

IN THE COURT OF MS. CHARU AGGARWAL  
ADDITIONAL SESSIONS JUDGE-02: CENTRAL  
DISTRICT TIS HAZARI COURT: DELHI

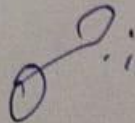
STATE                      Vs.                      MOHD. ARFIN

FIR No. 177/16  
PS : Chandni Mahal  
U/s: 326 A IPC

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| 1. SC No. of the case                     | : | 29051/16  |
| 2. Date of commission of offence          | : | 07.08.2016  |
| 3. Name, parentage and address of accused | : | Mohd. Arfin,<br>S/o Sh. Islamullah<br>R/o H. No. 3197, Fatak<br>Teliyan, Turkman Gate<br>Delhi. |
| 4. Offence complained of                  | : | u/s 326 A IPC   |
| 5. Plea of accused                        | : | Pleaded not guilty and<br>claimed trial.  |
| 6. Final order                            | : | Acquitted   |
| 7. Date of institution                    | : | 24.11.2016  |
| 8. Date of such order                     | : | 23.07.2020  |

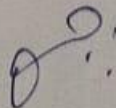
JUDGMENT

1. Accused Mohd. Arfin has faced trial for the offence u/s 326 A Indian Penal Code (*hereinafter referred as 'IPC'*) on the allegations that he, intentionally and knowingly, threw acid on five persons out of whom four are



his own family members and one is married daughter of his neighbour due to which they all sustained acid burn injuries.

2. The criminal machinery was put into motion on receipt of DD No. 30 A dated 07.08.2016 at PS Chandni Mahal regarding throwing of acid by one boy in drunken condition at H. No. 3198, Fatak Taliyan, Turqman Gate, Delhi. On receipt of said DD, IO/SI Ramesh Kumar alongwith const. Dharminder reached at the spot where they were informed that injureds have been shifted to LNJP hospital. IO/SI Ramesh Kumar left const. Dharminder at the spot and himself went at Lok Nayak Hospital, where he found five injureds namely Farzana, Rehana, Sameer, Ikara and Umar. He collected MLCs of all the injureds and recorded their respective statements. Injured Farzana is married daughter of neighbour of the accused and other four injureds are his wife and children respectively. In the statement of injured Farzana recorded by the IO she stated that she is a housewife. On 07.08.2016 she had gone to meet her parents and brothers at their house No. 3198, Phatak Talania, Turqman Gate, Delhi. On the said date, at about 8.30 p.m., on hearing noise from the adjacent house bearing No. 3197, she came out of her parental house and found that accused was in drunken condition and was abusing & beating his own wife and children. At that time, he was carrying one plastic bottle in his hand and was trying to pour the liquid of the bottle on his wife and children, however, his wife and children were stopping him from pouring the liquid of the bottle. While quarreling, the accused and his family came out of their house and started quarreling outside the gate of H. NO. 3198, which is the parental house of Farzana. In the scuffle amongst accused and his family, the lid of the bottle got opened and the liquid of the bottle fell upon the daughter Ikara of the accused, his wife Rehana and both his sons Sameer and Umar due to which they sustained injuries. Thereafter, the accused suddenly threw the bottle towards the house No. 3198



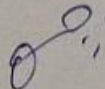
due to which the drops of the liquid fell upon the face and breast of Farzana and she started feeling burning and came to know that the said liquid in the bottle was acid. Thereafter, the accused poured acid on himself and got himself injured. All the injureds were shifted to hospital, from where they were discharged on the same day. Crime team reached at the spot and took the photographs. IO prepared the site plan and seized the plastic bottle containing liquid. IO also sealed the burnt clothes of the injured. On the same day i.e. on 07.08.2016 accused was arrested. Statement u/s 164 CrPC of injured Farzana was recorded by the Ld. MM. The IO collected the MLCs of all the injureds wherein the doctor opined injuries sustained by all the injureds were simple in nature. The bottle containing the liquid was sent to FSL. On the aforesaid facts and circumstances, the FIR of this case was registered.

3. After completion of investigation, the IO filed the chargesheet before the court of concerned MM who took the cognizance for the offence u/s 326 A IPC and summoned the accused. After compliance of provision u/s 207 Cr.PC, the chargesheet was committed to the Sessions Court. Vide order dated 23.03.2018, charge u/s 326 A IPC was framed upon the accused by Ld. Predecessor to which the accused pleaded not guilty and claimed trial.

4. The accused admitted the FSL result Ex. P-1 and recording of statement u/s 164 CrPC of injured Farzana by Ld. MM(Ex. P-2), however, disputed the contents of the said statement. In view of the admission of FSL report and recording of statement u/s 164 CrPC by Ld. MM, the witnesses from FSL and Ld. MM were dropped.

5. In order to establish its case against the accused, the prosecution has examined total 17 witnesses.

6. PW-1 is retired ASI Sri Gopal who on 07.08.2016 was posted as duty officer at PS Chandni Mahal and recorded the DD No. 30 A (Ex. PW1/A).



This PW also registered the FIR (Ex. PW1/B) on the basis of ruqqa (Ex. PW1/C). The FIR is computer generated therefore, this PW has also issued certificate u/s 65 B of Indian Evidence Act (Ex. PW1/D).

7. PW-2 is SI Harish Chander Pathak who on 19.10.2016 was posted at Police Head Quarter as Nodal Officer. On the said date i.e. on 19.10.2016, on the request of the IO of this case, he took out the print out of TCR form No. 07AUG161220492 dated 07.08.2016 bearing landing time 8.54 from mobile No. 9250826168. The computerized copy of the said TCR form is Ex. PW3/A. The certificate u/s 65 B of Indian Evidence Act given by this PW is Ex. PW3/C.

8. PW-3 is injured Farzana, who has stated that she is a housewife and residing at H. No. 2042, gali Telyian, Turqman Gate. On 07.08.2016 during the evening hours she went to meet his mother and brother residing at H. No. 3198, Phatak Teliyan. On the said day at about 8.30 p.m. she was present at the house of her mother when she saw that accused, residing in the neighbourhood of his paternal family, was quarrelling with his wife and children. Upon seeing accused quarrelling with his wife and children she went to the main gate of her house and suddenly some acid type substance thrown by accused over his wife and children fell on her. She was in Burka at that time but received burn injury on her forehead, face and left hand. Her Dupatta was burnt due to the acid type substance. This witness was immediately shifted to Irwin hospital by her sister Tabbasum. Thereafter, police recorded her statement (Ex. PW3/A). Police also seized her Burka and Dupatta. This witness correctly identified the accused and her Burka and Dupatta in the Court.

During cross-examination this PW has stated that on the day of incident accused was not quarrelling with her and had no intention to throw acid upon her. She voluntarily stated in the Court that accused was fighting with his family members and when she came out to see what has happened the

acid accidentally fell upon her. She has stated that even accused received injuries in the incident. During her cross-examination she admitted that the acid might have been thrown by wife of the accused and she could not notice who had thrown the acid upon her. She has also stated that wife and children of accused informed her that they are also injured in the incident therefore, she presumed that the acid must have been thrown by the accused. She has further stated that at the time she gave her statement to the police she was not sure whether the acid was thrown by accused or by any of his family member.

9. **PW-4** is Mohd. Nayeem, husband of injured Farzana(PW3). He has stated that on 07.08.2016 his wife Farzana had gone to meet her parents at H. No. 3198. At that time quarrel was going on in the neighbouring house i.e. H. No. 3197. In the said quarrel, accused threw acid on Farzana. Farzana had handed over her burnt Burka and Dupatta to this PW which he handed over to police. Police seized the Burka and Dupatta vide seizure memo Ex. PW4/A. This witness has correctly identified the case property in the Court.

During cross-examination this PW has stated that the incident has not taken place in his presence.

10. **PW-5** Sh. Sanjeev Kumar is Record Clerk from LNJP hospital. He has been examined on behalf of Dr. Amit Verma, Senior Resident, who medically examined all the injureds. This PW has stated that he is working in LNJP hospital in MRD Section since the year 2000 and can identify handwriting and signature of Dr. Amit Verma. This PW has proved the MLCs of injureds and the accused as Ex. PW5/A to Ex. PW5/F. He has stated that Dr. Amit Verma has opined the nature of injury on the MLC as simple.

11. **PW-6** is HC Ravinder Kumar who on 07.08.2016 was posted with Mobile Crime Team, Central District as photographer. He alongwith other officials of Crime team reached at the spot and took 8 photographs of the place

of occurrence. He has stated that he could develop only 5 photographs which he handed over to the IO. The negatives of the said photographs are Ex. PW6/A and the photographs are Ex. PW6/B.

12. PW-7 is Inspector Pankaj Kumar who on 07.08.2016 was posted as Incharge Mobile Crime Team, Central. On receiving the information of the incident, he alongwith other officials of the Crime Team reached at the spot and inspected the place of occurrence, thereafter, prepared Crime Team Report Ex. PW7/A.

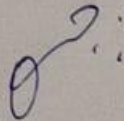
13. PW-8 is Const. Ravi Kumar who has stated that on 01.09.2016 he was posted at PS Chandni Mahal. IO/SI Ramesh Kumar handed over him one forwarding letter. This PW collected three pullandas sealed with the seal of RKV from MHC(M) vide RC No. 72/21/16 and deposited the said pullanda at FSL Rohini, Delhi. After deposit, he handed over the acknowledgement to MHC(M).

14. PW-9 is ASI Rafiq Singh who has stated that on 08.08.2016 IO SI Ramesh Kumar deposited two pullandas in the Mal Khana sealed with the seal of RKV, regarding which this PW made entry in Register No. 9 at Sr. No. 1677 (Ex. PW9/A).

He has further stated that on 14.08.2016 IO deposited one more pullanda in the Mal Khana sealed with the seal of RKV, regarding which he made entry in register No. 19 at Sr. No. 1696 (Ex. PW9/B).

He has stated that on 01.09.2016 this witness handed over all the above sealed pullandas to const. Ravi who deposited the pullandas in FSL and handed over the acknowledgement to this PW.

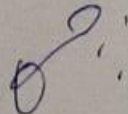
15. PW-10 is HC Dharminder Kumar who alongwith IO, on receipt of DD No. 30 A reached at the spot where they came to know that injured persons have been shifted to LNJP hospital. Acid stains were found by him and the IO at the spot. Curtain of the House No. 3198 was also found in burnt condition. One



plastic bottle containing liquid substance was also found there. IO left this PW at the spot and went to hospital. After sometime, IO again came back at the spot and handed over ruqqa to this PW on the basis of which he got registered the FIR of this case. Thereafter, he came back to the spot where Crime team was already present and inspected the place of occurrence. IO SI Ramesh Kumar seized the case property vide seizure memo Ex. PW10/A and arrested the accused. This PW has correctly identified the case property.

16. PW-11 to PW-16 are public witnesses including injureds, who all have turned hostile in the Court. PW11 is Smt. Tabbasum, sister of injured Farzana and PW12 Smt. Sabahat is her niece. They both have stated that on 07.08.2016 Farzana had come to their house. Quarrel was going on in H. No. 3197. On hearing the noise of screaming they came down and found that few children and ladies including Farzana had sustained burn injuries. They have further stated that they did not see as to who had thrown the acid substance on them. PW11 Tabbasum immediately shifted her sister Farzana (injured) to LNJP hospital. PW-11 & PW-12 were cross examined by Ld. APP that at the time of incident, accused was carrying the acid bottle but they denied the suggestion given by Ld. APP.

17. PW-13 Ikara, PW-15 Umar and PW-16 Sameer are children of accused and PW-14 Rehana is his wife who all have turned hostile and stated that on 08.08.2016 at about 8.30 p.m. accused Arfin came back at home after consuming liquor and started quarrelling with them. At that time, PW 15 Umar (son of accused) was cleaning the toilet and he on hearing the noise of accused, came outside the house while carrying acid bottle in his hand. Accused started scolding his daughter Ikara (PW13) and son Umar (PW15). On hearing the noise, wife of the accused also came out and scuffle started amongst all the family members. During the scuffle accused snatched the bottle from Umar



without knowing as to what was containing in the said bottle. In the scuffle, the lid of the bottle got opened and acid fell over on both the sons, daughter and wife of the accused and also on the accused. Accused seeing all his family members and himself in injured condition thrown the acid bottle outside the house and in the said process the droplets of the acid fell on injured Farzana. Someone made call at 100 number. Police reached at the spot.

All these public witnesses were cross-examined by Ld. APP for the State on the point that accused intentionally thrown acid on the injured. They were confronted with their statements recorded u/s 161 CrPC wherein they had stated that accused intentionally thrown acid but all these PWs denied making any such statement u/s 161 CrPC.

18. PW-17 is IO SI Ramesh Kumar who on receipt of DD No. 30 A reached at the spot alongwith const. Dharminder. At the spot they found that injured have already been shifted to LNJP hospital. Acid stains were found by him and const. Dharminder at the spot. Curtain of the House No. 3198 was also found in burnt condition. One plastic bottle containing liquid substance was also found there. He left PW Const. Dharminder at the spot and went to hospital. After sometime, he again came back at the spot and handed over ruqqa to Const. Dharminder on the basis of which he got registered the FIR of this case. Crime team was called by this PW at the spot who inspected the place of occurrence. This PW seized the case property vide seizure memo Ex. PW10/A and also arrested the accused. This PW has correctly identified the case property.

19. After completion of prosecution evidence, statement u/s 313 CrPC of the accused was recorded in which he pleaded his innocence and alleged false implication in the present case.

20. I have heard Ld. APP Sh. Virender Singh for the State and Sh.



Sanju Gupta, Ld. Amicus Curiae for the accused and perused the record.

21. Ld. APP has argued that prosecution has proved its case beyond reasonable doubt since all the public witnesses/eye witnesses have categorically stated that the acid was thrown by the accused on them due to which they sustained injuries. They specifically stated in their deposition that acid was thrown upon the injured persons by the accused and there cannot be any reason that all family of the accused would falsely implicate him in the criminal case.

22. Sh. Sanjay Gupta, Ld. Amicus Curiae on behalf of accused has argued that all public witnesses/eye witnesses have turned hostile and have not supported the case of the prosecution. He has further argued that PW Farzana (injured) during her cross-examination has admitted that she did not see as to who has thrown acid upon her and other injured persons. He has submitted that same is the admission by PW Tabbasum and PW Shahadat. They also did not speak who had thrown acid upon the injured persons. He has argued that testimony of all the family members of the accused clearly shows that accused had no intention to throw acid on the injured persons but in a routine family scuffle/quarrel the acid accidentally fell upon the injured.

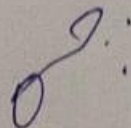
23. I have considered the rival contentions made by Ld. APP and Ld. Amicus Curiae.

24. It is not disputed and also proved on record from the FSL report (Ex.PX-1) that the liquid substance in the bottle was acid, stains of which were also found on the burnt burkha and dupatta of PW-3 Farzana. It is also proved on record from the MLC(s) (Ex. PW5/A to Ex. PW5/F) of the injureds brought by PW5 Sh. Suresh Kumar Record clerk, examined on behalf of Dr. Amit Verma who medically examined the injureds, that on the date and time of the incident all five injureds did sustain acid burn injuries, though simple in nature.

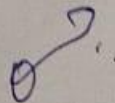
25. Now, the moot question before the court is as to who caused the

injury to the victims with acid and more importantly the court has to see whether prosecution has succeeded in proving that it is the accused alone who did it.

26. The prosecution has examined total 7 eye witnesses of the incident, out of whom 5 are injureds including four family members of the accused being his wife & children and one of the injured (PW3 Farzana) is married daughter of his neighbour who at the time of incident had gone to meet her parents at their house bearing No. 3198 (accused is residing at property No. 3197). The remaining two eye witnesses are PW-11 Tabbasum and PW-12 Sabahat, sister and niece, of injured Farzana. All the eye witnesses of the prosecution have consistently stated in their respective testimony that on the date and time of the incident accused and his family were quarrelling with each other in their house. However, none of the prosecution witness has supported the case of the prosecution that at the time of incident accused was either carrying the acid bottle or threw it on the victims. PW-11 & PW-12 in their statements recorded u/s 161 Cr.PC during investigation said that accused was carrying the acid bottle and in the scuffling amongst the family members, the acid spill out of the bottle and fell on the victims. But, they both took U-Trun in court and stated in their evidence that they reached at the spot after the incident and found their relative Farzana and some other ladies and children in injured condition. They have stated that they had not seen as to who has thrown the acid on Farzana and other victims. These witnesses were cross examined by Ld. APP who gave them specific suggestions that at the time of incident accused was carrying acid bottle and while the accused was beating his wife and children, the acid spill over on the injureds but despite the cross examination of these witnesses by Ld. APP, nothing could be elicited from them against the accused. The other eye witnesses, who are injureds also are PW-3 Farzana and PW-13 to



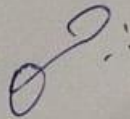
PW-16, have stated in their evidence that while quarreling accused and his family members came outside their house and at that time either accused or any of his family member was carrying one plastic bottle containing some liquid substance (*As per FSL report Ex. PX-1 the said liquid substance has been proved sulpheric acid*) and in the scuffle amongst the family members, acid spill out of the bottle and its droplets fell on the own family members of the accused and on PW-3 Farzana. Though, PW-3 Farzana, during her chief examination has stated that at the time of incident the accused was carrying the acid bottle in his hand and threw it on his family and droplets of the acid also spill over on her *but* during her cross-examination, recorded on the same day when her chief was recorded, she stated that she could not see as to who, whether accused or his wife, was carrying acid bottle and threw it due to which she sustained injuries. PW3 stated so, even, in her statement recorded u/s 164 CrPC by Ld. MM that she cannot say as to who was carrying acid bottle on the day and time of the incident and she could not even see that who, whether accused or his wife, threw the acid on her and on other victims. In her cross examination, she also stated that the wife and children of the accused had also sustained injuries in the incident, therefore, she assumed that accused must have thrown the acid. This is a criminal trial in which accused cannot be convicted on the assumption and presumption of the witnesses. Similarly, PW-4 (husband of PW-3 Farzana) has stated in his testimony that on the day of incident his wife went to meet her parents where accused threw acid on her but he (PW-4) during his cross-examination admitted that he is not an eye witness of the incident. In view of the admission of PW4 that he is not the eye witness of the incident the Court finds it surprise that how during his chief examination he stated that acid was thrown on his wife by accused, when his wife, who admittedly is the eye witness of the incident and also the injured, herself is not



aware who actually was carrying the acid bottle and threw the same. The other set of eye witnesses/victims are PW-13 to PW-16, own family members of the accused. They have stated in their chief examination that on the date and time of the incident they were quarrelling with each other. At that time PW-15 Umar (son of accused) was cleaning toilet and on hearing the noise of quarrel, he came out of the house while carrying acid bottle in his hand and while scuffling amongst the family members of the accused, the droplets of the acid came upon them and also on PW3 Farzana. During investigation, IO recorded statements u/s 161 CrPC of all the eye witnesses including the family members of the accused in which they all said that at the time of quarrel accused was carrying acid bottle with him and threatening to pour the same on them. However, when these witnesses entered in the witness box in the Court they all turned hostile on the point that accused threatened to pour acid on them. Ld. APP for the state confronted the eye witnesses from their statements recorded u/s 161 CrPC that they were so threatened by the accused but they all denied giving any such statements to the police. Thus, the testimony of eye witnesses have failed to prove that it was accused who was actually carrying the acid bottle and threw it on the victims.

27. *Even*, on the perusal of the MLC(s) of the injureds the Court found that in the alleged history, it is nowhere mentioned that acid was thrown on the victims by the accused but the MLC(s) mention the alleged history of injuries as sustained by injureds was at their house. Thus, undoubtedly it is proved on record that victims sustained acid burn injuries but prosecution could not prove beyond reasonable doubt as to who threw the acid upon them.

28. *Moreover*, even if the Court proceeds further on the premise that prosecution has proved that the acid was thrown by the accused on the injureds then also the case of the prosecution has remained unproved for the reason that

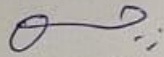


none of the prosecution witness has stated that the accused intentionally and knowingly poured acid on either of the injureds, which is one of the essential ingredient to prove offence u/s 326 A IPC against the assailant of the Crime. The material on record, particularly the testimony of eye witnesses has failed to prove that accused intentionally or knowingly threw acid upon the injured persons. *Rather testimony of all the eye witnesses clearly prove that the acid accidentally splashed from the bottle due to which apart from PW 3 Farzana, own family members of accused also sustained injuries.* Hence, the ingredient of intention and knowledge of accused to throw acid on the victim and to cause them hurt could not be proved by the State.

29. In view of the aforesaid discussion, the accused is acquitted for the offence u/s 326 A IPC. He be immediately released from the custody if not required in any other case. Copy of this order be uploaded on the official website of the District Court and sent to concerned Jail Superintendent as well as to the prosecution branch.

File be consigned to record room.

Announced through VC (Cisco Webex)  
on 23<sup>rd</sup> July, 2020

  
(Charu Aggarwal)  
ASJ-02/Central/THC/Delhi