**HIGH COURT OF TRIPURA**
**AGARTALA**

**Crl.A(J) No. 33 of 2019**

**B E F O R E**

HON'BLE MR. JUSTICE S.TALAPATRA

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

**Alamin Miah,**
Son of Akash Miah,
Resident of Camper Bazzar,
Gajaria,
P.S. A.D.Nagar,
District-West Tripura.

**.....Appellant.**

**Versus**

**State of Tripura**

**.....Respondent.**

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| For Appellant(s) | : | Mr. B.Majumder, Adv. |
| For Respondent(s) | : | Mr. S.Ghosh, Addl. PP |
| Date of hearing | : | 30.06.2020 |
| Date of Judgment and Order | : | 20.07.2020 |
| Whether fit for reporting | : | |

| Yes | No |
|---|---|
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**J U D G M E N T**

**[Per S.G.Chattopadhyay]**

[**1**] The challenge in this appeal is to the judgment and order of conviction and sentence dated 04.04.2019 passed by the learned sessions Judge of Gomati Judicial District, Udaipur in case number ST 21 (GT/U) of 2018

whereby convict Alamin Miah, the appellant hereinafter, has been sentenced to Rigorous Imprisonment[RI] for life and a fine of Rs. 1(one) lakh payable to the victim with default stipulation for having committed offence punishable under section 326A IPC and further sentenced to Rigorous Imprisonment[RI] for three years and fine of Rs. 5000/- payable to the victim with default stipulation for offence punishable under section 498A IPC and it has been ordered that both the sentences shall run concurrently.

[**2**] The genesis of the prosecution case is rooted in the FIR [Exhibit-3] lodged by Md. Akash Miah [PW1] with the officer-in-charge of Udaipur women police station in Gomati District at 9:32 PM on 14th January, 2018 alleging, inter alia, that he got his daughter Momita, the victim hereinafter, married to the appellant about 10 months back and the appellant husband of his daughter started torturing her few days after the marriage. Five months back Momita returned to her parents to get rid of his torture. During her stay with her parents she had gone to see her ailing grandmother in her house nearby.

At around 7 o'clock in the evening on 13th January, 2018, her appellant husband came there and called his wife to road and all on a sudden he had thrown acid on her face. Momita started crying in pain and the accused ran away from there. Following her cry the neighbouring people appeared for her rescue. Somebody informed the fire service. They came and transported her first to the nearby Tepania hospital and from there to AGMC & GBP hospital at Agartala, where she was admitted in critical condition.

[**3**] Based on this information, R.K.Pur Women PS case number WRP 002 of 2018 under Sections 498A and 326A, IPC was registered against the appellant. First part of the investigation was carried out by Smt. Madhabi Debbarma [PW-11] and after she was transferred to elsewhere the investigation was conducted by Smt. Alpana Sarkar [PW-12]. During her part of the investigation, Smt. Madhabi Debbarma [PW-11] met the injured victim Momita[PW2] in the hospital and her first informant father, Akash Miah [PW-1] and recorded their statements under section 161 Cr.P.C on 25.01.2018. During her stay in AGMC and GBP hospital as an indoor

patient, Doctor Nilotpal Dey, a medical officer [PW-7] and doctor Damodar Chatterjee, an Assistant Professor of Surgery [PW-8] met her and found acid burn on her face. Doctor Nilotpal Dey [PW7] opined that her injury was grievous in nature and it was caused by acid. He also recorded his opinion in his report, marked as Exhibit-4 at the trial. Smt. Debbarma [PW-11] having been transferred to another police station, investigation of the case was then endorsed to Smt. Alpana Sarkar [PW-12] who having come to know that the accused was available in the house of the informant, went to there on 25.06.2018 to arrest the appellant. Before she could arrest the appellant, he, all on a sudden, consumed insecticide from a container in his possession to commit suicide. He was immediately shifted to the District Hospital at Udaipur where he was treated till his recovery. After his recovery, PW-12 arrested him on 01.07.2018. After Momita was discharged from the hospital, the investigating officer produced her before Smt. Tanushree Debnath [PW-10], a Judicial Magistrate of the first class at Udaipur who recorded her statement under section

164(5) Cr.P.C on 12th July, 2018. At the completion of her investigation, PW-12, submitted charge sheet against the appellant for having committed offence punishable under Sections 326A and 498A, IPC.

[**4**] The case having been committed to his court, the learned Sessions Judge framed the following charges against the appellant:

> *"**Firstly** that about 10 months before 14.01.2018 you married Smt. Mamita Akhtar, D/O Akash Miah of Raidhar Nagar, PS Kakraban and after marriage you being her husband subjected her to cruelty both physically and mentally by demanding cash and other dowry articles and you thereby committed offence punishable under Section 498A of the Indian Penal Code and within the cognizance of this court.*
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> ***Secondly**, that you on 13-01-2018 at about 07.00 p.m at Nannadighi, Khilpara under R.K.Pur PS caused permanent damage or deformity or disfigurement to the body of Smti Mamita Akhtar and caused grievous hurt to her by throwing acid on her and you thereby committed offence punishable under Section 326A of the Indian Penal Code and within the cognizance of this court.*
>
> ***AND** I hereby direct that you be tried on the said charges by this court."*

The accused pleaded not guilty to both of the charges and claimed a trial.

[**5**] In the course of trial, prosecution, to bring home the charges to the accused, introduced as many as 12 prosecution witnesses **[PW 1 – PW 12]** including the first informant father of the victim as well as the victim

and relied on as many as 7 documents **[Exhibit 1 – Exhibit 7/1]**. After the recording of the prosecution evidence was over, statement of the accused was recorded under Section 313 Cr.P.C. He pleaded innocence and false implication. Opportunity was then given to him to lead evidence on his behalf in rebuttal of the prosecution case. He declined.

[**6**] On the culmination of trial, the learned trial Judge on appreciation of evidence found the accused guilty of offence punishable under Sections 498A and 326A, IPC and on his conviction imposed punishment on him which is under challenge before us.

[**7**] We have heard Mr. B.Majumder, learned counsel appearing for the appellant as well as Mr.S.Ghosh, learned Addl. PP appearing for the state Respondent.

[**8**] The main contention raised by Mr. Majumder, learned counsel of the appellant is that the prosecution version is based on the testimonies of the victim and her relatives and no impartial and independent witness has

been examined on behalf of the prosecution to inspire the confidence of the court in the prosecution story. It is argued by Mr. Majumder that the victim wife of the appellant and her family always maintained a grudge against the appellant due to their strained relationship and therefore, they falsely implicated him in this case to avenge their grudge against the appellant and as such his conviction based on their testimonies is completely erroneous and unsustainable. In support of his contention learned counsel has referred to the decisions of the Apex Court in ***Dalip Singh vs. State of Punjub reported in AIR 1953 SC 364 and in Namdeo vs. State of Maharashtra reported in (2007) 14 SCC 150***.

[**9**] Further contention on behalf of the appellant is that a charge under Section 326A is not sustainable against the appellant because there is no conclusive medical evidence with regard to the alleged acid attack on the victim.

[**10**] It is also argued by Mr. Majumder, learned counsel of the appellant that the learned trial court overlooked the infirmities and inconsistence in the

version of the prosecution witnesses and erroneously arrived at the conclusion of guilt of the accused which is not sustainable. In support of his contention learned counsel has referred to the decision of the Apex Court in ***Balak Ram and Anr. vs. State of U.P reported in AIR 1974 SC 2165***. It is also contended by learned counsel of the appellant that the hand sketch map drawn by the investigating officer clearly indicates that the alleged attack on the victim was quite improbable in view of the position of the appellant and the victim at the locations indicated in the hand sketch map [Exhibit-7]. In support of his contention learned counsel has referred to the decision of the Apex Court in ***Tori Singh and Anr. vs. State of U.P reported in AIR 1962 SC 399***.

[**11**] It is further contended by learned counsel that as per the prosecution version the alleged acid attack on the victim had taken place on road and as such it was most likely that the neighbouring people would have seen the occurrence. But except the victim and her relatives, none from the neighbourhood were examined on behalf of the prosecution. According to learned counsel, non

examination of such material witnesses casts doubt on the veracity of the prosecution case and the trial court has committed an error by overlooking this significant infirmity of the prosecution case. In this regard learned counsel has relied on the decision of the Apex Court in ***Takhaji Hiraji vs. T.K.Chamansingh and Ors. reported in (2007) 6 SCC 145***. It is also argued by learned counsel of the appellant that the learned trial court should not have taken into consideration the statement of the victim recorded under Section 164(5) Cr.P.C. for arriving at its conclusion because the statement of a witness recorded under Section 164(5) Cr.P.C is not a substantive piece of evidence. It can be used for the limited purpose of corroboration and contradiction. Learned counsel has relied on the decision of the Apex Court in ***Ram Kishan Singh vs. Harmit Kaur reported in AIR 1972 SC 468*** in support of his contention.

[**12**] Finally it is argued by Mr. Majumder, learned counsel that the victim of this case did not disclose the name of her assailant to the doctor who treated her in the hospital. Resultantly, the doctor could not record the

name of the assailant in medical record. The name of the appellant was first disclosed in the FIR. The omission of the victim in not disclosing the name of her assailant to the doctor whom she met first after the occurrence has affected the truthfulness of the prosecution case. In support of his contention learned counsel has referred to the decision of the Apex Court in ***Rehmat vs. State of Haryana reported in (1996) 10 SCC 346***.

[**13**] Mr. S.Ghosh, learned Additional PP representing the state respondent on the other hand contended that the trial court's judgment is based on cogent evidence and sound reasoning which does not call for any interference in appeal.

[**14**] According to Mr.Ghosh, learned Addl. PP, the victim has shared the minute details of the incident of acid attack committed on her by the appellant in a very consistent manner and her evidence has been wholly corroborated by the medical evidence and the evidence of her father and other witnesses.

[**15**] Furthermore, the victim was subjected to an incisive cross examination by the appellant which could not impeach or embellish her evidence. According to learned Addl. PP the trial court after proper appreciation of her evidence has rightly convicted and sentenced the appellant and the findings of the learned trial court does not merit any interference in appeal. Learned Addl. PP, therefore, urges us for dismissing the appeal.

[**16**] Before dealing with the rival contentions of the parties, a brief discussion of the evidence of the prosecution witness would be appropriate.

[**17**] It is apparent on the face of the record that the learned trial judge with regard to the charge of Section 498A IPC, believed the testimony of the victim[PW-2] and having relied on her testimony and the statement of her parents [PW-1 and PW-3] held the appellant guilty under Section 498A IPC. The relevant extract of the findings of the learned trial judge pertaining to the charge under Section 498A IPC is as under:

> *"As regards the charge under Section 498A IPC it appears from the evidence of the victim that after marriage, her husband started torturing her by demanding Rs.10,000/- and he used to assault her. Subsequently, her husband brought her to the house of her father after about six months of her marriage. Her father [PW-1] also has stated that the accused used to harass her demanding money. Her mother [PW-3] also has stated that the accused started torturing her by demanding Rs.10,000/- to be given by them and as they failed to meet the demand the accused put Moumita in their house. This evidence of the victim and her parents has not been shaken in her cross-examination.*
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> *Situated thus, I am of the view that the charge under Section 498A IPC stands proved against the accused beyond reasonable doubt."*

[**18**] As regards the conviction of the appellant under Section 498A IPC, it is contended by Mr. B.Majumder, learned counsel of the appellant that conviction of the appellant under Section 498A IPC based on the omnibus statement of the victim and her parents without proof of the material particulars of the alleged cruelty and all other ingredients of Section 498A IPC is grossly erroneous and unsustainable.

[**19**] It goes without saying that matrimonial cruelty occurs within the precincts of the matrimonial home of the wife and she hardly shares her ordeals with someone other than her parents and her near relatives. As a result

overwhelming evidence may not be available before the court in a case under Section 498A IPC. But that does not absolve the prosecution from the burden of proving the charge by cogent, coherent and persuasive evidence.

[**20**] A close scrutiny of the prosecution witnesses goes to show that except PW-1 (father of the victim), PW-2 (victim herself) PW-3, Smt. Firoza Begam (mother of the victim) and no other witness support the charge under Section 498A IPC against the appellant.

[**21**] Among them, Md. Akash Miah [PW-1] who is the father of the victim has asserted in his examination in chief that though he met the demand of his appellant son in law by paying Rs.10,000/- in cash to him during the marriage of his daughter [PW-2] with him, the appellant kept harassing the victim for money even after the marriage. The PW then brought back his daughter to his home. When he was confronted in cross examination on this issue, he admitted that he did not make any allegation with regard to payment of dowry to the appellant in his FIR. He also admitted that he did not

make any statement to police with regard to payment of dowry when his police statement was recorded under Section 161 Cr.P.C.

[**22**] Smt. Momita Akhtar, victim, who deposed as PW-2 at the trial stated in her examination in chief that her husband used to torture her for a cash of Rs.10,000/- after her marriage. She did not say as to whether the money was actually paid by PW-1 to her appellant husband. According to her, her husband had taken her back to her parental home and left her there. She said nothing more about her allegation against the appellant with regard to his demand of dowry. In her cross examination she stated that she gave statement before the Judicial Magistrate about the acid attack on her by her appellant husband. But she did not say anything about the demand of her appellant husband for dowry.

[**23**] Her mother Smt. Firoza Begam[PW-3] while testifying before the trial court stated that after marriage, the appellant raised a demand of Rs.10,000/- and for fulfilling his demand he kept torturing her daughter and

ousted her from her matrimonial home because they could not meet his demand.

[**24**] It is, therefore, apparent on the face of the record that other than the omnibus statement of the victim[PW-2] and her parents [PW-1 and PW-3] there is no other evidence in support of the charge of Section 498A IPC against the appellant. Moreover, their statements in this regard are not at all coherent and persuasive. PW-1, father of the victim did not even make such allegation in his FIR [Exhibit-6]. The story was subsequently developed by him when he came to court for giving evidence at the trial. Moreover, her father Akash Miah[PW-1] deposed that at the time of her marriage with the appellant he paid Rs.20,000/- in cash to the appellant whereas the victim stated in court that only after marriage, her husband started torturing her for Rs.10,000/-.There are, therefore, material inconsistencies in their evidence. This apart, her father told the trial court that when the appellant started abusing his daughter for dowry, he brought her back to his home whereas the victim has stated in her examination in chief that her

husband had taken her back to her parental home six months after her marriage. As per the statement of her mother [PW-3], her daughter was tortured by her appellant husband for Rs.10,000/- in cash. It surfaces from their statements that the victim and the appellant did not have a congenial conjugal life which resulted in their separation within few months of their marriage. But this much of evidence is not enough to bring home the charge of Section 498A IPC to the appellant.

[**25**] Unquestionably, the appellant as well as his in laws belonged to the poor strata of society. It was, therefore, not unlikely that there would be discord and differences in their domestic life. Petty quarrels arising out of such discord and differences in conjugal life would not amount to cruelty within the meaning of clause (a) of Section 498A IPC unless it is proved that the cruelty meted out to the wife was a willful conduct of the appellant which was likely to affect her normal mental frame and drive her to commit suicide out of depression or to cause grave injury or danger to her life, limb or her mental or physical health. For establishing the

commission of offence under clause (b) of Section 498A IPC, it has to be established that the appellant or his relatives subjected the victim to harassment with a view to coercing her or persons related to her to meet any unlawful demand for any property etc.

[**26**] In the case in hand, the matter was reported to police by the father of the victim after he brought back his daughter from her matrimonial home. It is apparent on the face of the record that the victim lived with her husband in her matrimonial home only for about 6 months after their marriage. Except the omnibus statement of the victim and her parents that the appellant demanded cash from the parents of the victim and tortured her for fulfillment of his demand, no particular incident of any kind of physical or mental torture meted out to the victim or any other instance of abuse in her matrimonial house has been proved against the appellant. In this regard, the Apex Court, while dwelling on similar issue in ***Manju Ram Kalita vs. State of Assam reported (2009) 13 SCC 330*** held as under:

> **"21. Cruelty" for the purpose of section 498A, IPC is to be established in the context of section 498A, IPC as it may be a different from**

> **other statutory provisions. It is to be determined / inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously /persistently or at least in close proximity of time of loading the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of section 498A, IPC. Causing mental torture to the extent that it becomes unbearable may be treated as cruelty."**

[**27**] In the case of ***Prwitish Datta and ors vs. State of Tripura*** reported in ***(2014) 1 TLR 848*** this High Court held that every case of harassment of the wife either by the husband or his family members cannot be termed as cruelty within the meaning of Section 498A unless the conduct of the husband or his family members, as the case may be, is willful and of such a grave nature which is likely to drive the wife to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical. Similarly, in ***Gautam Nama vs. State of Tripura*** reported in ***(2013) 2 TLR 134,*** this High Court observed that on the basis of mere omnibus statement without specific evidence regarding the particulars of the instances of such torture or cruelty, the accused cannot be held guilty under Section 498A IPC. In the case of ***Dhananjoy Shil vs. State of Tripura*** reported in ***(2013) 2 TLR***

***1060*** also it was held by this Court that a single incident of assault may not amount to an offence under Section 498A IPC because cruelty for the purpose of Section 498A is different from other statutory provisions and it is to be established against the appellant that he subjected his wife to cruelty continuously and persistently. It was also held that petty quarrels cannot be termed as cruelty to attract the provisions of Section 498A IPC.

[**28**] In view of the evidence discussed herein above and the law enunciated in the decisions cited above, we are of the view that the prosecution could not establish the charge of cruelty as enumerated under Section 498A IPC against the appellant and therefore, the conviction of the appellant under Section 498A IPC is liable to be set aside.

[**29**] Now we shall deal with the issue whether the finding of the learned trial court with regard to the charge under Section 326A IPC against the appellant is based on evidence and sustainable. The relevant extract of the

findings of the learned trial Judge in this regard is as follows:

> *"15.The sum total of the evidence of PW1,2,3,5,7,8 and 9 clearly establishes the fact beyond doubt that on the day of incident i.e. 13.01.2018 at about 7 P.M when she was in the house of her grand-mother at Nanna Dighir Par at that time the accused came there and threw acid on her by a drinking glass on her face and the acid got sprinkled on her face, eyes, ear and chest causing severe injuries.*
>
> *16.The oral evidence of the victim finds strong corroboration from the medical evidence of PW-7 to the effect that there was deep burn injury involving face right shoulder and pachy areas of chest and hand of the victim. It was 3rd degree burn of face, right shoulder etc. and approximately 20% of the body surface area. The effected location of the burn was face, right ear, right shoulder and pachy area of chest and hand. The injury was grievous in nature caused by chemical (acid).*
>
> *17.All the PWs have been sufficiently cross-examined by the defence. But nothing vital has transpired in the cross-examination so as to disbelieve their evidence so far as the fact of acid attack on the victim by the accused is concerned.*

With regard to the applicability of section 326A IPC, the learned trial Judge made a reference to the decision of the Apex Court in **Maqbool vs. The State of Uttar Pradesh and Ors.** reported in **(2019) 11 SCC 395**.

[**30**] Thereafter, the learned trial Judge, vide para 19-20 of his judgment, had drawn up the conclusion of the guilt of the appellant under Section 326A, IPC which is as under:

> *"19.In view of the clear and convincing evidence rendered by the victim [PW-2] and strong corroboration of the victim by the other witnesses including the medical evidence and forensic evidence and the evidence of the PW being remained unshaken in cross examination on material particulars, I am of the view that the charge under Section 498A and 326A of the IPC has been proved beyond shadow of doubt against the accused Alamin Miah.*
>
> *20. In the result, I hold that the charges under Section 498A and Section 326A of the IPC have been proved against the accused Alamin Miah beyond reasonable doubt. The accused Alamin Miah is hereby convicted under Section 498A and Section 326A of IPC."*

[**31**] At this juncture, it would be appropriate to take a brief stock of the evidence of the prosecution witnesses with regard to the acid attack on the victim by her appellant husband. In this regard PW-1, Akash Miah

who is the father of the victim has deposed at the trial that after the victim was brought back by him from her matrimonial home owing to the torture of her husband for dowry, she had gone to meet her ailing grandmother in one evening at a distance of about 1½ km from her parental home. The appellant had gone there and called the victim to road where he had thrown acid on her. The victim was then immediately hospitalized. As a result of the assault she received severe burn injury which damaged and disfigured her face. Assertions of PW-3 made out in his examination in chief, is as under:

> *"On the day of last Poush Sankranti Moumita went to the house of my mother to see her as she was sick. On that day at about 7 p.m her husband came there and called Moumita on the road and threw acid on her face causing grievous injury. Moumita was shifted to Tepania Hospital by the vehicle of fire service and she was immediately referrd to GB Hospital, Agartala where she was admitted for 2/3 months. Due to the acid throwing, she has suffered damage in her face, eyes, ear, nose and right arm. Now, she also cannot see properly as her eye sight also had been damaged. Her face has become unbearable to look at by any person and as such, she has to always keep her face covered by a cloth. Accused Alamin Miah is present today in the court and identified by the witness in the dock……"*

[**32**] During the cross examination of this witness, the appellant projected a defence case that the victim

had illicit relationship with 2 persons and on the date of occurrence she had actually gone to meet one of them namely Birendra Biswas where she was assaulted by her father i.e. PW-1 and his men. In answer the witness had denied the defence proposition. As it appears from the cross examination, the appellant failed to bring any material to light through cross examination of the PW to raise any suspicion about his evidence in so far as the acid attack by the appellant on his wife is concerned. Rather, it is apparent that he made an absurd proposition to the father of the victim and his men attacked and injured his daughter with acid because she maintained illicit relationship with 2 persons. From the trend of cross examination of the witnesses it appears that the appellant continuously resorted to sheer falsehood and contrivances to get rid of the charge brought against him.

[**33**] It has surfaced from the evidence of Smt. Momita Akhtar [PW-2] who is the victim that after she was brought back to her parental home from her matrimonial house, she had gone to see her ailing grandmother in one evening where her appellant husband

met her and threw acid on her. She shared the details of her ordeal with the trial court in the following words:

> *"On the day of last Poush Sankranti at about 7 p.m when I was in the house of my grand-mother at Nanna Dighir Par to see her, at that time my husband went there and called me on the road and threw acid by means of a drinking glass on my face. The acid fell on my face, eyes, ear and chest and as a result, I suffered grievous injury. I raised hue and cry and the nearby people gathered and in the mean time the accused fled away. I was taken to Tepania Hospital by the vehicle of fire service and I was admitted in GB Hospital for 2/3 months .Due to the acid attack, my face has been permanently damaged and distorted. My suffering is continuous and the injury is irreparable. My eye sight also has been blurred. My husband –accused Alamin Miah is present today in the dock and identified by witness. Now, I cannot get out of my house without covering my face and also cannot endure light or sun-light. During investigation I was produced before the Magistrate and I gave statement. This is my signature in the statement u/s 164 of Cr.P.C marked as Ext.1."*

[**34**] During her cross examination she admitted that her husband met her thrice to take her back to her matrimonial home and she refused to go back. It has been observed by us that during the cross examination of her father [PW-1], the appellant tried to project a defence case that the victim maintained illicit relationship with 2 persons for which her father and his men attacked and injured her. Again, during the cross examination of the victim [PW-2] a different defence case was thrown by

the appellant. It was suggested to the PW on behalf of the appellant that one Mithan Sarkar attacked and injured her because she misbehaved with him. From her cross examination it has become quite clear that the appellant was desperate to absolve himself from the criminal liability by resorting to an inconsistent and lame defence based on falsehood.

[**35**] Smt. Firoza Begam[PW-3], mother of the victim gave similar evidence supporting the case of her husband [PW-1] and daughter[PW-2]. She also stated that her appellant son in law had thrown acid on the face of her daughter causing grievous injury to her when she had gone to meet her ailing mother at her house and due to acid attack her daughter suffered extensive damage on her face, eyes, ear, nose and right arm which damaged her eye sight and disfigured her face.

[**36**] In her cross examination, a suggestion was put to her on behalf of the appellant that no acid was thrown on her daughter by the appellant. She straightaway denied the suggestion. The appellant,

however, did not try to project any defence case through her cross examination except denial of his involvement in the case.

[**37**] PW-4, Smt. Rehana Begam is a seizure witness who witnessed the seizure of a plastic bottle in connection with the case. She, however, did not give any evidence with regard to the contents of the bottle.

[**38**] PW-5, Sri Bahar Miah was present in his nearby shop when acid was thrown on the victim. Following a hue and cry from the spot, he came out of his shop and saw the victim writhing in pain at the spot due to acid burn. As stated by him, he did not see the appellant throwing acid on the victim but heard the victim saying that her husband had thrown acid on her.

In his cross examination, he admitted that the victim is a relative of him. It was then suggested on behalf of the appellant that he gave false evidence because the victim was his relative. The PW denied the suggestion. We do not find any reason to disbelieve the evidence of PW-5. His evidence appears to be quite

natural and trustworthy. We are unable to accept the suggestion of the appellant that the PW lied before the court because of his relationship with the victim for the simple reason that the PW could have easily implicated the appellant by saying that he had seen the appellant throwing acid on the victim if he had any intention to implicate the appellant. But the PW has simply stated that he saw the victim writhing in pain at the spot and heard her saying that her husband had thrown acid on her which appears to be quite natural for a truthful witness.

[**39**] PW-6, Md. Saheb Ali, a paralegal volunteer scribed the complaint of PW-1 which was later filed at the police station and the case was registered thereon. On his identification the complaint (Ejahar) scribed by him has been marked as Exhibit-3.

[**40**] The evidence of PW-7, Doctor Nilotpal Dey, assumes great importance because he attended the victim after she was brought to GBP Hospital at Agartala with acid burns. According to the PW, he had seen the

victim suffering from acid burns on her face in the emergency block of the hospital on 13.01.2018 and the observations of the PW were as under:

> *"On examination I found deep burn injury involving face, right shoulder and pachy areas of chest and hand. It was 3rd degree burn of forehead and eyelids. It was 2nd degree deep dermal burn of face, right shoulder etc. and approximately 20% of the body surface area. The effected location of the burn was face, right ear, right shoulder and pachy area of chest and hand. The injury was grievous in nature caused by chemical (acid). After conservative management the patient was discharged on 25.01.2018 with advice to attend surgical management on a later date. This is my report dated 25.05.2018 marked as Exhibit-4."*

[**41**] PW-8, Doctor Damodar Chatterjee, an Assistant Professor of Surgery at AGMC and GBP Hospital also examined the 20 years old victim who was admitted in the female surgical ward in the medical college and hospital under his supervision with history of acid burns. After examination of the victim, the PW referred her to the ophthalmological unit of the hospital.

[**42**] PW-9 is Smt. Monika Debbarma, Sr. Scientific Officer-cum-Assistant Chemical Examiner at the State Forensic Science Laboratory. She examined the contents of a plastic bottle which was seized from the possession

of the appellant on the date of his arrest after the occurrence. As revealed during the investigation, the appellant tried to commit suicide by consuming poison from this bottle when Smt. Madhabi Debbarma [PW-11] had gone to arrest him. The PW after analysis of the contents of the bottle opined that it was pesticide for the presence of organophosphorous group of pesticides. According to her, the chemical compounds detected were toxic substances and could cause deleterious effect in human being if consumed/ingested. Her report has been marked as Exhibit-5 in this case.

[**43**] Smt. Tanushree Debnath[PW-10] was the Judicial Magistrate at Udaipur in Gomati Judicial District on 12.07.2018 when she recorded the statement of the victim under Section 164(5) Cr.P.C. On her identification the statement recorded by her was marked as Exhibit-1/1.

[**44**] PW-11, Smt. Madhabi Debbrma, was posted as the Officer-in-charge of R.K.Pur Women Police Station on 14.01.2018 when she received the Ejahar[Exhibit 3/3]

of Md. Akash Miah[PW-1] containing his allegation of acid attack on his daughter by the appellant. The PW registered a case under Sections 498A and 326A, IPC on the basis of the ejahar of PW-1 and examined the first informant, his victim daughter and his wife and also got the statement of the victim recorded by Judicial Magistrate under Section 164(5) Cr.P.C. In her cross examination she stated that the acid container from which acid was allegedly thrown to the victim was not produced before her. She, however, denied the suggestion of the appellant that it was not a case of acid attack.

[**45**] Smt. Alpana Sarkar [PW-12] is the second investigating officer of this case who completed the investigation and submitted charge sheet against the appellant for having committed offence under Sections 498A and 326A, IPC. She has stated that pursuant to a secret information she had gone to arrest the appellant from the parental house of the victim and when the PW was about to arrest the appellant he swallowed poison from a container which he kept with him. The PW

immediately shifted the appellant to hospital. She also seized the plastic container of poison. In the course of investigation she sent this container along with its contents to the SFSL and collected the report therefrom. She also collected the injury report of the victim and on completion of the investigation submitted the charge sheet against the appellant.

[**46**] On closer analysis of the evidence of prosecution witnesses, it appears to us that it is quite difficult to ignore their cogent, consistent, coherent and persuasive evidence as regards the act of the appellant of throwing acid on the victim. With regard to the acid attack on her by her appellant husband on the fateful day, the victim has given a very consistent evidence which is absolutely trustworthy and reliable. As noted above, she has categorically stated that in the evening when she was in the house of her grandmother, the appellant called her to road and threw acid on her from a drinking glass. When the acid fell on her she started writhing in pain. PW-5, Bahar Miah, owner of a nearby shop appeared at the spot and found her writhing in pain

with acid burns. Though the PW did not see the appellant throwing acid, he had learnt from the victim at the spot that her husband had thrown acid on her. The medical evidence of PW-7 and PW-8 supports the prosecution version of acid attack on the victim. Doctor Nilotpal Dey[PW-7], has categorically stated in his evidence that he found 2nd degree deep dermal burns on the face of the victim, on her right shoulder and approximately 20% of her body surface area was affected. According to the PW the affected locations of burn were her face, right ear, right shoulder and the pachy area of her chest and hand. He opined that the injury was grievous in nature and caused by chemical (acid). There was no denial on behalf the appellant in the cross examination of the PW that the burn injuries sustained by the victim were not caused by acid. There is no ground to disbelieve the witness who was having a considerable experience in medical profession. Doctor Damodar Chatterjee [PW-8] who was the Assistant Professor of surgery also attended the victim who was admitted with acid burns in the AGMC and GBP Hospital. The Investigating officer, Smt. Alpana

Sarkar [PW-12] who investigated the case also found the charge established against the appellant during her investigation and accordingly she sent up the appellant for trial.

[**47**] It is apparent on the face of the record that there were serious discord and differences in the conjugal life of the appellant and his wife [PW-2] which led to their separation. It is also known from the cross examination of PW-2 that after she left her matrimonial home her husband met her thrice and persuaded her to be back to her matrimonial home to reunite with him. But she refused. The appellant thereafter met his wife and threw acid on her. The appellant tried to demolish the prosecution case by projecting defence case that his wife used to maintain illicit relationship with 2 persons which he could not establish. He even did not stick to this defence version in his examination under Section 313 Cr.P.C. In his statement recorded under Section 313 Cr.P.C, he had chosen the mode of complete silence and simply pleaded innocence and false implication. From the contents of his cross examination it

is crystal clear that he tried to get himself absolved from the guilt by stating falsehood which is a clear indication of his guilty mind.

[**48**] The evidence of the victim supported by the evidence of PW-5 and the Medical evidence of PW-7 and PW-8 on the other hand is so convincing that it is enough for drawing up the conclusion of guilt of the appellant.

[**49**] We are unable to accept the submission of learned counsel of the appellant that as a result of her animosity to her appellant husband the victim falsely implicated her appellant husband in this case. The evidence available on record do not support such contention of learned counsel of the appellant.

[**50**] With regard to the submission of learned counsel of the appellant that there is no conclusive medical evidence to support a charge under Section 326A, IPC against the appellant it is found that the medical officer [PW-7] has given a conclusive evidence in this regard in his report dated 25.05.2018[Exhibit-4] which is also supported by his oral evidence. He has

unambiguously stated in his examination in chief that the injury of the victim was grievous in nature caused by chemical(acid).

[**51**] It is noted by us that the PW has a considerable experience in his profession and quite obviously the signs of injuries caused by acid are not unknown to a doctor of his standing. Moreover, it is no case of the appellant that the injuries were caused to the victim otherwise than by acid burn. There is, therefore, no merit in this submission of learned counsel of the appellant.

[**52**] It was also argued by learned counsel that the trial court should have considered the inconsistencies appearing in the evidence of prosecution witness. Such submission of learned counsel is also unacceptable to us because there is hardly any inconsistency in the evidence of the prosecution witnesses with regard to the acid burns suffered by the victim. The evidence of PW-2 who is an eye witness to the occurrence has given a remarkably cogent, consistent and trustworthy evidence free from

any kind of exaggeration or embellishment. Her evidence is supported by the medical evidence of PW-7 who had treated her in AGMC and GBP hospital at Agartala till her recovery and release from the hospital. Her parents [PW-1 and PW-3] who had seen their daughter with acid burns also gave very consistent and trustworthy evidence. The victim who saw her assailant with her own eyes also testified at the trial and named her appellant husband as the one who had thrown acid on her. There is, therefore, no element of inconsistency in prosecution evidence with regard to the charge of acid attack against the appellant. The contention of learned counsel is, therefore, devoid of merit.

[**53**] Another ground of attack on behalf of the appellant is that after the injured victim was taken to hospital from the place of occurrence, she did not divulge the name of her assailant to the doctor[PW7]whom she met in the hospital. As noted by us, learned counsel of the appellant made a reference to the decision of the Apex Court in ***Rehemat vs. State of Haryana*** (supra) in support of his contention and contended that the trial

court did not consider this aspect. The facts of ***Rehemat*** being completely distinguishable, the appellant cannot derive any benefit from the decision. It has surfaced from the evidence of PW-5 that immediately after the attack by her appellant husband, PW-5 heard her saying the name of the appellant as her assailant. Thereafter, the victim [PW2] was admitted in hospital in a very critical condition with acid burns on her eyes, face, ear and other parts of her body. Initially she was taken to Tepania Hospital at Udaipur from where she was immediately shifted to AGMC and GBP Hospital at Agartala. In this fact situation, the prosecution version cannot be put to doubt on the ground that the victim did not tell the name of her assailant to the doctor.

[**54**] We have examined the entire record in details. The fact that the appellant had a strained relationship with the victim which resulted in their separation stand established. The testimony of the victim with regard to the allegation against her appellant husband that he had thrown acid on her on 13.01.2018 at about 7 O'clock in the evening is found quite cogent and consistent which is

free from any kind of exaggeration and embellishment. There is no reason to view her evidence with suspicion. The stand taken by the appellant on the other hand has amply proved that he has resorted to falsehood to prove his innocence. The medical evidence of PW-7 also support the prosecution case that the victim was admitted in AGMC and GBP hospital at Agartala with acid burns on 13.01.2018. PW-7 in his report [Exhibit-4] has given a conclusive opinion that her injury was grievous in nature and caused by chemical (acid).

[**55**] Thus the evidence available on record unerringly point to the appellant as the one who had thrown acid on his victim wife Momita Akhtar in the fateful evening on 13.01.2018 causing grievous burn injuries to her damaging and disfiguring her face, eyes, right arm, right shoulder, ears, hand, chest etc. In this regard the learned trial court rightly referred to the decision of the Apex Court in ***Maqbool vs. State of Uttar Pradesh and Anr.*** reported in ***(2019) 11 SCC 395*** wherein the Apex Court vide paragraph 8 and 16 of the judgment has observed that *merely because the title to*

*Section 326A IPC speaks about grievous hurt by way of acid, it is not a requirement under the Section that the injuries caused should be invariably grievous*(vide para-8). Further observation of the Apex Court vide para 15 of the said judgment is as follows:

> *"15. As we have already discussed above, it is not the percentage of the gravity of injury, which makes the difference. Be it simple or grievous, if the injury falls under the specified types under Section 326A on account of use of acid, the offence under Section 326A is attracted.*

Therefore, we are of the view that in view of the evidence available on record the learned trial court has rightly convicted of the appellant under Section 326A IPC.

[**56**] The only question which remains to be considered is whether the learned trial court in the given facts and circumstances of the case was justified in sentencing the convict appellant to RI for life for the offence committed by him.

[**57**] Learned trial court after hearing the convict appellant and his counsel as well as the learned Public

Prosecutor and after considering their submissions imposed punishment on the convict sentencing him to RI for life and a fine of Rs.1,00,000/- with default stipulation under Section 326A IPC and further sentencing him to RI for three years and fine of Rs.5000/- with default stipulation for offence under Section 498A IPC. We have noted above that the charge under Section 498A IPC against the appellant does stand established and therefore his conviction under Section 498A IPC is liable to be set aside. We are only considering whether the sentence to imprisonment for life awarded to the convict under Section 326, IPC has been proportionate to the crime committed by him.

[**58**] Unquestionably, throwing acid is one of the most culpable offences against human body for which severe punishment has been prescribed under Section 326A IPC which reads as follows:

> *"326A. Voluntarily causing grievous hurt by use of acid, etc.—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:*
>
> *Provided further that any fine imposed under this section shall be paid to the victim."*

[**59**] It is thus apparent that minimum sentence provided under Section 326A IPC is 10 years which may extend to imprisonment for life, and with fine. A wide discretion has thus been conferred upon the court in sentencing the person who is found guilty and convicted under Section 326A IPC. In the case in hand, the learned trial Judge seems to have assigned reasons as to why he imposed life sentence on the convict instead of imposing the minimum mandatory sentence of 10 years' RI and the reasons recorded by the learned trial Judge are as under:

> *"22.The convict has been adjudged guilty of the ghastly and gruesome acid attack on the victim who is legally married wife. If he had any problem with his wife he could have sought for legal redress or could have stay away from her. But instead of that, he chose the option of the revengeful and inhuman attack on the victim by*

> *means of acid and this act of the convict is unpardonable. The effect of the acid burn has totally distorted face of the victim and the suffering is even worst than death. It is kind of a living hell for the victim. No amount of sentence is enough to punish him to as to make good the loss and suffering of the victim and the suffering of the victim is lifelong. In fact she cannot move without covering on her face which by itself is unbearable and ignominious for a young woman like her."*

[**60**] It is also apparent on the face of the record that the learned trial judge followed the law enunciated by the Apex Court in ***Ravada Sasikala vs State of Andhra Pradesh and Anr.*** reported in ***(2017) 4 SCC 546*** and in ***Suresh Chandra Jana and Ors. vs. The State of West Bengal*** reported in ***(2017) 16 SCC 466*** while awarding the sentence to the appellant.

[**61**] In ***Ravada Sasikala***(supra) the accused appellant, whose marriage proposal was refused by the victim, poured acid on her and on proof of his guilt at the trial, he was convicted under Section 326 IPC and sentenced to RI for one year and fine of Rs.5000/- with a default clause. The state preferred appeal for enhancement of sentence. The convict also filed appeal against his conviction and sentence in sessions court

which was later transferred to the High Court. The High Court in appeal maintained the conviction of the appellant but modified the sentence under Section 326 IPC to the period already undergone by him without interfering with the sentence of fine. When the matter came up before the Apex Court, the sentence announced by the trial court was restored besides awarding compensation to the victim with an observation that *a crime of this nature does not deserve any kind of leniency*. Similarly, in the case of ***Suresh Chandra Jana***(supra), during the pendency of a rape case against the appellant, he had thrown acid on the victim and the victim succumbed to her injury arising out of the acid attack. The trial court sentenced the principal accused to death penalty and the co-accused to RI for life under Section 302 IPC. In appeal the High Court acquitted both. Aggrieved by the acquittal, State preferred appeal in the Supreme Court. The Apex Court affirmed the conviction of the principal accused and modified the death sentence of the principal accused to RI for life and fine of Rs.10,000/- with default clause in view of the fact that there was no criminal history of the accused and there

was no evidence that he was a continuing threat to the society and also the fact that meanwhile he was acquitted of the rape charge by the trial court. The findings of the High Court in respect of the co-accused was affirmed by the Apex Court. On that occasion the Apex Court vide para 30 observed as follows:

> ***"30.At the outset, certain aspects of acid attack need to be observed. Usually vitriolage or acid attack has transformed itself as a gender based violence. Acid attack not only cause damage to the physical appearance of the victim but also cause immense psychological trauma thereby becoming a hurdle in their overall development. Although we have acknowledged the seriousness of the acid attack when we amended our laws in 2013, yet the number of acid attacks are on the rise. Moreover, this Court has been passing various orders to restrict the availability of corrosive substance in the market which is an effort to nip this social evil in the bud. It must be recognized that having stringent laws and enforcement agencies may not be sufficient unless deep-rooted gender bias is removed from the society."***

[**62**] The judgment of the learned trial court demonstrates that the learned trial judge, having considered the nature and severity of the offence and the pain and deprivation suffered by the victim due to the gruesome act the appellant wanted to award an

exemplary deterrent sentence to him and accordingly sentenced him to imprisonment for life and a fine of Rs.1(one)Lakh payable to the victim.

[**63**] It is true that the trial judges exercise wide discretion in respect of awarding sentence within the statutory limits because there is no structured guidelines in respect of sentencing. Another problem is that the reliable materials with regard to the educational, professional and social back ground of the offender, information about his home life, his adjustment capability, his emotional and mental condition, the status of his health, the prospect of his rehabilitation and possibility of his return to normal life are hardly presented before the trial judges at the time of hearing on sentence to help him to take a correct decision in respect of sentence.

[**64**] In this regard, the Apex Court in ***Dilbag Singh vs. State of Punjab*** reported in ***(1979) 2 SCC 103*** vide para.13 observed as follows:

"13.The observations of the United States Supreme Court in Williams v. New York (337 U.S. 241, 249) lay the right stress on pre-sentence reports**:**

> **".....have been given a high value by conscientious judges who want to sentence persons on the best available information rather than on guess-work and inadequate information. To deprive sentencing judges of this kind of information would undermine modern penological procedural policies that have been cautiously adopted throughout the nation after careful consideration and experimentation."**
>
> **Judge F. Rayan Duffy has written:**
>
> **"If the judge has before him a complete and accurate pre-sentence investigation report which sets forth the conditions, circumstances, background, and surroundings of the defendant, and the circumstances underlying the offense which has been committed, the judge can then impose sentence with greater assurance that he has adopted the proper course. He can do so with much greater peace of mind."**

[**65**] Regarding the factors to be considered at the time of sentencing, we can also gainfully advert to the decision of the Apex Court in ***State of Madhya Pradesh vs. Najab Khan and Ors.*** reported in ***(2013) 9 SCC 509*** wherein the Apex Court has held as follows:

> *"13. In Jameel vs. State of Uttar Pradesh, (2010) 12 SCC 532, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus: -*
>
> > **"15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and**

> **tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.**
>
> **16. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."**

*14. In Guru Basavaraj vs. State of Karnataka,(2012) 8 SCC 734, while discussing the concept of appropriate sentence, this Court expressed that:*

> **"33. It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored."**

*15. This Court, in Gopal Singh vs. State of Uttarakhand, (2013) 7 SCC 545 held as under:-*

> **"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence....."**

*Recently, the above proposition was reiterated in Hazara Singh vs. Raj Kumar & Ors., 2013 9 SCC 516.*

*16. In view of the above, we reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in*

> *each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.*

[**66**] Having regard to the parameters laid down by the Apex Court in the decisions cited above, we have given our anxious consideration to the attending facts and circumstances of the case, the nature of the crime committed by the appellant and the manner in which it was committed and also the proportionality between the offence committed by the appellant and the sentence awarded to him. It has been circumstanced that after their separation, the appellant met his victim wife several times at her parental home to take her back to his home but she refused to go back to her matrimonial home. This is admitted by the victim[PW-2] in her cross examination. This circumstance indicates that the appellant desired to restore his matrimonial relationship with his wife[PW-2]

but his reluctant wife was not willing to reunite with him which might have caused a sense of frustration in the appellant. We cannot overlook this mitigating circumstance while deciding about the proportionality of the sentence to be awarded to the appellant for the crime committed by him.

[**67**] In view of what is stated above, we are of the view that the sentence of RI for life awarded by the learned trial court should be reduced to RI for 10 years which is the mandatory minimum sentence within the statutory limit of Section 326A IPC. The learned trial court has also sentenced the appellant to a fine of Rs.1(one)Lakh and in default to undergo RI for one year which means that if the appellant fails to pay the fine, he will have to suffer RI for a total period of 11 years. It is apparent on the face of the record that before his conviction the appellant used to earn his livelihood as a day labourer. Moreover, 20% of the wages earned by a RI convict is also deducted for the State Victim Compensation Fund. In view of these aspects, the fine awarded by the learned trial court should also be reduced

to Rs.25,000/- and in default to undergo RI for 3(three) months. Therefore, the conviction of the appellant under Section 326A IPC is affirmed by us and the sentence of RI for life with a fine of Rs.1(one)lakh awarded by the learned trial court is reduced by us to RI for 10 years and a fine of Rs.25,000/- and in default of payment of fine to undergo RI for 03(three)months. The fine money, if realized, shall be paid in full to the victim. The charge under Section 498A IPC, not being proved, the appellant is acquitted of the charge.

Resultantly, the appeal stands partly allowed.

[**68**] The Apex Court in the case of ***Laxmi Vs. Union of India and Ors.*** reported in ***(2014) 4 SCC 427*** directed that each victim of acid attack shall be paid compensation of at least rupees 3 lakhs by the State Government. Such amount of compensation has also been incorporated in the Tripura Victim Compensation Scheme, 2018. It is, therefore, directed that the State Government shall deposit the amount before the learned trial court within a period of 4(four) months from today in terms of the State

Victim Compensation Scheme, if such compensation is not already paid to the victim and the learned Trial Judge(the District and Sessions Judge, Gomati Judicial District) will disburse the amount in favour of the victim on her proper identification.

Copies of this judgment be given to the Chief Secretary, Government of Tripura and the learned District and Sessions Judge, Gomati Judicial District, Udaipur for compliance.

Send back the LCR.

**JUDGE** **JUDGE**

*Saikat Sarma*