the identity of the accused persons as he was busy in looking after his sisters.

54. **PW-6 is Constable Krishan Kumar** who had joined the investigation on 21.10.2009 and accompanied the Investigating Officer of this case to arrest the accused Shabbir. In his examination-in-chief PW-6 deposed that brother of Shabbir brought the key of the shop from where accused took out a red stripe shirt which was burnt on the shoulder side by acid.

55. In his cross-examination, he deposed that Gullu brother of Shabbir handed over the keys of the shop and many public persons were there at the time of seizure but none of them joined as a witness to the recovery proceedings.



56. **PW-7 is Head Constable Mohan Singh** who had prepared the *rukka* and recorded the FIR in question.

57. **PW-8 is victim Jhaveria** who in her examination-in-chief stated as under:

“Accused Afroz @Shahbaz used to tease me for last 5-6 months prior to the incident and some time he used to park his motorcycle in front of my shop, some time he used to blow whistle on seeing me and used to pass some comments whenever I used to pass near him and told me to have friendship with him. Later on also offered me to get married with him. But I refused to his proposal of marriage. He threatened me and told me that he would throw acid on me as he deal with cleaning of utensils in which acid is used and he further threatened me that I will never be in position to get married with anybody as he will destroy my face and figure. One month prior he threatened me that if I don't marry him, I would be made to bath in acid. I did not disclose regarding the threat given to me by accused on the same day as there was some function in my house as it was a birthday Shariq and there was a marriage of my cousin sister on the same day.

One day when I was coming back from hospital, police officials were bringing Shabbir in street no. 20 and I have identified him in the presence of police officials. Name of father of Afroz is Kamruddin who deals with the utensils in Okhla market. I know afroz and his father as they are staying nearby my aunty's house in Okhla market. Therefore, I know them since my childhood.”



In her cross-examination she deposed as under:

“I cannot tell the date and time of threatening given by accused Afroz that in case I will not marry him, he will throw acid over me. Vol. he had given threatening of throwing acid one week prior to the incident and proposal of marriage one month prior to the incident. I had not complaint to police in this regard. It is wrong to suggest that no such threat or proposal was given by accused. It is wrong to suggest that I have not complaint because accused has not given any such threat.”

58. **PW-9 is Uzma** who used to work along with victim Jhaveria in the beauty parlour. She in her examination-in-chief stated that victim Jhaveria had told her that accused Afroz used to ask her to get friendly with him and to marry him or else he would destroy his face. Thereafter, on 14.09.2010, the accused persons threw acid on the face of Jhaveria and Samar.

59. During her cross-examination, this witness stated that 10-12 days ago, the victim Jhaveria had told her about the threat received from Afroz and she and Jhaveria had not made any complaint to the police regarding this as there was marriage in the house of Jhaveria.

60. **PW-10 is Dr. Monisha Kapoor** from Safdarjung Hospital who had testified the discharge summary Ex.PW-4/B and Ex.PW-10/A of injured were prepared by Dr. B.N. Mishra and identified his signatures.

61. **PW-11 Constable Jitendra** in his examination-in-chief stated that he had gone to Holy Family Hospital along with the IO and made inquiry regarding cloth of Samar and the hospital official told that they had thrown the cloth of Samar and thereafter, he came back to Safdarjung Hospital and



prepared seizure memo Ex.PW-1/D in respect of clothes of Jhaveria. He deposed that he had gone inside the ward along with SI Tika Ram and Jhaveria had told that the person who had thrown the acid on her and sister had come to the hospital and had asked them whether they have made any complaint to the police. She pointed out towards one person who was standing there and told the IO that he was Afroz who was apprehended with the help of ASI Sant Pal. He arrested accused Afroz vide arrest memo Ex.PW-1/G which bore his signatures. He further deposed that Afroz admitted that he had thrown acid on Jhaveria and Samar in his disclosure statement.

62. **PW-12 Samar/** victim in her examination-in-chief stated that

“.... When we reached near Akhtar Manzil it was deserted road, the bike of Afroz was already parked on the road and Afroz and Shabbir were also sitting on the motorcycle. We had seen them sitting on the motorcycle was parked there as their face were towards our faces. Afroz was shaving one big steel jug in his hand. When our rickshaw passed from near their motorcycle, there was a speed breaker. The rickshaw puller was an old person so he got down and started pulling the rickshaw on foot as there was a speed breaker. Both the accused persons aforesaid came on motorcycle, Afroz threw some liquid on our face which was quite hot and later on we realized it was acid. And after throwing acid upon us, they fled away from the spot. The quantity of the acid was so much that if it could have fallen on one person, one persons could have died. The acid fell on my eyes, face, neck, chest, hands, legs and back, shoulder and fingers. And on the eyes, face, neck, back and hands, shoulder and fingers of Jhaveria. I know accused Afroz and



Shabbir since my childhood as they were residing in same local area where my Khala (Mausi) is residing. I and my sister have lost our eyes and our faces have been disfigured due to acid throw.”

63. During her cross-examination, victim- Samar (PW-12) stated that at the place of occurrence, there is a jungle on one side and there is a boundary wall of Institute of Mass Communication of Jamia and on one side there are residential buildings. No person from the residential building came to the spot to her knowledge. She further stated as under:-

“They were standing before the speed breaker. The steel jug was in the hand of assailant. We are in a position to see the steel jug carried by the assailant. They reside in the same locality i.e. Okhla and Jakir Nagar. Acid was thrown over me from the front side. Accused persons had thrown the acid as soon as we crossed their motorcycle. Thereafter they also started their motorcycle and thrown acid over us.”

In her cross-examination victim-Samar further stated that even though accused Afroz had not proposed Jhaveria in her presence and also that she had not disclosed the factum of threat given by Afroz to Jhaveria to anyone, yet she had told her sister Sheeba in this respect.

64. **PW-13 is Dr. Radhika Tandan** who in her examination-in-chief stated that on 27.01.2010, she had examined victim Jhaveria. She stated that victim Jhaveria had only light perception in vision in both eyes and was bilaterally blind with 100% visual impairment. She also stated that victim Samar also had light perception in both the eyes but was bilaterally blind with 100% visual impairment.



65. **PW-14 is Sri Narain**, Senior Scientific Officer, Chemistry, FSL Rohini, Delhi who had conducted tests with regard to chemical found on the clothes of the victim as well as the accused.

66. **PW-15 is Sheeba Naaz**, elder sister of Jhaveria and Samar. She in her examination-in-chief deposed that on 14.10.2009, Afroz and Shabbir had thrown acid on their face due to which they had become blind.

67. In her cross-examination, PW-15 stated that at the time of alleged incident, she was in Cannaught Place and before she could reach Holy Family Hospital, the injured were removed to Safdarjung Hospital so, she reached there. She further deposed that she was in ICU with the doctor during treatment and other persons were outside because they were not allowed to remain inside and for entire night she remained in ICU. She further deposed that at about 11:00 PM, police persons had come but nurses of ICU ward had not allowed them to enter ICU ward. The police had recorded her statement at the time of filing of the supplementary charge-sheet and she had come to know about the names of the assailants first time at the Safdarjung Hospital.

68. **PW-16 is SI Tika Ram** who along with ASI Sant Pal and Constable Jitendra had apprehended and arrested accused Afroz from Safdarjung Hospital at whose instance all three of them had gone to apprehend accused Shabbir and also seized the motor-cycle used in the crime. During investigation he had collected medical papers and recorded witnesses.

69. In his cross-examination, PW-16 stated that injured Jhaveria had informed him that accused Afroz had come to the hospital to enquire about what statement she had given and he had arrested accused Afroz who had



not tried to run away from the ward, however no signatures of head nurse or any medical staff were taken on arrest memo nor any statement was recorded in this regard. He had recorded the supplementary statement of Jhaveria and accepted that he had not inquired about the rickshaw wala involved in alleged incident. He accepted that neither any notice was given to the doctors or nurses for their refusal to join arrest memo nor signatures were obtained from any of the family members of the accused Shabbir on the seizure memo of motor-cycle. He stated that he had not seen any acid marks on the motor-cycle. He also stated that no entry was made in the police record before they left to search for accused Shabbir and arrested him. He could not tell who was the secret informer and stated that he had not received any such information. He further stated that the place where accused Shabbir was arrested was a thickly populated area, however, no public persons had gathered at the time of his apprehension and signatures of only Jhaveria were taken on the arrest memo.

70. The **accused in their statements recorded under Section 313 Cr.P.C.** denied the charges framed against them and stated that they have been falsely implicated in this case and pleaded for defence evidence. The accused got examined four witnesses in their defence.

71. **DW-1 Anish Ahmad**, a Carpenter, in his examination-in-chief stated that he knew accused Shabbir who used to do the job of rectifying the bones. On 14.10.2009, he had gone to meet him at about 06:00 PM to 07:00 PM for treatment. In his cross-examination, he stated that he was having pain in his back and had gone to Shabbir for treatment.



72. **DW-2 Zuber Ali** is Shabbir's younger brother who deposed that on 20.10.2009, he had gone to Patiala House Court along with Gullu and Shabbir from where they had gone to Police Station Jamia where the police persons demanded Rs.50,000/- from accused Shabbir and threatened him to implicate in some case. The police took signatures on some blank papers.

73. In his cross-examination, he admitted not having made any complaint to the police with regard to demand of Rs.50,000/-, however, stated that when his father went to the police station to make complaint, he was also threatened.

74. **DW-3 Inderjeet Arora**, a shop merchant in Okhla main market who deposed that on 14.10.2009, accused Afroz was on his shop and both of them had played ludo from 04:30 PM till 09:00 PM, however, on 15.10.2009, he came to know about his arrest.

75. **DW-4 Masroor Ahmed** who is neighbour of accused Afroz who deposed that on 15.10.2009, accused was arrested from his house and 20-25 people had gathered at the time of his arrest.

76. Learned trial Court on the basis of aforesaid evidence observed that the prosecution had miserably failed to connect the accused persons to the alleged crime with the help of any cogent evidence and acquitted the accused of the offences charged with.

77. The submissions made by learned counsel appearing on behalf of parties have been considered in the light of evidence placed on record.



78. The question for determination before this Court is as to whether the offence alleged was committed by them and if not what is the reason for the victims to implicate the accused persons.

79. It is relevant to note here that as per the statement of the victims, the rickshaw puller had taken them to the Holy Family Hospital. In the MLC recorded before the Holy Family Hospital it is recorded that the crime was committed by “two unknown persons”.

80. Even though the victims have in their examination-in-chief and cross-examination stated that they had suffered immense pains of burns and so could not tell the name of the accused, however, at one point also stated that doctor did not ask as to who had thrown the acid on them. It is clear that the injured victims had not stated name of the assailants before the doctor of Holy Family Hospital.

81. The victims were referred to the Safdarjung Hospital where in her statement victim Jhaveria gave description of the assailants and stated that the assailant sitting on the front side of the motor-cycle was wearing Himesh Reshamia type cap and the pillion rider was wearing helmet and was having a jug in his hand. She did not name accused Afroz or Shabbir. However, in their statement under Section 161 Cr.P.C., the victims suspected and named involvement of accused Afroz. It is relevant to note that both the victims in their testimony have very categorically stated that they knew accused persons since childhood as they were living near the house of their Khala (Mausi), however, did not identify and name them neither before the doctors at Holy Family Hospital at the time of recording of their MLC nor at the time of recording of their statement before the IO of the case in Safdarjung



Hospital. It is only in their supplementary statement recorded under Section 161 Cr.P.C. that they mentioned names of accused Afroz and Shabbir.

82. It is also relevant to note here that in the very first statement to the police, victim Jhaveria had raised suspicion only about accused Shahbaz, i.e. accused Afroz and had not uttered name of accused Shabbir. However, in her further statement recorded on 15.10.2009, she stated that “*Sharib jo apna naam Shahbaz bhi batata tha*”. She thereby first time named the co-accused Shabbir.

83. Even if it is taken that the learned trial Court has erroneously come to the conclusion that the victims had not named the accused persons at the first instance, it assumes importance to see whether the victims had actually seen the assailants and identified them at the time of alleged incident. PW-8 victim Jhaveria and PW-12 Samar have stated that they both were sitting on rickshaw and when reached Gaffar Manzil, at speed breaker rickshaw puller got down to pull the rickshaw.

84. PW-8 Jhaveria stated that a blue coloured motor-cycle was standing at some distance where accused Shabbir was on front seat and accused Afroz was on back seat, having a steel jug in his hand. The accused threw acid on them and they were taken to the Holy Family Hospital by the rickshaw wala. In her cross-examination, victim Jhaveria stated that at the time of alleged incident, the road was deserted and there was no street light even though some light was coming from the flats on the road, however, could see the motor-cycle which was in a moving condition and while the rickshaw puller got down on the speed breaker, accused persons came from backside and threw acid on them and ran away. She also stated that she could not notice



what the pillion rider was wearing as she was not able to look at him because he was wearing helmet.

85. PW-12 Samar in her examination-in-chief stated that it was a deserted road, accused Afroz and Shabbir were sitting on a motor-cycle which was parked and when the rickshaw puller got down at the speed breaker, the accused Afroz carrying one big steel jug in his hands came towards them, threw acid on them and fled away from the spot. She stated that they were waiting for them and the motor-cycle was not moving and was in a standing condition.

86. The testimony of both the victims PW-8 Jhaveria and PW-12 Samar spell out contradictions with regard to the happening of the alleged incident. The victim Jhaveria stated that the motor-cycle was in a moving condition whereas victim Samar said that it was parked; victim Jhaveria stated that the acid was thrown from the back side whereas victim Samar stated that the acid was thrown from the front side; victim Jhaveria stated that the person sitting at the front of the motor-cycle was wearing a white colour shirt, blue jeans and a Himesh Reshamia type cap and the person at the back side was wearing a helmet whereas in her supplementary statement, she stated that the person in front was wearing a red shirt and helmet without shield.

87. It is the settled position of law that in cases of heinous crimes such like rape and acid attack, conviction can be solely premised upon the testimony of the victim/prosecutrix but the deposition has to be trustworthy, unblemished, credible and sterling quality.

88. The Hon'ble Supreme Court in *Rai Sandeep Vs. State (NCT of Delhi)*, (2012) 8 SCC 21 has defined who can be a sterling witness in the



following words:-

“22 In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling



witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

89. Not only the statement of victims, but also the manner in which the investigation of this case has been carried out, demolishes the case of the prosecution.

90. Even the *rukka* mentions that the person who was driving the bike was wearing a white shirt, however, specifically a red burnt shirt was recovered at the instance of accused Shabbir which was sent to CFSL. This casts a doubt on the case of the prosecution with regard to identity of the accused and recovery of the shirt/t-shirt worn by the accused at the time of the alleged incident. Also, the mention of “Himesh Reshamia type cap” got converted into helmet in the *rukka*. The *rukka* also notes that the colour of the motor-cycle used in the crime was black (*kala*) which has been deliberately altered to blue (*neela*) as the motor-cycle recovered from the accused Afroz is of blue colour.

91. In our considered opinion, the learned trial Court has rightly observed that in the month of October at about 07:00 PM, with no street lights on the road, it was actually difficult for the victims to identify the accused persons which is established.



92. With regard to the arrest of the accused, the case of the prosecution is that the accused was arrested from the ICU ward of the Safdarjung Hospital, where he had come to threaten victim Jhaveria to not name him in the alleged incident, however, it is highly unbelievable that victims were in the ICU ward, and family members of victims were also present outside the ward. There could not have been any occasion for the accused Afroz to threaten the victims.

93. With regard to the arrest of accused Shabbir, the case of the prosecution is that when injured Jhaveria arrived at the spot with her parents, accused Shabbir was arrested in her presence, however, since her hand and body were bandaged, the police had not taken her or her family members' signatures whereas the arrest memo is containing the right hand thumb impression of the victim Jhaveria.

94. So far as recovery of clothes of the victims and the accused persons, the case of the prosecution is that both the victims were given first aid treatment at Holy Family Hospital where clothes of victim Jhaveria could not be traced as they were allegedly thrown in the dustbin by the doctor, however, clothes of Samar were seized and sent for FSL opinion vide Ex.PW-1/D.

95. Even though victim Jhaveria had stated that the one who was riding motor-cycle was wearing a white coloured shirt, however, the Investigating Officer of this case, PW-1 ASI Sant Pal, in his testimony had deposed that the shirt worn by accused Shabbir was recovered at his instance from his shop and seized vide seizure memo Ex.PW-6/A. However, no public or independent witness had signed recovery memo. As per the FSL, the clothes



worn by Samar and Shabbir were found to contain Sulphuric acid whereas MLC report of the Holy Family Hospital there appeared “chlorine” on the clothes of Samar.

96. In our considered opinion, the prosecution version in respect of colour of the shirt, the colour of bike, place of recovery of clothes of victim and the accused and non-joining of the public persons to the memo of recovery, does not substantiate the allegations against the accused persons and colour of the motor cycle allegedly involved in the crime.

97. The victim Jhaveria in her statement had stated that Sharib @ Afroz, wanted to marry her for last 1.5-2 years whereas in her statement recorded before the Court she stated that he used to tease her for last 5-6 months and threatened her of making her bathe in acid if she did not marry him. Even though she stated that she had complained her mother a month prior to the incident, however, did not make any complaint to the police in this regard. Whereas, during her cross-examination, she stated that she had not told this fact to her mother as there was a marriage ceremony in her family but had told this fact to her sister Sheeba. PW-15 Sheeba Naaz in her statement did not utter a word about having knowledge of accused Afroz threatening her sister. No complaint whatsoever was ever made to the police regarding the alleged threat given by the accused Afroz either by Jhaveria or any of his family members. In such circumstances, the allegation of victims of being threatened by the accused comes under clouds.

98. In *Suchand Pal v. Phani Pal*, 2004 SCC (Cri) 220, the Hon'ble Supreme Court held that if from the evidence on record and in the facts and circumstances of the case two views are possible, one pointing to the



innocence of the accused and other to the guilt of the accused, the view which favours the accused should be preferred.

99. In the considerable opinion of this Court, the prosecution has not been able to prove its case beyond reasonable doubt. Finding no error in the impugned judgment, these appeals are accordingly dismissed.

100. However, before parting with this Judgment, this Court finds it necessary to mention that if the identify of the assailant of the crime of throwing acid upon the appellants-victims has not been established, still this Court cannot ignore the fact that the victims have suffered grave injuries, scars of which shall remain with them for life. The Hon'ble Supreme Court in *Nipun Saxena Vs. Union of India* (2019) 2 SCC 703 emphasized the need for comprehensive Victim Compensation Schemes for survivors of sexual offences and acid attacks and directed the **National Legal Services Authority (NALSA)** to establish a committee comprising of about 4 or 5 members to prepare **Model Rules for Victim Compensation**.

101. We are conscious of various schemes where-under acid attack victims can be compensated, which are as below:-

- (i) **NALSA (Legal services to Victims of Acid Attack) Scheme, 2016:** A dedicated scheme was devised by NALSA to streamline legal services and extend compensation mechanisms to acid attack victims. This scheme served as the foundational structure for State Victim Compensation schemes, allowing for the creation of special provisions to



address the immediate rehabilitative needs of acid attack victims.

(ii) Central Victim Compensation Fund (CVCF), 2016: The Central Victim Compensation Fund, established by the Ministry of Home Affairs, provides financial assistance to victims of various crimes, including acid attacks. The fund aims to support victims with medical treatment, rehabilitation, and livelihood support. Under the heading **Admissible Activities of CVCF**, there is a provision to provide special financial assistance up to Rs. 5 lakhs to meet treatment expenses over and above the compensation paid by respective States/UTs.

(iii) Nirbhaya Fund: The Government of India had set up a dedicated fund called 'Nirbhaya Fund' for implementation of initiatives aimed at enhancing the safety and security for women in the country. Part of this fund may be utilized for the rehabilitation of acid attack survivors, including medical treatment, counselling, and vocational training. Under the Nirbhaya Fund, one of the schemes namely **“One Stop Centre (OSC) Scheme”** is implemented across the country since 1st April 2015. OSCs aim to facilitate women



affected by violence with a range of integrated services under one roof such as Police facilitation, medical aid, providing legal and psycho-social counselling and temporary shelter. OSCs are to be set up within 2 kms radius of the hospitals or medical facilities either in new constructed building in an approved design or in pre-existing buildings. Under the scheme, One Stop Centres are being set up in all districts of the country. So far, 704 OSCs have been operationalised and more than three lakh women have been assisted through them.

(iv) State Victim Compensation Scheme i.e., Delhi Victims Compensation Scheme, 2018: Under the State Victim Compensation Scheme, including the **Delhi Victims Compensation Scheme, 2018, (DVCS)** acid attack survivors in Delhi are eligible to receive financial compensation to assist in their recovery and rehabilitation. DVCS outlines provisions for compensating victims of various crimes, including acid attacks, to cover medical expenses, loss of earnings, and other rehabilitation support. Part II of DVCS specifically deals with women victims, including Acid Attack victims. Clause 3 of DVCS talks about “**Women Victim Compensation Fund**” specifically for



women victims, it shall include contributions to **SVCF**, maintained by MHA, GOI. DVCS received a one-time grant of Rs. 8.8 crore from the Government of India on 31.03.2019. Subsequently, it has been maintained through budgetary allocations in the form of grants-in-aid to the DSLSA by the State Government. Clause 10 of DVCS states that There is a provision for additional interim compensation of **Rs. 1 Lakh** to be paid to acid attack victims, to be paid within 15 days. The order granting interim compensation shall be passed by DLSAs within 7 days of the matter being brought to its notice. DSLSA shall pay the compensation within 8 days of passing of order. Additionally, **Rs. 2 Lakh** shall be paid expeditiously within 2 months. Further, clause 14 states that in cases where the victims need continuous or multiple medical treatments, the DSLSA shall forward the case, at the earliest to the govt. of NCT of Delhi, which will ensure free treatment to the victim from any government hospital as the case may be.

(v) **Prime Minister's National Relief Fund:** The Prime Minister's Relief Fund may provide financial assistance to acid attack survivors for medical treatment and rehabilitation. The fund may cover expenses related to surgeries, hospitalization,



prosthetic limbs, and other necessary medical interventions. Financial assistance of **Rs. 1 lakh** is provided to the female acid attack victims from Prime Minister's National Relief Fund. In case of male victims, financial assistance up to Rs. 1 lakh is granted, depending upon scale of injuries and other criterion.

(vi) Legal Compensation: In addition to government schemes, acid attack survivors may also be entitled to compensation through legal proceedings against the perpetrators. Courts may award compensation to survivors as part of the criminal proceedings or through separate civil suits for damages.

102. The victims in these appeals have suffered the following grave injuries, which has badly disfigured their face and upper parts of body and also lost 100% vision of eyes.

103. The OPD report dated 12.12.2011 from Dr. Rajender Prasad Centre for Ophthalmic Science has placed on record in respect of both the victims. The report in respect of victim Jhaveria opines that "*verified from hospital records that patient has only light perception vision B/E and is bilaterally blind with 100% visual impairment*". Also, report of victim Samar opines that "*verified from hospital records that patient has VN<FCCF B/E (i.e. finger counting close to face) and is bilaterally blind with 100% visual*



impairment vision recorded on 19.12.2009 is lighter perception only i.e. Blind with 100% visual impairment.”

104. The victims have suffered immensely due to the acid attack, not by just completely losing vision in both their eyes, but also becoming disfigured and handicapped and have to dependent on others for life. They have lost all prospects of career, marriage and leading a normal life. This Court is of the opinion that the victims in the present case have gone through not only physical but also mental agony.

105. Accordingly, we hereby direct **Delhi State Legal Services Authority** to forthwith grant compensation of Rs.5,00,000/- each to the victims under the “**Women Victim Compensation Fund**”, which shall be kept in fixed deposit receipts by the Registrar General of this Court in a nationalised bank and quarterly interest accrued thereupon shall be remitted to the saving bank account of the victims, which they shall be at liberty to withdraw for their expenditure.

106. **We further direct the Delhi State Legal Services Authority** to get a fresh medical check up of the victims done from All India Institute of Medical Sciences within two weeks, especially from Department of Plastic, Reconstructive and Burn Surgery Department and Dr. Rajinder Prasad Centre for Ophthalmic Sciences and any other department, if so required and to file a detailed Status Report with the opinion of the Specialists for future treatment and surgeries, if required, upon the victims, to ensure their present and future medical treatments.

107. **The Delhi State Legal Services Authority** is further directed to bring forward proposal and prospects for employment of the acid attack



victims in the present case in any Department of Delhi Government to ensure their rehabilitation.

108. A copy of this judgment be sent to the learned Trial Court as well as Delhi State Legal Services Authority for necessary compliance.

109. Re-notify on 06.05.2024 for compliance and necessary directions.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 02, 2024

r