

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,

Chief Justice

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

CRIMINAL APPEAL NO.30 OF 2015 WITH JAIL PETITION NO.08 OF 2015.

(From the judgment and order dated 14.09.2014, 15.09.2014 and 16.09.2014 passed by the High Court Division in Death Reference No.57 of 2009, Criminal Appeal No.6013 of 2009 and Jail Appeal No.566 of 2009.)

Md. Akbar Ali alias Jelhaque Mondal : Appellant.
(In both the cases)

=Versus=

The State and another : Respondents.
(In both the cases)

For the Appellant : Mr. Farid Ahmed, Senior Advocate, instructed by
(In both the cases) Mr. Md. Taufique Hossain, Advocate-on-Record.

For the Respondents : Mr. Md. Mehedi Hasan Chowdhury, Additional
(In both the cases) Attorney General, instructed by Mr. Haridas Paul,
Advocate-on-Record.

***Date of hearing and judgment* : 01.09.2021.**

J U D G M E N T

Hasan Foez Siddique, J: The appellant Md Akbar Ali @ Jelhaque Mondal was convicted under section 5(Ka) of the Acid Aparadh Daman Ain, 2002 (the Ain) and sentenced to death and to pay a fine of tk.50,000/- by the Acid Aparadh Daman Tribunal, Sirajgonj (the Tribunal) in Acid Aparadh Daman Case No.04 of 2008 arising out of Sahjadpur Police Station Case No.12 dated 19.02.2008 corresponding to G.R. Case No.35(Shah)/08. The High Court Division in Death Reference No.57 of 2009 and Criminal Appeal No.6013 of 2009 and Jail Appeal No.566 of 2009 maintained the said judgment and order.

Prosecution case, in short, was that P.W.2, victim Most. Aysha Siddika Neela, went to sleep with her husband, the appellant on the night of 18th February, 2008. At about 2.00 a.m., she did not find her husband on the bed. Sometimes thereafter, he returned. On query, by the P.W.2, he exchanged heated arguments with the victim. At one stage, the appellant threw acid on her face, left ear, two hands, left shoulder, left side of the head, chest and throat. Then he went away. P.W.2, sustained acid burn injuries and raised alarm. Her neighbours rushed to the place of occurrence and poured water on her person, thereafter, she was shifted to Pabna Hospital. P.W.1, father of the victim, getting message, rushed to the place of occurrence and, thereafter, to Pabna Hospital and saw that the victim had sustained severe burn injuries. The Pabna Hospital Authority referred the victim to Dhaka Medical College Hospital for better treatment. In such circumstances, the P.W.1 lodged the First Information Report with Sahjadpur Police Station on 19.02.2008(Exhibit-1).

Police, holding investigation, submitted charge sheet against the appellant under Section 5(Ka) of the Ain. The case was ultimately tried by the Acid Aparadh Daman Tribunal, Sirajgonj who framed charge against the appellant for commission of offence punishable under the aforesaid provisions of law. The charge being framed in absentia to the appellant could not be read over and explained to him.

The prosecution examined 23 witnesses out of 24 witnesses cited in the charge sheet and defence examined none. From the trend of cross-examination of the prosecution witnesses it appears that the defence case was that the appellant had been implicated in the case falsely.

The Tribunal, upon recording the evidence and examining the appellant under Section 342 of the Code of Criminal Procedure and hearing the parties, convicted the appellant as aforesaid. Thereafter, he submitted the proceeding by transmitting the case record in the High Court Division for confirmation of sentence of death. The appellant preferred Criminal appeal and jail appeal and all those matters were heard analogously. The High Court Division by the impugned judgment and order maintained the order of conviction and sentence awarded by the Tribunal. Thus, the appellant has preferred this appeal.

Mr. Farid Ahmed, learned Senior Counsel appearing for the appellant, submits that the appellant was not properly represented in the trial Court, thereby, he has been prejudiced seriously. He, next, submits that the prosecution has failed to prove its case beyond reasonable doubt by examining any independent eye witnesses of the occurrence and that ingredients of section 5(Ka) of the Ain had not been proved against the appellant so the appellant is entitled to get an order of acquittal. He, lastly, submits that the appellant has been languishing in the condemned cell for about 12 years and that the P.W.2 is still alive, in such view of the matter, the sentence of death awarded to the appellant may be commuted to imprisonment for life.

Mr. Mehedi Hasan Chowdhury, learned Additional Attorney General appearing for the State submits that the victim P.W.2 herself is the eye witness of the occurrence. She saw the appellant to throw acid targeting her, consequently, she sustained severe burn injuries. Thereafter, the appellant fled away. Some of the witnesses in their testimonies stated that

the appellant and victim were staying in their dwelling hut in the night of occurrence. But, they did not find the appellant after the occurrence, which formed a strong circumstance that nobody else but the appellant threw acid towards the victim. He, lastly, submits that from the medical reports, it appears that the victim, P.W.2 had sustained severe acid injuries and considering the nature of injuries received by her, the High Court Division rightly maintained the death sentence awarded to the appellant.

In this case, prosecution examined 23 witnesses. Of them, P.W.1 is the father of the victim. He stated that after two months of solemnization of marriage of the appellant and the victim, the appellant took tk.80,000/- from this witness, and, thereafter, he went to Saudi Arabia. After staying in Saudi Arabia for a period of 6(six) months, he returned home and approached the victim for taking her to Saudi Arabia. They apprehended that the appellant could sell the victim in Saudi Arabia. Thus, the victim denied to go there. Upon such disagreement, the appellant became annoyed and committed such offence. P.W.2, victim Aysha Siddika Neela in her testimony stated that the appellant approached her for going to Saudi Arabia with him. She denied the proposal. At about 10/10.30 p.m. on 18.02.2008, the appellant and she went to bed. But at about 2.00 a.m., she did not find her husband in the bed. Sometimes thereafter, he returned. This witness asked the appellant about the reason of going outside the room. The appellant abused her with filthy language and, at one stage, her father-in-law, mother-in-law and other inmates went there. In their presence, the appellant threw acid towards this witness, consequently, she sustained severe acid injuries on her face, left ear, two hands, left shoulder, left side of the head, chest and throat. She raised alarm. The neighbours rushed to

the place of occurrence and shifted her to Pabna Hospital and, thereafter, to Dhaka Medical College Hospital. Finally, she was admitted in Acid Survivors Centre. In her cross-examination, she stated that her husband threw a glass of acid on her head. She denied the defence suggestion that her husband did not throw any acid on her person. P.W.3 Rokeya Khanam stated that hearing the outcry, she woke up from sleep and found that victim Neela's father-in-law and mother-in-law were pouring water on her person. Neela told that her husband had thrown acid on her. She was shifted to Pabna Hospital. P.W.4 Shahitun Bewa in her testimony stated that the appellant Jelhaque Mondal had thrown acid on his wife Neela. Hearing outcry, she woke up from sleep and rushed to the place of occurrence and found Neela crying. P.W.5, Sonavan Begum hearing the outcry, woke up and rushed to the house of the victim. She did not know the attacker of acid to the victim. She was declared hostile. On recall, she stated she did not find the appellant in their house. P.W.6, Md. Ali Mondal in his testimony stated that hearing outcry, he rushed to the place of occurrence and Neela told him that her husband had thrown acid upon her. He did not find the appellant in his house at the relevant time. In his presence, police recovered some incriminating materials upon preparing a seizure list(Exhibit-2) and those seized articles were marked as material Exhibits I, II, III and IV. P.W.7 Omar Ali Mondol in his testimony stated that in the night of occurrence the appellant and victim Neela were sleeping in the same room. He went to the place of occurrence and heard from the people present there that the appellant had thrown acid on the victim. He did not find the appellant in his house at the relevant time. In his presence, police recovered some incriminating materials upon preparing seizure list.

He put his signature in the seizure list. P.W.8, Abu Sayeed is also a seizure listed witness. He heard that the appellant had thrown acid on the victim Neela. P.W.9 Sajeda Begum stated that the appellant had thrown acid on the victim and, hearing outcry, she rushed to the place of occurrence and found burn injuries on her person. P.W.10 Hasna Khatun stated that the appellant is her “debor” (brother-in-law). At the relevant time, Neela was staying at her husband’s house. She stated that she had not seen anything. P.W.11, Sanowar Hossain in his testimony stated that on the date of occurrence the appellant and his wife were staying in their house. He went to the place of occurrence but did not find Jelhaque in his house. P.W.12, Tofazzal Hossain in his cross-examination said that he saw the appellant in his house on the day before the occurrence. P.W.13 Sujan Ali, hearing the outcry, went to the place of occurrence and heard about the occurrence. P.W.14 Tutul @ Zahedul in his testimony stated that the appellant is his brother. He did not see the thrower of acid on the victim. P.W.15 Kalu Mondal was tendered by the prosecution. P.W.16 Md. Mostafa in his testimony stated that he is a neighbour of the appellant. Hearing outcry, he rushed to the place of occurrence and found victim Neela severely burn injured. They shifted the victim to Pabna Hospital through a micro-bus. P.W.17, Md. Habibur Rahman was tendered by the prosecution. P.W.18 Chandullah in his testimony stated that on the date of occurrence the appellant Jelhaque was staying in his house. Hearing outcry, he went to the place of occurrence and found that the victim had been shifted to Pabna Hospital. He heard that the appellant had thrown acid. Neela disclosed the names of accused persons in the hospital. P.W.19 Samina Begum, mother of the victim, heard about the occurrence. P.W.20 Azizul Sheikh, getting

such message, went to the appellant's house and came to know that the victim had been shifted to hospital. He went to Pabna hospital wherefrom the victim was shifted to Dhaka. P.Ws.21 and 22 were the Investigating Officers of the case. P.W.23, Dr. Sanjoy Biswas deposed that after examining the victim, he found following injuries on her person:

- “1. Type of injury: burn by corrosive agent.
2. Nature of injury:- Mixed type burn almost deep.
3. Area involved:-About 20%.
4. Colour of skin:-Black.
5. Age of injury:-about 1 day.
6. Name of involved area.

Lesion involved her whole face, nose and both eyes. Eyes look ground glass appearance. Both lips of mouth swollen severely. Both ears affected. Left ear totally involved, part of scalp, neck was involved with trickling sign. Both hands involved with trickling signs. Part of her trunk including both breast with trickling sign. Left shoulder with trickling sign.

Her condition was dangerous. After primary treatment and resuscitation her condition underwent two long operations on 23.02.2008 and 03.03.2008. Her left ear totally damaged. She will need further surgical treatment. Her eyes condition is not good. There may be totally vision loss.”

Usually in the matter of this nature, testimony of the injured is sufficient to prove the case of the prosecution. An injured witness would not allow the real culprit to escape from rigors of law and falsely implicate her innocent husband. Evidence of injured witness has evidentiary value and unless compelling reasons exist, his/her evidence is not to be discarded

lightly. Section 134 of the Evidence Act has categorically laid it down that “no particular number of witnesses shall in any case be required for the proof of any fact.” Testimony of a solitary witness can be made the basis of conviction. So long as the single eye-witness is a wholly reliable witness the Courts have no difficulty in basing conviction on his/her testimony alone. The credibility of the witness requires to be tested with reference to the quality of his evidence which must be free from blemish or suspicion and must impress the Court as natural, wholly truthful and so convincing that the court has no hesitation in recording a conviction solely on his uncorroborated testimony [(2006) SCC 323, Bhimappa Chandappa V. State of Karnataka.]

From the evidence discussed above, it appears that in the night of occurrence the victim P.W.2 was staying in the house of her husband. P.W.2 herself and P.Ws.6,7,9 and 11 in their testimonies stated that the appellant was also staying in his house on the night of occurrence. In their testimonies, they further stated that they did not find the appellant in his house after the occurrence. That is, after throwing acid on the victim he absconded. The appellant threw acid on victim’s face, scalp, neck, hands, breast etc. and caused grievous corrosive injuries and, thus disfigured her face and body. Since the appellant was staying in his house with the victim it was his obligation to save his wife and to explain as to how she received injuries. It is evident that he fled away after the occurrence. We find absolutely no material to hold that the victim falsely implicated the appellant. The Courts below have rightly accepted the evidence of P.W.2 holding that the appellant had thrown acid on her causing extensive physical damage to her. The victim herself deposed that she saw the

appellant to throw corrosive substance to her and, thereafter, fled away, we do not find anything to disbelieve the testimony of P.W.2 which was substantially corroborated by the P.Ws.6,7 and 11. It is the cardinal principle of evaluation of evidence, "A man may tell a lie but the circumstances do not." There are very strong reliable and clinching circumstantial evidence which clearly indicates that it is the appellant and none else who was guilty of throwing acid to his wife, the victim. Though the testimony of injured witness herself is sufficient to sustain conviction and no further corroboration is required, the prosecution has in addition, led evidence to connect the appellant with crime. The learned Courts below did not commit any error of law in believing the testimonies of P.Ws.2, 6, 7 and 11.

Present case is a glaring example of brutal inhuman attack with acid on a young girl of hardly 18 years. The case of the acid attack is an example of uncivilized and heartless crime. Such crime does not deserve any kind of clemency when there is medical evidence that there was an acid attack on the young girl, an examinee of S.S.C. examination, and that circumstances having brought home by cogent evidence, there is no justification to reduce the sentence. The incidents of acid burning cause physical, mental and psychological torture. The victim of acid burn is stigmatized and traumatized. This Court cannot be oblivious of the situation that the victim must have suffered an emotional distress which can not be compensated. The damage caused by the accused throwing acid on the victim is immense. The Court must not only keep a keen view of the rights of the criminal, but also of the right of the victim of the crime and the society at large while considering the imposition of appropriate

sentence. As throwing acid on a young girl is not less dangerous than murder and the same can not be tolerated by any father, mother, brother and sisters of the girl and the society at large. It would be a mockery of justice to permit the appellant to escape the extreme penalty of law. In order to curb and control the increasing rate of acid attacks, an exemplary punishment was required to be awarded and the Courts below rightly did the same.

Considering the aforesaid facts and circumstances of the case, we do not find any illegality or irregularity in the judgments and orders of the courts below which call for any interference.

Thus, the appeal is dismissed. The judgment and order of conviction and sentence awarded by the trial Court, which has been affirmed by the High Court Division is hereby maintained. Jail Petition No.08 of 2015 is disposed of.

C.J.

J.

J.

J.

J.