



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY, 2021

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRIMINAL APPEAL NO.512/2016(C)

BETWEEN:

MAHESHA

...APPELLANT

(BY SRI S G RAJENDRA REDDY, ADVOCATE)

AND:

STATE BY MALEBENNUR POLICE
DAVANAGERE
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE - 560001

...RESPONDENT

(BY SRI S.RACHAIAH, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
374(2) OF CODE OF CRIMINAL PROCEDURE PRAYING TO SET
ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED

25.02.2016 AND SENTENCE DATED 26.02.2016 PASSED BY THE II ADDL. DIST. AND S.J., DAVANAGERE IN S.C.NO.86/2014 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 326(A) AND 307 OF IPC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05.07.2021, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **B. VEERAPPA J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The accused filed the present criminal appeal against the impugned judgment of conviction and order of sentence dated 25.02.2016 made in S.C.No.86/2014 on the file of the II Additional District & Sessions Judge, Davangere sentencing him to undergo life imprisonment and to pay fine of Rupees Ten Lakhs with default clause for the offence punishable under the provisions of Section 326A and sentencing him to undergo life imprisonment with fine of Rs.50,000/- for the offence punishable under Section 307 of IPC with default clause.

I. FACTS OF THE CASE

2. The case of the prosecution is that, initially, the accused has made proposal to marry the victim-PW.8 and

her family members did not give consent for the same, thereby, the accused felt disgusted and with an intention to take revenge on her, he decided that she should not marry anyone else and to disfigure her face or to take her life, on 31.01.2014 at about 4.40 p.m., when PW.8 was proceeding on public road situated near Malladara Gowramma house along with PW.3-Raghu, the accused came on his motorcycle bearing registration No.KA 17/EL 5938 with an intention to disfigure her face so as to prevent her from marrying anybody, he threw acid on her face, back, hands and caused grievous corrosive injuries and thus, disfigured her face and body. During the acid attack on PW.8-the victim, acid also fell on PW.3-Raghu and he also sustained corrosive injuries on his face and head and thus, the accused caused corrosive injuries to both PW.8 & PW.3.

3. Based on the complaint lodged by PW.11-Rangappa-the brother of the victim, the Jurisdictional Police registered Cr.No.24/2014 under the provisions of Sections 326A, 326B and 307 of IPC and after investigation, filed charge sheet against the accused for the aforesaid offences.

4. After committal of the matter, learned Sessions Judge secured the presence of the accused and framed charges on 21.01.2014 under the provisions of Section 307, 326A and 326B of IPC against the accused and read over and explained the charges to the accused in the language known to him. The accused pleaded not guilty and claimed to be tried.

5. In order to prove the guilt of the accused, the prosecution examined in all PW.1 to PW.24 and marked the material documents as Ex.P1 to Ex.P24 and material objects as MOs.1 to 8. An exercise note book was marked as Ex.D1 by defence. After completion of the evidence of the prosecution witnesses, the statement of the accused as contemplated under Section 313 of Cr.P.C was recorded and the accused denied all incriminating circumstances adduced against him by the prosecution witnesses. He has not adduced any evidence except marking Ex.D1.

6. Based on the aforesaid material on record, learned Sessions Judge framed two points for consideration as under:

"(1) Whether the prosecution prove its case against the accused beyond all reasonable doubt that, on 31.1.2014 at about 4.40 PM when CW.8 Kavitha D/o Hanumanugowda, alongwith CW.9 Raghu S/o.Nayaruj, was proceeding on a public road situated near the house of Malladura Gowramma. situated at Kokkunur village, Hariharu latuk, thus accused came on his motorcycle bearing Reg. No.KA 17/ EL 5938, and he with an intention to disfigure her face and also to prevent her from marrying anybody, as she refused to marry him, he threw acid on her face, back, hands and caused grievous corrosive injuries to her, knowingly that such injuries are likely to cause death of CW 8 and thus he has made an attempt on the life of CW.8, and if by that act if he had caused her death, then he would have been guilty of murder, and thereby committed an offence punishable under Sec: 307 of IPC?

2. Whether the prosecution further proves beyond all reasonable doubt that, on the above said date, time and place, this accused with an intention to disfigure the

face of CW.8 Kavitha and also to prevent her from marrying anybody, as she refused to marry him, he threw acid on her face, back, hands and also on the body of CW.9 Raghu and caused simple and grievous corrosive injuries to them, and thereby committed the offences punishable under Sec 326 (A) & (B) of IPC?"

Considering both oral and documentary evidence on record, learned Sessions Judge answered both the points in affirmative holding that the prosecution has proved beyond reasonable doubt that on 31.01.2014 at about 04.40 p.m., when PW.8-the victim was proceeding alongwith PW.3-Raghu on public road near the house of Malladara Gowramma situated near Kokkanur village, the accused came on his motorcycle bearing registration No.KA 75/EL 5938 in order to disfigure her face and also to prevent her from marrying anybody, as she refused to marry him, he threw acid on her face, back, hands and caused grievous corrosive injuries to her, knowingly that such injuries likely cause death of PW.8 and thus, he has made an attempt on the life of PW.8. If by

that act, if he had caused her death, then he would have been guilty of murder and thereby, committed an offence under Section 307 of IPC and further, recorded a finding that the accused with an intention to disfigure the face of the victim-PW.8 and also prevent her from marrying anybody, he threw acid on her face, back, hands and also on the body of PW.3-Raghu and caused corrosive injuries by acid and therefore, committed an offences punishable under the provisions of Section 326A of IPC. Accordingly, learned Sessions Judge by impugned judgment and order of sentence proceeded to convict the accused for the offences punishable under the provisions of Section 326A of IPC and sentenced to undergo life imprisonment and to pay a fine of Rupees Ten lakhs in default of payment of fine, to undergo simple imprisonment for five years and imprisonment for life with fine of Rs.50,000/- in default to undergo simple imprisonment for one year for the offence punishable under Section 307 of IPC. Hence, the present appeal.

7. We have heard the learned counsel for the parties.

II ARGUMENTS OF LEARNED COUNSEL FOR THE APPELLANT/ACCUSED

8. Sri.S.G.Rajendra Reddy, learned counsel for the appellant contended with vehemence that the impugned judgment and order of sentence passed by the trial Court convicting the accused under the provisions of Section 326A and 307 of IPC is erroneous and contrary to the material on record and the same is liable to be set aside. He would further contend that all the witnesses including the victims i.e., PW.8 and PW.3 have stated that the appellant at the time of the incident was wearing helmet which covers the entire face and his identification came to know only after watching TV Channel. Therefore, involvement of the accused in the alleged incident on PW.8 is highly doubtful. Whether the accused has thrown the acid on the victim or not is doubtful and, the learned Judge relying on inconsistency evidence of close relatives came to the erroneous conclusion that the prosecution has proved the case beyond all reasonable doubt. On that ground alone, the impugned judgment and order of conviction is liable to be set aside. He further contended that the trial Court has not made

any evaluation, analysis or scrutiny of the evidence in a proper perspective and objectively; thereby, proceeded to pass erroneous judgment and order of conviction. Impugned Judgment is contrary to the evidence and material on record and the same cannot be sustained. He further contended that the identification of the accused is not proved beyond the reasonable doubt by the prosecution.

9. Learned counsel for the appellant contended that the evidence of PW.5 and PW.15 who were independent witnesses to the incident have not supported the case of the prosecution. There is no other corroboration to the evidence of the injured-PW.8. Only on the basis of the statement of PW.8, the order of conviction cannot be sustained. He would further contend that PW.13, who alleged to have been sold the acid to the accused has not supported the case of the prosecution. PW.18, the doctor who examined the victim deposed that as per Ex.P9-wound certificate, he has noticed six corrosive injuries.

10. He further contended that there is a delay in lodging the complaint and forwarding the FIR to the learned

Magistrate and such delay has been continuously used by the complainant and others to implicate the accused in a false case. He would further contend that the evidence of the injured and eyewitnesses runs contrary to each other, thereby, the trial Court believing their evidence came to the wrong conclusion that the accused is guilty of the offences charged. The entire judgment is based on the "assumptions and presumptions" without there being any substantial evidence on record. Alternatively, he contended that taking into consideration the peculiar facts and circumstances of the case and in the absences of any positive evidence, he sought for reduction of sentence to minimum sentence permissible and sought to allow the appeal.

III. ARGUMENTS OF LEARNED HCGP FOR THE RESPONDENT-STATE

11. Per contra, Sri.Rachaiyah, learned HCGP while justifying the impugned judgment and order of conviction passed by the trial Court contended that PW.8 in Para.3 of her statement specifically stated on oath that on 31.01.2014 at about 9.30 a.m., as usual she was going to school and after attending the school, she was coming back at 4.30

p.m., towards her maternal uncle's house alongwith PW.3-Raghu by walk. At about 4.40 p.m., when they reached near Kannanur village near Gowramma's house. At that juncture, the accused came from opposite side and told the victim to stop and has poured acid from a bottle to a glass and threw on her. Though victim had closed her face with her hands, yet acid fell over her head, entire face, two hands including PW.3-Raghu. Thereby, she was screaming. By that time, the adjoining neighbors Anusuyamma, Yellamma and Kotrappa took the victim and PW.3 to the Government Hospital for first-aid.

12. He further contended that PW.13, who sold acid to the accused has specifically deposed on oath that on the request made by the accused that he has to put acid to the roots grown in the jetty in front of his house, he has given one bottle of acid. Thereafter, when the police came to the garage alongwith accused, he has admitted that he has given acid in a bottle to the accused and thereby, he came to know that the accused thrown acid on the victim. In his cross-

examination, he has denied the suggestion that he has not at all sold the acid to the accused.

13. Learned HCGP would contend that Ex.P21, the FSL report clearly depicts the items sent to the examinations, which are as under:

- i) One glass cup
- ii) One quarter bottle
- iii) One saree
- iv) One saree petycoat
- v) One shirt
- vi) One school bag
- vii) One quarter bottle

The presence of sulphuric acid was detected in article Nos.1 to 6 and sample found in article No.7 is concentrated sulphuric acid. Prosecution witnesses including the victim- PW.8 and PW.3, deposed that the accused has thrown acid on the victim and PW.3. He would further contend that learned Sessions Judge considering both oral and documentary evidence on record has rightly come to the conclusion that the accused is involved in throwing acid on the face of the victim and other parts of her body so as to

attract the provisions of Sections 307 and 326A of IPC. Therefore, he sought to dismiss the appeal.

IV. POINTS FOR DETERMINATION

14. In view of the rival contentions urged by the learned counsel for the parties, the points that would arise for our consideration in the present appeal are:

- (i) "Whether the learned Sessions Judge is justified in convicting the appellant/accused for the offence punishable under Section 307 of IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.50,000/- with default clause?"
- (ii) "Whether the learned Sessions Judge is justified in convicting the appellant/accused for the offence punishable under Section 326A of IPC and sentencing him to undergo imprisonment for life and to pay a fine off Rs.10,00,000/- with default clause in the facts and circumstances of the case?"

15. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the

parties and perused the entire material including the original records carefully.

**V. EVIDENCE ADDUCED BY THE PROSECUTION
WITNESSES AND THE DOCUMENTS RELIED UPON**

16. This Court being the Appellate Court, in order to re-appreciate the entire material on record, it is relevant to consider the evidence of the prosecution witnesses and documents relied upon:

- (i) PW.1-Lakshmappa deposed that he knows the house of Malladara Gowramma which is situated at Anjaneya temple road and the victim is also known to him and she is working as teacher in the Kokkanur village. He further deposed that the accused has thrown acid on the victim. He is the panch witness to the spot mahazar-Ex.P1 and he identified MOs.1 and 2 i.e., one glass bottle and one glass cup respectively. He is also witness to seizure mahazar-Ex.P2 and identified MOs.3 to 5 i.e., one saree, one

petycoat and one shirt and supported the case of the prosecution.

(ii). PW.2-H.Jilanisab deposed that PW.13-Salim known to him and he owned a battery shop about one year earlier. When he went to battery shop of the Salim, at that time, the police came there alongwith one bottle. He is the panch witness to Ex.P3-Seizure mahazar and he identified MO.7-bottle and supported the prosecution case.

(iii). PW.3-Raghu, the victim boy who stated that he is studying in first standard. On the date of the incident, he was with his teacher-PW.8 and the accused has thrown acid on him and his teacher. Due to the acid attack on his teacher, acid also fell on him and his teacher sustained serious corrosive injures and he also sustained serious corrosive injuries and supported the prosecution case.

(iv). PW.4-Channabasappa deposed that about 1 ½ years back, the Police came along with the accused to a land situated in between Nandigudi and Hindasagatta, there they found one motor bike and the accused identified the said bike. Accordingly, MO-8-Motor Cycle bearing registration No.KA 17/EL 5938 was seized under Ex.P.4-Sezuire mahazar and supported the prosecution case.

(v). PW.5-Kotrappa is the eyewitness and panch witness to Ex.P1-Spot Mahazar. He identified Mos.1 and 2 i.e., one glass bottle and one glass cup and supported the prosecution case.

(vi). PW.6-Yallamma, who is the eyewitness to the incident deposed that she is acquainted with PW.8 and she is an English teacher. About one year earlier to date of deposition at about 4.40 p.m., when she was

collecting water from tap, the accused came on a motor cycle along with acid bottle and he poured the acid to a glass and threw on the face and the hands of PW.8; PW.3-Raghu who was with PW.8 also sustained corrosive injuries, thereby, PW.8 started screaming and people gathered there and supported the prosecution case.

(vii). PW.7-Nagaraja, the father of PW.3-Raghu who informed about the incident to the police station and supported the case of the prosecution.

(viii). PW.8-Kavitha.T.H., the victim deposed the entire incident reiterating averments made in the complaint and specifically stated that at about 4.30 p.m., when herself and PW.3 her student were proceeding to Kokkanur village near Malladara Gowramma's house, the accused came from opposite side and stopped them and poured acid on her face.

Though, she protected her face with the hands, yet she sustained serious corrosive injures on face, two hands and other parts of the body. She also deposed that PW.3- Raghu also sustained corrosive injures on his head and other parts. She was taken to the hospital by people who gathered there and supported the prosecution case.

(ix). PW.9-Habibullakhan, the panch witness to Ex.P3-Sezure mahazar. He turned hostile to the prosecution case.

(x). PW.10- Rangappa S/o.Kotrappa, the relative and uncle of PW.8 took the injured (PW.8) to S.S.High Tech Hospital, Davanagere for treatment and deposed that he identified the accused as Mahesh and was harassing the victim to marry him. As the parents of the victim have not consented for the marriage, the accused threw acid on the victim. He lodged the

complaint with the Jurisdictional Police as per Ex.P10 and supported the case of the prosecution.

(xi). PW.11-Rangappa S/o. Hanumagouda is the brother of the victim and he is the witness to the vehicle seizure mahazar-Ex.P11 and supported the case of the prosecution.

(xii). PW.12-Ranganagouda is the brother of the accused and also owner of the motor cycle. He identified Ex.P12 to 15-photos and he is the RC owner of the said vehicle. He got released the said vehicle from the Court.

(xiii). PW.13-Salim is the garage owner and who sold acid to the accused on the request of the accused that he need to put acid to the roots grown in the jetty in front of his house. He deposed that he has given acid in a bottle. He admitted that he has given acid to the accused and he came to know

that the accused had thrown the said acid on the victim when the Police came alongwith the accused to his garage and supported the case of the prosecution.

(xiv). PW.14-Tirthachari, the Head Master of Smt.Anjanadevi Primary school, Kokkanur where PW.8 was working and he issued certificate Ex.P17. He supported the case of the prosecution and he has specifically stated that he has given Ex.P17 on 12.04.2013.

(xv). PW.15-Anusuyamma, who is an eyewitness to the incident has deposed that when she has seen the victim and PW.3, both were suffering from acid attack. But she was not aware that who had thrown acid as the person who threw the acid ran away from the spot. She turned partly hostile to the case of the prosecution

(xvi). PW.16-Anitha, the mother of PW.3 deposed that PW.3 is her son and is studying at Smt.Anjanadevi Primary school, Kokkanur in first standard. She is acquainted with PW.8-the victim as she was working as teacher in the said school and everyday, PW.3 used to go alongwith PW.8. On the date of the incident, when they were returning from the school, she came to know that the accused had thrown acid on PW.8, the teacher and her son. Thereafter, villagers took both victim and her son to the Bapuji Hospital, Davanagere and supported the case of the prosecution.

(xvii). PW.17-Dr.Harsha, who examined PW.3 on 31.01.2013 at about 9.00 p.m., and issued wound certificate-Ex.P18 deposed that PW.3-Raghu was suffering from acid attack and there are acid injuries

on his body and supported the case of the prosecution.

(xviii). PW.18-Dr. Kantesh, had given first-aid to PW.8 and PW.3 at Primary Health Centre, Kokkanur. He has given medical report of the victim as per Ex.P19 and supported the case of the prosecution.

(xix). PW.19-Kiran, who registered the case in Cr.No.24/2014 and sent FIR to the Jurisdictional Court on the basis of the complaint lodged by PW.10-Rangappa.

(xx). PW.20-S.Suma, Scientific Officer, FSL Bangalore examined the articles and submitted the report as per Ex.P21. She supported prosecution case. In his cross examination, she denied the suggestion that without conducting proper examination, she had mechanically arrived at opinion and issued false certification-Ex.P.21.

(xxi). PW.21-L.Chandrappa, ASI Malebennur Police Station is the investigating officer who conducted spot mahazar as per Ex.P1 and recovered MOs.1 & 2 and supported the case of the prosecution.

(xxii). PW.22-Dr.Nitin, Professor, S.S.High Tech Hospital, Davanagere, who treated PW.8 deposed that when he examined the victim, she has sustained acid injuries on her face, both hands and on the entire body, corrosive injures were found. Accordingly, he issued Ex.P12, the medical report of the injured and supported the case of the prosecution.

(xxiii). PW.23-Umeshbabu, PSI, is the investigating officer, who conducted part of the investigation, conducted Ex.P1-spot mahazar, Exs.P2, 3 & 4-sezuire mahazars

and Ex.P11-vehical seizure mahazar and supported the case of the prosecution.

(xxiv). PW.24-Pampanagouda, CPI, who conducted further investigation. He deposed that after verifying Ex.P17-Service certificate, Ex.P23-Attendance Register and Ex.P24-Appointment Order, on completion of the investigation, he filed Charge sheet.

17. In the cross-examination of PW8, PW3 and other prosecution witnesses who supported the case of prosecution, no useful or worthy materials are elicited so as to disbelieve or discredit their testimony.

Based on the aforesaid both oral and documentary evidence on record, the learned Sessions Judge proceeded to convict the accused for the offences made out in the charge framed.

VI. CONSIDERATION

18. It is the specific case of the prosecution that at the inception, the accused was insisting PW.8 to marry him

and as the family members of the victim did not give consent, he got disgusted and with an intention to take revenge on her, he decided that she should not marry anyone else and to disfigure her face, on 31.01.2014, he had thrown acid on PW.8 and PW.3, thereby, they sustained serious corrosive injuries.

19. Though learned counsel for the appellant contended that identification of the accused is not proved, PW.8, the victim specifically stated on oath and identified the accused that on unfortunate day, when herself and PW.3 after attending school at about 4.30 p.m., came near Malladara Gowramma's house, the accused came from opposite side in a motor cycle and stopped the victim & PW.3 and he poured acid from the bottle to one glass and had thrown on her and PW.3, thereby, she sustained corrosive injuries on her face, both hands and all over the body. She clearly identified the accused and she deposed in categorical terms that the accused had thrown acid on her. Nothing worthy material is elicited in her cross-examination. She denied the suggestion that the accused had not come on a

motor cycle (MO.8) and not poured acid. She also denied that Ex.D1-the exercise note book contains her own handwriting and she has made a false statement on the advice of maternal uncle and her brother that the handwriting is not belong to her and further, she denied the suggestion that the accused has not poured acid. The said evidence of PW.8 was corroborated with the evidence of PW.3-the minor boy, another injured eye witness who also sustained corrosive injuries alongwith PW.8. PW.3 specifically deposed in his examination-in-chief and cross-examination that the accused had thrown acid on his teacher and on him, thereby, they sustained corrosive injuries. PW.13-Salim, who sold the acid to the accused has specifically stated that he has given one bottle of acid on the request made by the accused to remove roots grown in the jetty and he came to know that the accused thrown the said acid on the girl, thereby, the identity of the accused is proved by the evidence of PW.3, PW.8 and PW.13 and other prosecution witnesses. Therefore, the contention of the learned counsel for the appellant that prosecution has not established the identity of accused cannot be accepted.

20. PW.18-Doctor who examined the victim-PW.8 has given report dated 04.08.2014 marked at Ex.P19. In the said report it has been specifically stated that on request made by the Police Sub-inspector, letter dated 01.08.2014, victim, aged 25 years D/o. Hanumanthappa, Hindasagatte, Mahadevappa Mane, Kokkanur came with history of acid vitrolage on her by Mahesh at 4.15 p.m. near 'baavi' (well) Kokkanur sustained injuries and he has given treatment. He noted following injuries.

- 1) *Burnt injury over the face about 10x10 cm.*
- 2) *Burnt injury over the back about 5x5 cm.*
- 3) *Burnt injury over the right and left hand about 5x5 cm.*
- 4) *Burnt injury over the right and left legs about 3x3 cm.*
- 5) *Burnt injury over the neck and shoulder right side region about 3x3 cm.*
- 6) *Burnt injury over the both lids of eye.*

With above ref.(1)

- *Operated on 04.03.2014 - Acid burn on face Debridement.*
- *Operated on 11.03.2014 - Acid burns on face collagen sheel application.*
- *Operated on 25.03.2014- Skin grafting*

- Operated on 12.04.2014 - For Ectriopion of upper and lower eyelid.
- Ectriopion release and full thickness grafting.
- From above ref. and O/E I am of the opinion that injury 1 and 6 are Grievous in nature and 2,3,4,5 are simple in nature.

Therefore, the contention of the learned counsel for the appellant that the accused has not involved in the alleged acid injures on the victims-PW.8 & PW.3 cannot be accepted.

21. It is well settled that usually in matter of this nature, testimony of the injured is sufficient to prove the case of the prosecution. PW.8, the injured withstood searching cross examination and identified the accused, who had thrown acid on her on the date of the incident. Therefore, the contention of the learned counsel for the appellant that identification of the accused is not proved cannot be accepted.

22. Normally, the injured would not allow the real culprit to escape from the rigors of law and falsely implicate an innocent. Our view is fortified by the dictum of this Court in the case of **Nagesh v. State of Karnataka** reported in

2013 Cr.R. 826 (Kant), at Paragraph No.10 it is held as under:

"Generally an injured does not implicate an innocent does not leave a person who has really caused harm."

23. Our view is also fortified by the dictum of the Hon'ble Supreme Court in the case of **Vijay Shankar Shinde & Ors vs. State Of Maharashtra** reported in **2008 (1) Crimes 216 (SC)**, at Paragraph No.9 it is held as under:

'The evidence of injured person who is examined as a witness lends more credence, because normally he would not falsely implicate a person thereby protecting the actual assailant.'

24. The Hon'ble Supreme Court while considering the identical circumstances in the case of **State of Madhya Pradesh vs. Mansingh & Ors** reported in **2003 (3) Crimes 380 (SC)** at Paragraph No.9 held as under:

'Evidence of injured witnesses have evidentiary value and unless compelling reasons exist, their statements are not discarded lightly.'

25. Apart from the evidence of the victims-PW.8, PW.3-Raghu and PW.13, who sold acid to the accused coupled with medical evidence-Ex.P19 stated supra, it is also relevant to state at this stage that PW.20-Dr.S.Suma, who examined articles No.1 to 7 i.e.,

- i) One glass cup
- ii) One quarter bottle
- iii) One saree
- iv) One saree petycoat
- v) One shirt
- vi) One school bag
- vii) One quarter bottle

specifically stated that after scientific examination, she has given her opinion. Nothing has been elicited in her cross-examination to discredit the contents of the report or her oral testimony. Ex.P21-FSL report opinion given by PW.20 reads as under:

1. *Sample found in article No.7 is concentrated sulphuric acid.*
2. *Presence of Sulphuric acid was detected in the above staged article Nos.1, 2, 3, 4, 5 and 6.*
3. *The above acid can cause corrosive injuries on contact with the skin.*

26. PW.22-Dr.Nitin, Professor, S.S.High Tech Hospital, Davanagere, also stated that after examination of PW.8, her face, hair, nose and eyelashes have completely burnt. In view of throwing of sulphuric acid, the injuries have been caused and the acid injury marks or scar found on PW.8 are permanent in nature. Accordingly, he issued Ex.P22, the medical report, which clearly depicts that PW.8 was admitted in SS Hospital, in plastic surgery ward for acid burns over the face, eyes and ears and she is under treatment and she needs to stay for another one month. The said material clearly depicts that the accused is involved in acid attack on PW.8 and PW.3.

27. Though, learned counsel for the appellant contended that since the prosecution has not proved identity of accused and none of the witnesses supported the case of the prosecution, except PW.8, the sentence imposed to the accused by the learned Sessions Judge to undergo imprisonment for life under the provisions of Section 326A of IPC needs to be reduced to atleast for ten years, cannot be accepted. In order to appreciate said contention, it is

necessary to cull out the provisions of Section 326 A of IPC which reads as under:

'Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine;

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim;

28. On careful reading of the said provision, it is crystal clear that whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause

such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine, provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim.

29. The provisions of Section 326A does not carry any such indication in the title regarding the nature of injury as grievous suffered by use of acid. On closer analysis, it is seen that the provisions of Sections 326A and 326B provide eight types of injuries:

- (i) Permanent damage
- (ii) Partial damage
- (iii) Deformity
- (iv) Burns
- (v) Maiming
- (vi) disfigurement
- (vii) Disability
- (viii) Grievous hurt

It is pertinent to note that the first seven of the injuries referred to in the Sections are classified based on the normal aftereffect of acid attack, whereas the eighth one is on the gravity of the effect.

30. Noting the increase in number of acid attack crimes and absence of suitable legislation in this regard in Indian Penal Code, the provisions of Section 326A of IPC came to be introduced by the Legislature by Act 13 of 2013, with effect from 03.02.2013. The object of the amendment is to provide stringent punishment for crimes against women and also to provide more victim friendly procedure in the trial of such cases and the Committee recommended to make a specific provisions to award adequate punishment for such offences which cause grievous hurt by acid attack and also attempt thereof.

31. Though, learned counsel for the appellant contended with vehemence for reduction of sentence, the overwhelming evidence adduced and produced by the prosecution clearly depicts that the accused has taken cruel step of pouring sulphuric acid on the head of the victim which likely cause death and the accused had the knowledge of consequences of throwing sulphuric acid. The accused after threatening her to marry him, made a preparation and purchased acid from PW.13. Learned Sessions Judge while

imposing adequate sentence for the offence under Section 326A of IPC, has noted his duty towards the protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the justice deliver system in curtailing the evil. While imposing the sentence, it is the court's accountability to remind itself about its role and the reverence for the rule of law. Courts must evince the rationalised judicial discretion and not an individual perception or a moral propensity. The Trial Court further held that if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined and law does not tolerate it; society does not withstand it; and sanctity of conscience abhors it. It was observed that the old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be

allowed to rule. The conception of mercy has its own space but it cannot occupy the whole accommodation.

32. On careful re-appreciation of entire material, orai and documentary evidence on record and in view of unequivocal testimony of the victims, PW.3, PW.8 and PW.13, who sold acid to the accused, medical evidence and scientific evidence, the alleged acid attack by the accused on PW.8 merely on the ground that, she refused to marry him as her parents did not give consent, the accused cannot treat the victim as slave and pour acid on her face and body. The brutality act of the accused shocks the conscious of this Court. Under the Constitution of India, which is called 'Bhagavad Gita', '*right to life*' is the fundamental right guaranteed and it is the fundamental duty of the State to protect it. An 'acid attack' by the accused not only caused physical injuries, but left behind a permanent scar on the most cherished position of PW.8, who is a teacher and PW.3, who is the student studying in 'U' KG since their dignity, honour and reputation are involved. The 'acid attack' is not only a crime against PW.8 and PW.3, but a crime against the

entire civilized society. It is a crime against basic human rights and also violates the most cherished fundamental rights guaranteed under Article-21 of the Constitution of India.

33. Great Saint and Scholar of our Country - Swami Vivekananda stated that "the best thermometer to the progress of a nation is its treatment of its women". Therefore, the acid attack by the accused on PW.8 to fulfill his wish to marry her against her will and her parents, is violation of personal liberty as contemplated under Article 21 of the Constitution of India. The 'acid attack' caused physical scar on the face and body of PW.8 and the corrosive injuries on PW.3, a minor boy will heal up by spending lacs of rupees towards plastic surgery. On record, there is an estimation of expenses involved for reconstructive surgery dated 05.07.2014 issued by the Health Care Service India Private Limited. As per the same, a sum of Rs.22,50,000/- was estimated for reconstructive surgery. But the mental scar on victims will remain for ever till their death. Therefore, the evidence of the victim is more reliable, which

corroborates with the evidence of the other prosecution witnesses.

34. Our view is fortified by the dictum of judgment of the Hon'ble Supreme Court in the case of **State of Punjab vs. Bawa Singh** reported in **(2015) 3 SCC 441**, at Paragraph No.16 it is held as under:

'One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers.'

35. The Hon'ble Supreme Court while considering award of suitable and proportional punishment in the case of **State Of Madhya Pradesh vs Bala @ Balram** reported in **(2005) 8 SCC 1** at paragraph No.13 has held as under:

"The rationale for advocating the award of punishment commensurate with the gravity of the offence and its impact on society, is to ensure that

a civilized society does not revert to the days of "eye for an eye and tooth for tooth". Not awarding a just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted."

36. The Hon'ble Supreme Court in the case of *State Of Madhya Pradesh vs Munna Choubey & Anr* reported in **(2005) 2 SCC 710** held that "the law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the

edifice of "order" should meet the challenges confronting the society."

37. Learned Sessions Judge on considering both oral and documentary evidence on record came to the conclusion that the involvement of the accused in the acid attack on PW.3 and PW.8 attracts the provisions of Section 326A of IPC and imposed life imprisonment with fine of Rupees Ten Lakhs. Because of the acid attack on PW.8 by accused, PW.8 has to suffer throughout her life. Brutality on her by the accused will be remembered by her, every moment of life leaving her as deadwood and she has to suffer mental agony throughout her life, which cannot be compensated in terms of money. Admittedly, the acid attack made by accused on the face of the victim disfigured her permanently and the doctor, who treated the victim also stated that the injuries are grievous in nature. Therefore, the trial Court is justified in imposing imprisonment of life and fine of Rupees Ten lakhs for the offence punishable under Section 326A of IPC.

38. On careful perusal of the original records especially Ex.P6, the original photograph prior to acid attack

and Exs.P7 & P8, the photograph showing disfigurement after acid attack as well as Ex.P9, the corrosive injures on the head of PW.3-Raghu, clearly establish the gravity of the attack. Though the doctor has made a plastic surgery, the disfigurement marks is permanent on her body. Even otherwise, the Court cannot shut its eyes to obnoxious growing tendency of young persons like accused resorting to use corrosive substances like acid for throwing on girls, causing not only severe physical damage, but also mental trauma to young girls. In most of the cases the victim dies because of severe burns and septicemia or even if luckily survives, it will only be a grotesque disfigured person, who even if survive, lives with mangled flesh, "hideous zombie like appearance and often blind if acid is splashed on face and suffer a fate worse than death". The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the such criminals. Justice demands that the Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime.

39. The Court must not only keep in view the rights of the criminal, but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. Taking judicial note that such restorative surgeries cost a fortune and if unfortunately the parents or the relatives of the victim are poor or even from middle class strata, they cannot afford or spend the huge amount and ultimately even after series of surgeries the result would be not fully restoring the damaged face as has been done in the present case. Admittedly, in the present case, the damage caused by the accused throwing acid on the victim is immense, irreparable and cannot be retractable and the victim has to suffer throughout her life. Therefore, the accused is not entitled for any lenience or mercy to be shown. When a woman is thrown acid on her face, what is inflicted is not merely physical injury but the deep sense of some deathless shame. She has to hide her face to the Society and the victim woman body is not a plaything and the accused cannot take advantage of it in order to satisfy his avenger and the Society will not tolerate such things any

longer. The crimes against women continued in a never ending cycle. As throwing acid on young women or young lady and minor boy is more dangerous than murder and same cannot be tolerated by any father, mother, husband, children of the women etc and society at large. Therefore, it is high time to deal with the criminals/acid attackers with iron hand.

40. It is also relevant at this stage that while recording of statement of the accused under provisions of Section 313 of Cr.P.C., he has denied all incriminating circumstances and he has filed the statement under 313(5) of Cr.P.C., stating that the accused and the victim had love affair and the victim was pressurized to obtain consent from her parents and he has produced the letter containing the hand writing of the victim. Therefore, he has not committed any offence as alleged. He has taken plea of alibi. Once he has taken plea of alibi, it is for him to prove the same in view of the provisions of Section 103 of the Evidence Act as held by the Hon'ble Supreme Court in the case of **State Of**

Haryana vs Sher Singh & Ors reported in **AIR (1981)**

SC1021 in para No.4:

'4. When an accused pleads alibi, the burden is on him to prove it under Section 103 of the Evidence Act which provides:

"103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

41. It is also relevant to state at this stage that in respect of the incriminating circumstances adduced by the prosecution witnesses against the accused involvement in acid attack on PW.8, he has not offered any explanation. Therefore, adverse inference has to be drawn against the accused. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of Prahlad v. State of Rajasthan reported in AIR (2019) 14 SCC 438, at Paragraph No.11 held as under:

"No explanation is forthcoming from the statement of the accused under Section 313 Cr.P.C. as to when he

parted the company of the victim. Also, no explanation is there as to what happened after getting the chocolates for the victim. The silence on the part of the accused, in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against the accused."

42. Today, world is suffering from the menace of acid attack. Number of countries are fighting against this menace across the globe. The study conducted by United Nations Children's Fund depicts "Acid attack is a serious problem all over the world, even children are victims of acid attack in many cases. In an Acid attack, acid is thrown at the face or body of the victim with deliberate intent to burn and disfigure. Most of the victims are girls, many below the age of 18, who have rejected sexual advances or marriage proposals. Acid attack or vitriolage act of throwing acid onto the body of a person "with the intention of injuring or disfiguring out of jealousy or revenge". The most common types of acid utilized in these assaults include sulphuric, nitric, and hydrochloric acid. Attack through acid rarely kills but it causes severe physical, psychological and

social scarring. The victims of acid violence are overwhelmingly women and children, and attackers often target the head and face in order to maim, disfigure and blind a person for life and push her in everlasting life of pain and apathy."

43. Over the last decade India is witnessing an alarming growth of acid attack especially on women. The contributing factors are various for these attacks. "The main are social weakness of women in the society and the existence of male dominated society." Moreover, the easy availability of acid in an inexpensive manner makes the perpetrators to use this as an ideal weapon against women. Some of the reasons for acid attack are as follows:

- i) Revenge for any post incident occurring between the victim and offender.
- ii) The refusal of an offer of the marriage proposal.
- iii) The refusal to have sex or relationship.
- iv) Failure of a women to bring dowry to her husband.
- v) Enmity between two families.

VII. CONSEQUENCES OF ACID ATTACK

44. Acid attack victim faces long-term consequences. After the attack, life of victim itself changes and even their loved ones starts to ignore the victim due to their horrific physical appearance. Such attack leaves victim handicapped in some way rendering them dependent on either their spouse or family. For everyday activities these dependencies are increased by the fact that many acid survivors are not able to find suitable work due to vision and physical handicaps.

Majority of the victims have to face psychological effects which included sympathetic behavior of family, ignorance of children and taunting behavior of relatives. The findings reflected that females were mentally disturbed and they are trying to reduce their stress through weeping and shouting on others. Other psychological effects like eternal trauma, social isolation and suicide plan were also found. While other belongings like fear, threatening and frustration were very high. The acid attacks adversely impact all aspects of the survivors' lives. The psychological consequences were severe in

many instances rendering the survivors mentally retard and eternally shocked.

VIII. SOCIAL AND ECONOMIC CONSEQUENCES

45. Acid attacks usually leave victims handicapped in some way, rendering them dependent on either their spouse or family for day to day activities, such as eating and running errands. They face a lifetime of discrimination from society and they become lonely. These dependencies are increased by the fact that many acid survivors are not able to find suitable work, due to impaired vision and physical handicapped. As a result, divorce, abandonment by husbands is common in the society.

46. Moreover, acid survivors who are single when attacked almost certainly become ostracized from society, effectively ruining marriage prospects. They are embarrassed that people may stare or laugh at them and may hesitate to leave their homes fearing an adverse reaction from the outside world. Unmarried victims are not likely to get married and those victims who have got serious

disabilities because of an attack, like blindness, will not find jobs and earn a living. Discrimination from other people, or disabilities such as blindness, makes it very difficult for victims to fend for themselves and they become dependent on others for food and money.

47. As per the National Crime Records Bureau of India, the acid attack in India from 2014 to 2019 is as under:

year	Number of Cases Reported
2014	309
2015	222
2016	167
2017	244
2018	228
2019	240

The case in hand is an example of uncivilized and heartless crime committed by the accused. It is completely unacceptable that concept of leniency or mercy can be conceived of in such a crime. A crime of this nature does not deserve any kind of clemency. Emphatically one has to say that it is individually as well as collectively intolerable. The accused might have felt that his ego had been hurt by such a denial to the proposal marriage by PW.8 or he might have

suffered a sense of exaggeration, sense of honour or might have been guided by the idea that revenge is the sweetest thing that one can be wedded to when there is no response to the unrequited love; but, whatever may be the situation, the criminal act, by no stretch of imagination, deserves any leniency or mercy. The accused might have suffered emotional distress by the denial, yet the said feeling could not to be converted into vengeance to grant a licence to act in a manner like he has thrown acid on PW.8. "The brutal act of the accused on PW.8 shocks our conscious and when there is medical evidence that there was an acid attack on the young lady aged about 29 years and PW.3, minor boy and the circumstances having brought home by cogent evidence and the conviction is given the stamp of approval, there is no justification to reduce the sentence as contended by the learned counsel for the appellant."

48. How to appreciate a case in respect of incident where acid attack has taken place, was subject matter of the judgment of the Apex Court in the case of ***Laxmi -vs- Union of India and Others*** reported in ***(2014)4 SCC 427***,

the Hon'ble Supreme Court has set out series of guidelines at paragraphs 7, 8, 9 to 9.6, 11 and 15 which read as under:

7. In our opinion, all the States and Union Territories which have not yet framed rules will do well to make rules to regulate sale of acid and other corrosive substances in line with the Model Rules framed by the Central Government. The States, which have framed rules but these rules are not as stringent as the Model Rules framed by the Central Government will make necessary amendments in their rules to bring them in line with the Model Rules. The Chief Secretaries of the respective States and the Administrators of the Union Territories shall ensure compliance with the above expeditiously and in no case later than three months from the receipt of the draft Model Rules from the Central Government.

8. The Centre and States/Union Territories shall work towards making the offences under the Poisons Act, 1919 cognizable and non-bailable.

9. In the States/Union Territories, where rules to regulate sale of acid and other corrosive substances are not operational, until such rules are framed and made operational, the Chief

Secretaries of the States concerned/Administrators of the Union Territories shall ensure the compliance with the following directions with immediate effect:

9.1. *Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.*

9.2. *All sellers shall sell acid only after the buyer has shown:*

(a) a photo ID issued by the Government which also has the address of the person;

(b) specifies the reason/purpose for procuring acid.

9.3. *All stocks of acid must be declared by the seller with the Sub-Divisional Magistrate (SDM) concerned within 15 days.*

9.4. *No acid shall be sold to any person who is below 18 years of age.*

9.5. *In case of undeclared stock of acid, it will be open to the SDM concerned to confiscate the stock and suitably impose a fine on such seller up to Rs 50,000.*

9.6. *The SDM concerned may impose fine up to Rs 50,000 on any person who commits breach of any of the above directions.*

11. *The SDM concerned shall be vested with the responsibility of taking appropriate action for the breach/default/violation of the above directions.*

15. *The Chief Secretaries of the States and the Administrators of the Union Territories shall take necessary steps in getting this order translated into vernacular and publicise the same appropriately for the information of public at large. List the matter on 3-12-2013.*

49. The Hon'ble supreme Court while considering the provisions of Section 302, 326A and 460 of IPC, in a case of death of women due to acid attack, converted death sentence in to life imprisonment in the case of **Yogendra alias Jogendra Singh vs. State of Madhya Pradesh**

reported in **(2019) 9 SCC 243** at paragraph Nos.13 and 15 held as under:

13. *In the case before us, the incident is related to the appellant being disappointed in his relation with the deceased who he believed deserted him. The circumstance of the case and particularly the choice of acid do not disclose a cold-blooded plan to murder the deceased. Like in many cases the intention seems to have been to severely injure or disfigure the deceased; in this case we think the intention resulted into an attack more severe than planned which then resulted in the death of the deceased. It is possible that what was premeditated was an injury and not death.*

15. *We find that there is no particular depravity or brutality in the acts of the appellant that warrants a classification of this case as "rarest of the rare". Therefore, the sentence of death imposed by the High Court is set aside and instead the appellant shall undergo imprisonment for life. The appeals are accordingly allowed.*

50 Having said thus, as rightly contended by the learned counsel for the appellant that learned judge while convicting the accused under the provisions of Section 326A

for imprisonment of life with fine of Rupees Ten lakhs, erroneously convicted for imprisonment of life under the provisions of Section 307 of IPC with fine of Rs.50,000/-. Learned Judge failed to note that when there were two sentences and major sentence contemplates life, the other sentence which also contemplates life sentence automatically merges. There cannot be two life sentences though learned Judge held the sentence ordered against the accused runs concurrently.

51. In this regard it is worth to note the provisions of Section 31 of Cr.P.C: which contemplates that the sentence in cases of conviction of several offences at one trial and the proviso to sub-section (2) to Section 31 lays down the embargo whether the aggregate punishment of prisoner. In view of the fact that life imprisonment means imprisonment for full and complete span of life, the question of consecutive sentences in case of conviction for several offences at one trial does not arise. Therefore, in case, a person is sentenced for conviction of several offences, including one that of life imprisonment, the proviso to Section 31(2) shall come into

play and no consecutive sentence can be imposed. In the instant case, the accused has been convicted for more than one sentence i.e., imprisonment for life with fine of Rupees Ten lakhs for the offence punishable under Section 326A of IPC and imprisonment for life with fine of Rs.50,000/- for the offence punishable under Section 307 of IPC with default sentence. It is well settled that sentence of life imprisonment implies imprisonment till the end of normal life of convict and it cannot be directed to run consecutively.

52. Our view is fortified by the dictum of the Constitutional Bench judgment of the Hon'ble Supreme Court in the case of ***Muthuramalingam and Others vs. State Represented by Inspector of Police*** reported in ***AIR 2016 SC 3340*** wherein at paragraphs No.17, 20, 21 and 31, it is held as under:

"17. *The legal position is, thus, fairly well settled that imprisonment for life is a sentence for the remainder of the life of the offender unless of course the remaining sentence is commuted or remitted by the competent authority. That being so, the provisions of Section 31 under CrPC must be so interpreted as to be consistent with the basic*

tenet that a life sentence requires the prisoner to spend the rest of his life in prison. Any direction that requires the offender to undergo imprisonment for life twice over would be anomalous and irrational for it will disregard the fact that humans like all other living beings have but one life to live. So understood Section 31(1) would permit consecutive running of sentences only if such sentences do not happen to be life sentences. That is, in our opinion, the only way one can avoid an obvious impossibility of a prisoner serving two consecutive life sentences.

20. *Ranjit Singh case [Ranjit Singh v. UT of Chandigarh, (1991) 4 SCC 304 : 1991 SCC (Cri) 965] was no doubt dealing with a fact situation different from the one with which we are dealing in the present case, inasmuch as Ranjit Singh case [Ranjit Singh v. UT of Chandigarh, (1991) 4 SCC 304 : 1991 SCC (Cri) 965] was covered by Section 427 CrPC as the prisoner in that case was already undergoing a sentence of life imprisonment when he committed a second offence of murder that led to his conviction and award of a second sentence of life imprisonment. In the cases at hand, the appellants were not convicts undergoing life sentence at the time of commission of multiple murders by them. Their cases, therefore, fall more*

appropriately under Section 31 of the Code which deals with conviction of several offences at one trial. Section 31(1) deals with and empowers the court to award, subject to the provisions of Section 71 IPC, several punishments prescribed for such offences and mandates that such punishments when consisting of imprisonment shall commence one after the expiration of the other in such order as the court may direct unless the court directs such punishments shall run concurrently. The power to award suitable sentences for several offences committed by the offenders is not and cannot be disputed. The order in which such sentences shall run can also be stipulated by the court awarding such sentences. So also the court is competent in its discretion to direct that punishment awarded shall run concurrently not consecutively. The question, however, is whether the provision admits of more than one life sentences running consecutively. That question can be answered on a logical basis only if one accepts the truism that humans have one life and the sentence of life imprisonment once awarded would require the prisoner to spend the remainder of his life in jail unless the sentence is commuted or remitted by the competent authority. That, in our opinion, happens to be the logic behind

Section 427(2) Cr.P.C., mandating that if a prisoner already undergoing life sentence is sentenced to another imprisonment for life for a subsequent offence committed by him, the two sentences so awarded shall run concurrently and not consecutively. Section 427(2) in that way carves out an exception to the general rule recognised in Section 427(1) that sentences awarded upon conviction for a subsequent offence shall run consecutively.

21. *We may now turn to the conflict noticed in the reference order between the decisions of this Court in Cherian [O.M. Cherian v. State of Kerala, (2015) 2 SCC 501 : (2015) 2 SCC (Cri) 123] and Duryodhan [Duryodhan Rout v. State of Orissa, (2015) 2 SCC 783 : (2015) 2 SCC (Cri) 306] cases on the one hand and Kamalanantha [Kamalanantha v. State of T.N., (2005) 5 SCC 194 : 2005 SCC (Cri) 1121] and Sanaullah Khan [Sanaullah Khan v. State of Bihar, (2013) 3 SCC 52 : (2013) 2 SCC (Cri) 34] cases on the other.*

31. *In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life*

sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other."

53. Therefore, learned trial Judge is not justified in convicting the accused for imprisonment of life under the provisions of Section 307 of IPC with fine of Rs.50,000/-, when the accused has already been convicted for the offence under Section 326A imposing life imprisonment with Rupees Ten lakhs fine. The offence under section 307 of IPC telescopes in to offence under section 326A of IPC. Therefore, the punishment imposed by the learned judge under Section 307 cannot be sustained. However, in view of dictum of the Hon'ble Supreme Court in the case of Muthuramalingam and others vs. State represented by Inspector of Police reported in AIR 2016 SC 3340, the benefit under section 428 Cr.P.C. is not available, when the court convicts the accused for life imprisonment. Hence, we make

it clear that the accused is not entitled to the benefit of set off under Section 428 of Cr.P.C.

54. We notice yet another dimension in the case while appreciating the arguments putforth on behalf of the appellant that there cannot be conviction of the accused both under the provisions of Section 307 of IPC and Section 326A of IPC.

55. It is settled position of law that a person cannot be tried and convicted for a single offence twice. It is a guarantee enshrined in Article 20(2) of the Constitution of India, which clearly debars double jeopardy. For ready reference Article 20(2) of the Constitution reads as hereunder:

"20(2) No person shall be prosecuted and punished for the same offence more than once."

56. In the case on hand, when accused is tried for specific offence carved out under the Indian Penal Code for the offence of acid attack, trial Court resorted to Section 307

of IPC, having regard to gravity of offence especially after effects of the acid attack cases discussed supra. The Legislature in its wisdom carved out a separate and distinct offence punishable under Section 326A of IPC., for an action wherein the acid is used as a weapon for attacking the innocent, as is referred to supra and prescribed suitable punishment. Therefore, the action of the accused can be traced to and punished only under Section 326A of IPC and the said action of the accused cannot be tried and punished under Section 307 of IPC along with Section 326A of IPC.

57. In other words, the offence under Section 307 of IPC which was available to the prosecution in the absence of Section 326A of IPC., was justifiable. Since prosecution has invoked Section 326A of IPC and trial Court accepting the prosecution case, convicted the accused for the offence punishable under Section 326A of IPC., and ordered for imprisonment of life, convicting the accused again for the same action under Section 307 of IPC would certainly require interference by this Court by resorting Article 20(2) of the Constitution of India. Moreover, even if the offence under

Section 307 of IPC., is taken into consideration as required in the case on hand, the same has merged into Section 326A of IPC., and therefore, action of the accused should be only treated as offence punishable under Section 326A of IPC and not under Section 307 of IPC by applying the doctrine of merger.

IX. CONCLUSION

58. On re-appreciation of the entire oral and documentary evidence on record and in the light of the judgments of the Hon'ble Supreme Court cited *surpa*, we answer the points raised in the present criminal appeal as under:

- (i) The first point raised in the present criminal appeal is answered in the **negative** holding that the learned Sessions Judge is not justified in convicting the appellant/accused for the offence punishable under Section 307 of IPC and sentencing him to undergo

imprisonment for life and to pay a fine of Rs.50,000/- with default clause in the facts and circumstances of the case.

- (ii) The second point raised in the present criminal appeal is answered in the **affirmative** holding learned Sessions Judge is justified in convicting the appellant/accused for the offence punishable under Section 326A of IPC and sentencing him to undergo imprisonment for life and to pay a fine off Rs.10,00,000/- with default clause in the facts and circumstances of the case.

59. At this stage, it is relevant to state that it is not in dispute that the victim has suffered corrosive injuries in the unfortunate incident occurred in the case on hand and she has spent large sums of money for plastic surgery. Therefore, this is a fit case to recommend that victim is entitled to compensation as contemplated under the

provisions of Section 357-A(3) of the Code of Criminal Procedure. In view of the above, the victim is permitted to approach the District Legal Services Authority, Davangere by filing an application seeking adequate compensation. If such an application is filed, the District Legal Services Authority taking into consideration the young age of the victim, who was a teacher and that she has suffered corrosive injuries in the unfortunate incident, shall arrive at the appropriate quantum of compensation and make suitable recommendations.

X RESULT

60. In view of the above, we pass the following:

ORDER

- (i) The Criminal Appeal is **allowed in part.**
- (ii) The impugned judgment of conviction and order of sentence dated 25/26.02.2016 made in S.C. No.86/2014 on the file of the II Addl. District & Sessions Judge, Davangere, insofar as convicting the appellant/accused for the offence

punishable under Section 326A of IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.10,00,000/- (Rupees ten lakhs only) and in default of payment of fine to undergo simple imprisonment for five years, is hereby **confirmed**.

(iii) The impugned judgment and order passed by the trial Court insofar as convicting the appellant/accused for the offence punishable under Section 307 of IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.50,000/- with default clause, is hereby **set aside**. The accused is hereby acquitted for the offence punishable under Section 307 of IPC.

(iv) In exercise of appellate powers of this Court under the provisions of Section 357(3) of the Code of Criminal Procedure,

on deposit of the fine amount, a sum of Rs.9,75,000/- (Rupees nine lakhs seventy-five thousand only) shall be paid to victim (PW.8) as compensation and remaining amount of Rs.25,000/- (Rupees twenty-five thousand only) shall vest with the State Government towards defraying expenses.

- (v) The Victim (PW.8) is permitted to approach the District Legal Services Authority, Davangere by filing an application seeking adequate compensation. If such an application is filed, the District Legal Services Authority taking into consideration the young age of the victim, who was a Teacher and that she has suffered corrosive injuries in the unfortunate incident and has spent large sums of money for plastic surgery, shall arrive at

the appropriate quantum of compensation
and make suitable recommendations.

Ordered accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

VM