
(2008) 03 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 13 of 2006

Vijay Kumar and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 320, 325, 326, 34

Citation : (2008) 2 ShimLC 4

Hon'ble Judges : V.K. Ahuja, J; Surjit Singh, J

Bench : Division Bench

Advocate : A.S. Chahal and Lovneesh Kanwar, No. 1 and Anup Chitkara, No. 2, for the Appellant; P.K. Sharma, A.A.G. and P.M. Negi, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—This is an appeal filed by the Appellants against the judgment of the Court of learned Sessions Judge, Shimla, dated 30.11.2005, vide which the Appellants were held guilty u/s 307/34 I.P.C. and sentenced to undergo rigorous imprisonment for 10 years each and a fine of Rs. 5,000/- each. In default of payment of fine, the Appellants were to further undergo imprisonment for six months.

2. Briefly stated the facts of the case are that on 12.7.2004, at about 9.00 a.m., PW-13 Shami Verma, resident of Mashobra, was present at BCS at Khalini-Dhalli Bye-Pass. She saw PW-5 Kumari Ishita there crying with burn injuries, who had jumped into a water tank nearby. She took out PW-5 Kumari Ishita from the tank, gave information to the Police Post, New Shimla, that a girl with burn injuries is present near her residence and this information Ext.PR was recorded by the Incharge of the Police Post, New Shimla, who deputed a police officer on wireless set to go to the spot. PW-36 Shakuntla Sharma went to the spot, shifted the girl to the hospital and recorded her statement, on which the case was registered. It came up during investigation that when PW-5 Kumari Ishita was

going to college, two boys came on a scooter and threw some acid over her from a jug and ran away from the spot. The case was registered and after investigation, the challan was filed as against both the Appellants who were tried by the learned trial Court leading to their conviction, as detailed above.

3. We have heard the learned Counsel for the Appellants and the learned Additional Advocate General for the State.

4. The first point raised by the learned Counsel for the Appellants was that the injured PW-5 Kumari Ishita had not identified the Appellants at that time who threw acid upon her. It was submitted that the prosecution version is based upon circumstantial evidence but the chain of circumstantial evidence is not sufficient to connect the Appellants with the commission of the crime and the evidence led is not reliable to hold that the prosecution case was established beyond any reasonable doubt.

5. During the course of arguments, we were taken through the evidence consisting of various circumstances pointing out to the guilt of the accused and some infirmities were also pointed out in the evidence and we will refer to the various circumstances proved by the prosecution to substantiate its case.

6. The first circumstance pointed out was that the Appellants had changed their trousers by purchasing new trousers at Sunni. To prove this fact, the prosecution had examined PW-28 Girish Bhardwaj, who is running a garment shop at Sunni. A perusal of his statement shows that he stated that on 12th July, 2004, two boys visited his shop and purchased two trousers Ext.P-51 and Ext.P-52. The police had brought the Appellants to him during the course of investigation and he identified that these were the persons who had purchased the trousers from his shop.

7. The second circumstance pointed out was that PW-34 Anil Kumar has stated that he saw two scooter riders at about 9.00 a.m. on 12.7.2004 who were wearing helmet and were coming from Khalini side and one of the scooter rider was having a jug in his hand from which he threw some substance on a girl. The girl started crying and the scooter riders went away on their scooter. This witness tried to chase the scooter in a Tata Mobile but could not catch the scooter riders. He stated that he cannot identify the accused since he had not seen them with open face but both the accused persons were of the same stature and size as the scooter riders.

8. The third circumstance pointed out was from the statement of PW-14 Mohan Lal, who stated that he was walking on foot and when he reached near Kamhali, he saw one scooter parked on a side of the road. Two boys were also there and he identified one of them as accused Vijay Kumar who was washing his hands in the water of the channel, who was having some injury on his arms. He stated that the garments of Vijay Kumar were having holes of burns and he also identified the accused Daljit Singh who was standing nearby and his clothes were also burnt. He had holes in the clothes and was having burn marks on his arms.

He was told by Vijay Kumar that they have met with accident and he could help them. Vijay Kumar also asked for the T-shirt which he was wearing from this witness who refused saying that he was going to his office and could not provide the T-shirt. This witness was associated in the identification of both the accused persons and he identified them on 20th July and 21st July in the identification parade conducted before the Magistrate. PW-30 Sh. Virender Sharma.

9. The next circumstance pointed out was from the statement of PW-29 Bhagat Ram, who stated that on 12th July, 2004, two boys came on a scooter and stated that they wanted to keep their scooter at his shop since it had developed some defect. On 23rd July, 2004, the police came to his shop alongwith the accused persons who were identified by him and the scooter was taken from the shop which was kept by those two boys. He is the witness to the recovery memo also.

10. The next circumstance pointed out was about the presence of traces of sulfuric acid on parts of the scooter. The scooter was examined by PW-10 Dr. B.R. Rawat, Assistant Director from State Forensic Science Laboratory, who gave his report Ext.PK, that on different parts of the scooter, namely, mud guard, upper portion of headlights, foot mat and front dickey were having traces of sulfuric acid. No specific questions were put up to the witness that no scooter was examined by him or that this report is incorrect and that all the traces were of some other substance.

11. The next circumstance which was pointed out was that the parcel No. 1 sent to the expert contained white plastic jug. Parcel No. 2 contained a leather purse, a burnt dupatta, a burnt sweater, a book and a notebook. Parcel No. 3 contained a salwar, shirt piece and vest, which were stated to be the clothes of PW-5 Kumari Ishita. Parcel No. 4 was stated to be containing burn scraping, while Parcel No. 5 was containing scalp hair. According to the report of the expert Ext.PI, proved from the statement of PW-10 Dr. B.R. Rawat, these contained the traces of sulfuric acid on all the parcels, except parcel No. 4 which report was also found proved from the statement of PW-10 Dr. B.R. Rawat.

12. The next circumstance pointed out was the burn injuries found on the clothes worn by the accused, which were recovered by the prosecution during investigation. Shirt Ext.P-54 and one Inner was recovered at the instance of accused Vijay Kumar in the presence of witnesses, while accused Daljit Singh got recovered trousers Ext.P-52 having hole on the front side. According to the report Ext.PJ proved from the statement of PW-10 Dr. B.R. Rawat, the shirt and inner and a "Can" were having traces of sulfuric acid and holes were also made because of sulfuric acid.

13. The next circumstance pointed out was that one day prior to the incident, both the accused persons had stayed together in a Hotel at Shimla and to substantiate this plea, the prosecution had examined PW-19 Prithvi Raj from the said Crystal Hotel, Shimla, who had appeared alongwith the register Ext.P-37 and stated that both the accused had stayed in his Hotel on 11.7.2004 and

checked out at 5.00 p.m. though the entry was made for the afternoon and he stated that the form Q- 1 was filled by accused Vijay Kumar and was signed by him. Entry in the name of Daljit Singh was signed by him. However, according to the report of the expert, both the hand writings in the register were proved to be that of Vijay Kumar after she compared them with the specimen handwriting of Vijay Kumar taken by the police. This proves that the handwritings were in the hand of Vijay Kumar, who had made the entries in the register. Accordingly, these had been proved from the statement of PW-11 Minakshi Mahajan, Assistant Director of Documents from the State Forensic Science Laboratory.

14. The next circumstance pointed out was that both the accused persons had burn injuries on their person when they were examined by the Medical Officer during investigation and there is also evidence of pattern of these burn injuries on the person of both the accused and PW-5 Kumari Ishita. The prosecutrix was examined by PW-1 Dr. Anita Puri, Medical Officer, who proved the burn injuries on the person of PW-5 Kumari Ishita, who had also given the samples of scalp hair of Kumari Ishita, scraps taken from the burn site and the clothes worn by her, to Police Constable for sending them to the expert. According to the opinion given by the Medical Officer after receipt of the Chemical Examiner Report, the chemical found on the person, clothing, scalp and hair of Kumari Ishita was sulfuric acid. The learned Counsel for the Appellants, during the course of arguments, had pointed out to one cutting wherein the word "superficial" was scored off and "deep", was written in regard to the injuries and it was submitted that it was done at the instance of the police. No motive was attributed to the Medical Officer in regard to these cuttings and these cannot be attributed without there being any specific reason for attributing these motives that the Medical Officer acted at the instance of the police. The Medical Officer had given a plausible explanation which has to be accepted that these things she corrected at the same time after consulting the books etc. However, she clearly stated that she corrected these things at the same time and we find no reason to disbelieve her.

15. The next circumstance was that PW-2 Dr. Piyush Kapila, Registrar, Forensic Medicine, IGMCI, Shimla had also examined PW-5 Kumari Ishita on 24.7.2004 on the request of the police and he gave his opinion that the injuries were having duration of around 12 days. These injuries looked alike made of splash of some chemical. He also gave his opinion in regard to examination of PW-5 Kumari Ishita. He also opined about the injuries on the person of both the accused and had photographed the injury pattern also and found that they were having same process of healing and were around 12 days old. He also stated that the chemical burns were also of the same thickness and duration as of the two persons examined by him, namely, the accused and the mere fact that he also gave the opinion that the injuries on the person of PW-5 Kumari Ishita could cause her death, which opinion was not given earlier, is not sufficient to hold that his statement cannot be disbelieved by the Court. However, this fact was stated by him in the Court for the first time and the opinion could have been given,

according to him, by the Medical Officer who examined PW-5 Kumari Ishita for the first time, therefore, this portion of his statement that these injuries were sufficient to cause her death can be ignored.

16. The next circumstance pointed out was the injuries Ext.PD and Ext.PE, which have been proved from the ML Cs of these two accused recorded by PW-2 Dr. Piyush Kapila. According to his opinion, these injuries look alike, made of splash of some chemical and were in the process of healing and their duration was 12 days. The injuries observed on the person of Daljit Singh were as under:

Acid burn wounds in small patches on the front of right shoulder, right arm, front right elbow, front and lateral size of right fore arm and lateral side of right hand. The patches were of the size of 2" x 1/4" to 1/2" x 1/4" with brownish scabs.

Acid burn wounds on the area of 6" x 4" on the mid front of left forearm, the patches were 2" x 1/4" to 1/2" x 1/4" in size with brownish scabs. The hairs were burnt on the pathy area of acid burns.

Acid burn wounds 1" x 3/4" on the top and just medial to the top of the left shoulder with brown scabs.

The injuries found on the person of Vijay Kumar were as under:

A brownish scabbed abrasion partially healed 1" x 1/4" present on nape of neck.

A brownish black scabbed burn 1-1/4" x 1/6" with surrounding erythema partially healed at margins present obliquely in front of base of neck.

Multiple healed (partially) brownish abrasions of variable sizes 1 Cm. x 0.75 Cm. upto 1.25 Cm. x 1 Cm. present in front of upper part of right side of chest.

Multiple brownish black scabbed burns of variable sizes 0.5 Cm. x 0.5 Cm. upto 1-3/4" x 1-1/2" partially healed, some showing yellowish granulation tissue at the periphery and some showing erythema around the burns which were present on dorso lateral aspect of both arms and forearms starting from middle of both arms upto dorsum of both hands. The burns were present even lateral half of the ventral half of both arms.

Multiple brown black scabbed burns of variable sizes 1 Cm. x 0.5 Cm. upto 2" x 1" present in front of both eyes on right thigh lower 2/3rd and on left side lower 1/3rd was involved. The burns were partially healed, some burns show surrounding redness.

Multiple small brownish black burns of variable sizes were present on dorsum of right foot.

17. The explanation furnished by Vijay Kumar in regard to these injuries in answer to question No. 36 put up to him in his statement u/s 313 Code of Criminal Procedure was that these injuries were old caused by hot water. The explanation furnished by Daljit Singh was that these injuries were on his person since birth. But this explanation was not accepted by the learned Sessions Judge

in para 37 of his judgment holding that the doctor had fixed duration of the injuries having been caused by acid and the circumstances fully prove and establish on record as per ocular version proved by the prosecution as well as medical evidence. This can be said to be most important circumstance as against the Appellants.

18. The next circumstance pointed out during the arguments was the motive. According to the prosecution and as per the testimony of PW-5 Kumari Ishita, Appellant Vijay Kumar was her first cousin and he had made several attempts at different places and had cajoled her to marry him and she chided him since she was the first cousin of this accused. This can be said to have been substantiated mainly from the statement of PW-5 Kumari Ishita, though she was confronted with some of the facts which were narrated by her for the first time but it was not necessary that all the facts in regard to earlier behaviour should have been told also in the first report made by her. Therefore, these improvements cannot be said to be such which can be brushed aside and rather they point out to the motive for Appellant Vijay Kumar to commit the offence alongwith his co-accused.

19. In our opinion, PW-5 Kumari Ishita can be said to be more truthful since in case she wanted to falsely implicate the Appellant Vijay Kumar or his companion, she could have easily stated that she had identified both these persons and can identify them when shown to her or she could have named both the Appellants being the persons who threw acid on her. However, in her first report made to the police Ext.PG, she simply alleged that two persons came on a scooter and threw some substance on her face with plastic jug and she felt burning sensation on parts of her body. She did not name those persons since she had no occasion to see them since it was thrown upon her suddenly and as has come up in her statement made in Court in which she clarified that these persons were wearing the helmet and, therefore, she could not identify them. We have gone through the evidence of PW-5 Kumari Ishita in detail and we reiterate that she appears to be a truthful person who made no attempts to falsely implicate the Appellants at the earliest or stated that she could identify those persons, but subsequently when it came up during investigation that some persons known to her may be involved, she narrated to the police about the previous attempts made by the Appellant Vijay Kumar to compel her to marry him even though he was the first cousin of the complainant. In our opinion, the statement made by PW-5 Kumari Ishita does not suffer from any major contradictions or infirmities and inspires confidence.

20. During the course of arguments, we were also taken through other evidence which completes the chain of circumstances to prove the guilt of the Appellants. The chain of circumstances proved in the prosecution evidence and referred to above is complete and it points out to only one thing that this offence was committed by both the Appellants and the evidence led clearly proves this point beyond any reasonable doubt.

21. In view of the above detailed discussion, we are of the opinion that the

findings recorded by the learned Sessions Judge holding the Appellants guilty are sustainable in the eye of law. However, we are not inclined to hold that the guilt of the accused was proved u/s 307 IPC.

22. The next submission made by the learned Counsel for the Appellants was that the Medical Officer came up subsequently with the statement that these injuries were sufficient to cause death, which part of the opinion given by the Medical Officer, as discussed above, we are not inclined to agree. Moreover, to substantiate his point that the guilt u/s 307 IPC was not established, the learned Counsel for the Appellants, during the course of arguments, had gone to the extent that the case under Sections 325 or 326 IPC was also not proved since the injured had not either stayed in the hospital for 20 days or there was no proof of disfigurement of the prosecutrix.

23. To substantiate his point that the offence u/s 307 IPC was not made out, the learned Counsel for the Appellants had relied upon the decision in *Dr. A.G. Bhagwat v. U.T. Chandigarh* 1988 (1) RCR 591. The facts of this case show that the acid was thrown by an Associate Professor of PGI on his colleague doctor. The victim remained as indoor patient for more than 20 days. It was held that the offence did not fall u/s 307 IPC but u/s 326 IPC.

24. The next case law relied upon by the learned Counsel for the Appellants was the decision of Punjab and Haryana High Court in *Jagdish Mittar v. State of Punjab and Anr.* 1991(1) RCR 594, wherein the acid was thrown on the son of "A" making him blind and accordingly in view of the facts of that case, it was held that the accused had no intention to kill. The offence u/s 326 IPC was made out but no case u/s 307 IPC was made out, though it was observed that the factum that the injured had been rendered blind is only a circumstance calling for aggravating sentence.

25. The reliance was also placed upon the decision in *Kapoor Singh Rana v. State of Delhi* 2006 (1) RCR 943. In that case the accused had poured acid on the face of the victim causing loss of eyes and disfigurement. It was observed that usually when acid is thrown on the face of someone, the intention behind the act is to cause disfigurement rather than to cause death. It was held that the accused was guilty of offence u/s 326 IPC and not u/s 307 IPC. In coming to this conclusion, the Division Bench of the Delhi High Court had relied upon the decision of the Apex Court.

26. In the present case, there is no evidence to show that the injured had remained in the hospital for 20 days or in severe bodily pain to attract the provisions of Section 320 (Eighthly) IPC. There is nothing to show permanent privation of the sight to attract the provisions of Section 320 (Secondly). However, the provisions of Section 320 (Sixthly) are attracted i.e. permanent disfigurement of the head or face.

27. A perusal of the statement of PW-5 Kumari Ishita shows that she stated as under:

...I am having deep scars on the left side of my face which are visible to a naked eye. I have also suffered injuries and scars on my nose and my left ear. In fact, left side of my face has been totally damaged which is visible. My neck has been also damaged. My left arm including wrist and fore-arm have been also damaged and I am having deep scars on my arm. There are deep scars on my abdomen. There was some injuries on my scalp and was also having deep scars.

28. This part of her statement finds corroboration from the testimony of PW-1 Dr. Anita Puri, who had examined her and had referred to the various burn injuries on different parts of the body of the injured. Therefore, the injuries suffered by the injured PW-5 Kumari Ishita are covered u/s 320 (Sixthly), which clearly shows that there was disfigurement of her face, which, in our opinion, can mar her marriage prospects and may be a permanent nuisance to her in her coming life.

29. We have considered the facts of the case and we are of the opinion that the act of the Appellants in causing these injuries on the person of the injured is fully covered u/s 320 (Sixthly) IPC and as such the Appellants are liable to be held guilty u/s 326 IPC.

30. Coming to the sentence imposed upon the Appellants, the submissions made by the learned Counsel for the Appellants were that father of one of the Appellants was a government employee while the father of another Appellant is doing a small work to earn his livelihood and both the Appellants are young persons of the age of 27 years, as given by the accused Vijay Kumar at the time of recording of his statement u/s 313 Code of Criminal Procedure and as per the statement made by the Appellant Daljit Singh at that time, he was of the age of 23 years. Thus, it was submitted that the sentence of 10 years imposed by the learned Sessions Judge can be said to be excessive keeping in view the age and the fact that in the present case there was no loss of eye or any major part of body and the evidence led only shows disfigurement or burn marks on different parts of body and, therefore, the Appellants deserve leniency of this Court.

31. To substantiate this point, the learned Counsel for the Appellants had relied upon the following decisions in which lesser sentence was imposed though the injuries in question were more serious.

32. The decision in *Dr. A.G. Bhagwat v. U.T. Chandigarh* (supra) shows that in that case also the accused had caused burn injuries by acid. The doctor had opined that the injuries may cause death which was not more than a possibility and it was held that the injuries were not likely to cause death. The sentence imposed by the trial Court was imprisonment for life, which was reduced to 5 years rigorous imprisonment and fine of Rs. 10,000/-.

33. The decision in *Kapoor Singh Rana v. State of Delhi* (supra) shows that sentence was reduced from life imprisonment to seven years rigorous imprisonment and fine of Rs. 30,000/-, in a case u/s 326 I.P.C.

34. Keeping in view the facts of the case and the submissions made, we accordingly hold that the sentence imposed upon the Appellants deserves to be modified.

35. In view of the above discussion, the sentence imposed upon the Appellants is modified from Section 307 IPC to Section 326 IPC. Both the Appellants shall undergo rigorous imprisonment for a period of five years and pay fine of Rs. 25,000/- each; in default of payment of fine to undergo rigorous imprisonment for a further period of six months each. The amount of fine, as and when deposited, shall be released in favour of the injured Kumari Ishita as compensation so that, if necessary, she can undergo plastic surgery or any other treatment that may be required. The amount of fine shall be payable after the expiry of the period of appeal. The appeal is partly allowed to this extent.