

**IN THE COURT OF PRINCIPAL SESSIONS JUDGE,
SRINAGAR**

ST No: 10 of 2022

CNR No: **JKSG010003272022**

Date of Institution:08.03.2022

Date of Judgment: 04.03.2024

Date of sentence order: **06.03.2024**

In the case of:

UT of J&K through Police Station Nowhatta Srinagar

VS

1. Sajid Altaf Sheikh (Rather) S/o Mohammad Altaf Sheikh
(Rather) R/o Khalpora Buchwara Dalgate, Srinagar.

(Convict)

In the matter of: FIR No. 08 of 2022 of P/S Nowhatta, Srinagar
Offence u/s 326-A & 120-B IPC.

CORAM: Jawad Ahmed

(UID No: JK00053)

Ld. PP Ajaz Hussain for the UT of J&K.

Advocate Mir Naveed Gul, Penal Lawyer assigned to victim by DLSA
Srinagar.

Advocate Amir Masoodi & associates for the convict.

SENTENCE ORDER

*"The Jealous are troublesome to others, but a torment to
themselves"*

...William Penn

1. By a detailed judgment dated 04.03.2024, the accused No.1 namely Sajid Altaf Sheikh (Rather) S/o Mohammad Altaf Sheikh (Rather) R/o Khalpora Buchwara Dalgate, Srinagar has been held guilty by this court for the commission of offence punishable under section 326-A r/w 34 IPC in case FIR No. 08 of 2022 of P/S Nowhatta and stands convicted for the said

offence but, has been acquitted for the offence punishable under section 120-B IPC. The other accused namely Mohammad Saleem Kumar, who was also facing trial with accused No.1 for offences under section 326-A r/w 120-B IPC in the same FIR, has been acquitted for these offences but, held guilty and convicted for offence punishable under section 336 IPC and sentenced to three months imprisonment. The three months imprisonment imposed upon him has been set off from the period of detention he had undergone during investigation and trial of the case.

2. I have heard the learned Public Prosecutor and the learned counsel for the convict on the quantum of punishment.

3. The learned Public Prosecutor submitted during the course of arguments that the court has held the act of the convict a brutal inhuman act which has disfigured the face of the victim, who is just 26 years of age. The Ld. PP submitted that by this brutal inhuman act of the convict, the victim has completely lost the eye sight of her left eye and is hardly able to see just 5 percent from her right eye. He submitted that as on date the victim has undergone 23 surgeries and her parents have spent a huge amount on her treatment but, yet her treatment is not complete. He submitted that the barbaric act of the convict has crippled the life of the victim, who always needs the help of at least two helpers, because one of her eye is completely damaged and the eye sight of her other eye has also got impaired around 95 percent. He submitted that the father of the victim is a poor person tailor by profession and is not able to bear the medical expenses of the victim and her other lifelong expenses who has become completely dependent on her parents. For meeting the medical expenses of the victim, the mother of the victim has disposed of her house. The ld. PP submitted that the acid attack cases mostly on young girls are increasing.

The acid attack not only causes physical damage to the victim but, also adversely affects the victim economically, mentally, emotionally and socially as well. He submitted that the face of the victim has got disfigured, moment by moment the disfigured face would remind the victim the barbaric act of the convict. She has to live rest of her life with this trauma. He submitted that whenever the victim would be looking at the mirror, her disfigured face would remind her the horrific act of the convict, which would lower down her morale and give her a feel that her face would be terrible for others particularly for her parents. The Ld. PP submitted that if the convict is not awarded the maximum punishment provided under law, the victim will remain under this constant fear that the moment convict would come out he may take revenge from her by doing any act more heinous than the present act and this would make the victim to feel insecure. He submitted that it is the duty of the court to ensure the safety of the victim while awarding punishment to the convict and shall not provide a chance to the convict to repeat the offence with the victim more heinous than the present one. He submitted that the court has also to take in to consideration the larger interest of the society while awarding punishment to the convict of acid attacker so that no likeminded person in the society dare to indulge in such type of inhuman act. He submitted that to send a signal to the likeminded persons in the society, the legislature by an amendment incorporated the offence of 326-A IPC providing stringent punishment for acid attackers. The ld. PP submitted that in the facts and circumstances of the present case, the convict does not deserve any leniency and submitted that apart from awarding the maximum punishment of life imprisonment to the convict as provided under section 326-A IPC, the convict may also be imposed fine equivalent to the medical expenses

incurred as on date by the victim as well as the future medical expenses needed by her for her complete restorative treatment. To buttress his arguments, the Id. PP relied on the judgments of the Hon'ble Supreme Court in case *State of Karnataka By Jalahalli Police Vs. Joseph Rodrigues S/o V.Z. Rodrigues reported in 2006 (5) AIR KAR R 724*, in case *Ravji @ Ram Chandra Vs. State of Rajasthan reported in 1996 AIR 787* and in case *Suresh Vs. The State of Karnataka passed in Criminal Appeal No. 1469 of 2012*.

4. The Penal lawyer, Advocate Mir Naveed Gul, who has been assigned to the victim from DLSA, Srinagar, submitted that the inhumane and barbaric acid attack on the victim has not only ruined her life but, has also shattered the lives of her all other family members. The victim's mother had to sell her house to meet the medical expenses of the victim. He submitted that as on date the victim has undergone 23 restorative surgeries outside the UT of J&K at Chennai, because the specialized restorative treatment she requires is not available in the UT of J&K but, yet her treatment is incomplete. He submitted the details of the medical bills and the expenses incurred by the victim, which are taken on record. After retaining the copies, the original bills have been returned to him. He submitted that the parents of the victim are very poor, who are not able to bear the medical expenses of the victim. He submitted that apart from awarding maximum life punishment to the convict, the convict may also be imposed fine equivalent to the medical expenses incurred by the victim as well as the future expenses she may require on her treatment.

5. The victim, who was present in the court at the time of arguments on quantum of punishment, with permission of the court narrated the struggle and hardships she is undergoing ever since the convict has thrown acid on

her. She stated that she wants justice by awarding maximum punishment to the convict who has made her life miserable so that no other girl in the society should suffer such a trauma which she is facing. She stated that her left eye is completely damaged and has lost the eye sight of her left eye but, she is little bit able to see from her right eye. Her both eyes are closed and she can't independently standup or walk and always needs the help of two-three persons. She stated that as on date she has undergone 23 surgeries outside the UT of J&K at Chennai and has incurred expenses more than Rs.48 lakhs and still she is under treatment and require lot of money for her restorative treatment with no hope of restoration of her eye sight. Her mother disposed of her house to bear her expenses. This barbaric attack has shuttered all her hopes and dreams which she had dreamt for her career. She produced her photographs, three of them before the occurrence and three after the occurrence of this barbaric act. These photographs speak about the beauty she was possessing and how badly this acid attack has caused permanent disfigurement of her face. These photographs have been taken on record marked as "V-1 to V-6". The victim stated that as on date she has received Rs. 3.00 lakhs as interim compensation from DLSA, Srinagar under victim compensation scheme and Rs. 1.00 lakh from the civil administration. Apart from that she has not received any monetary help from any other quarter.

6. The victim was provided support in the court by one Sehar Nazir, another acid attack survivor. Sehar Nazir, support person to the victim, submitted with permission of the court that she has passed through the phase with which the victim is presently going. Feeling her trauma, she is voluntarily providing the victim support just to encourage her to face this trauma. She submitted that the convict, who is present in the court

apparently has no remorse for the act he has committed, be awarded the maximum punishment and the victim, who needs lot of money for her restorative treatment, be also compensated adequately.

7. The Ld. Counsel for the convict, Advocate Amir Masoodi at the very outset expressed his sympathy with the victim. He submitted that the court cannot be driven by emotions nor it is the duty of the court to send message to the society by awarding sentence to a convict but, the court has to look into the mitigating circumstances of the convict. The court while awarding sentence has to adopt reformative approach instead of deterrent approach. He submitted that the convict is the sole bread earner for his family and is just around 25 years old. He submitted that the convict is not having any criminal background, the offence for which he has been convicted is his first offence as such, he deserves the leniency. He relied on two judgments of the Hon'ble Supreme court one titled *Mohammad Giasuddin Vs. State of Andhra Pradesh*, reported in 1977 AIR 1926, and another in case *Pramod Kumar Mishra Vs. The State of U.P arising from SLP (CRL) No. 2190/2023*. The Ld. Counsel for the convict prayed that minimum punishment be awarded to the convict.

8. The convict, who was present during the course of arguments on the quantum of punishment, was also given chance to make the submission, if any, he wants to make before the court. His sister was also present in the court. The convict and his sister prayed for leniency in awarding punishment to the convict keeping in view the young age of the convict.

9. I have considered the arguments of both the sides on the quantum of punishment as well as the submissions made by the victim and the convict.

10. The convict, as has been said in the opening para, has been held guilty for commission of offence punishable under section 326-A r/w 34 IPC and has been convicted for the said offence. The punishment provided for offence under section 326-A IPC is imprisonment of either description for a term which shall not be less than 10 years but, which may extend to imprisonment for life and with fine. As per proviso 1 to Section 326-A IPC, the fine imposed shall be just and reasonable to meet the medical expenses of the treatment of the victim. As per proviso 2 to Section 326-A IPC the fine imposed shall be paid to the victim.

11. The great jurist, **Lord Denning**, while appearing before the Royal Commission expressed the following view on the object of punishment:

“Punishment is the way in which the society expresses its denunciation of wrongdoing and in order to maintain respect of law, it is essential that punishment inflicted for grave crimes should reflected revulsion felt by the great majority of the citizens. For them it is a mistake to consider the object of punishment as being deterrent or reformatory or preventive and nothing else. The truth is that some crimes are so outrageous that society insists on adequate punishment because the wrong doer deserves it, irrespective of whether it is deterrent or not.”

12. In ***Mahesh Vs. State of M.P, reported in (1987) 3 SCC 80***, the Hon’ble Supreme Court while considering the death sentence observed as under:

“It will be a mockery of Justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justice system of this country suspect. The

common man will lose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon.”

13. In ***State of Karnataka V/s Joseph Rodrigues, 2006 SCC online Kar 494***, the Hon’ble High Court of Karnataka has observed as under:

“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 or even 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”.

14. In the case of ***State of M.R. Vs. Bala alias Balram, reported in (2005) 8 SCC 1***, the Hon’ble Supreme Court observed 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”.

15. In the case of ***Ravji Vs. State of Rajasthan, reported in (1996) 2 SCC 175***, the Hon’ble Supreme held that:

“It is the nature and gravity of the crime and not the criminal, which are germane for consideration of appropriate

punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual but also against the society to which the criminal and the victim belong”.

16. While considering the quantum of sentence to be awarded to the convict, the law enunciated in the aforesaid judgments by the Hon’ble Apex Court and the High Courts is required to be kept in mind.

17. In the instant case the brutal inhuman acid attack by the convict on the victim is an uncivilized and heartless crime committed by the convict on a young, innocent and defenseless girl (victim) in the evening on 1st of February, 2022 while she was returning to her home from her workplace. The chilling evening of 1st February, 2022 became a darkest and blackest evening of her life when by the horrific act of the convict, all hopes and dreams of her future got lost. The barbaric act of the convict was not a spontaneous act where it could have been said that he had no time to think over the repercussions of such act. The evidence has proved that much before the occurrence, the convict had made the preparation for the act when he had obtained the acid from accused No.2 on the pretext of erasing the name of the victim which he had written on his chest. It has also come in the evidence of the victim and her father that after the breakdown of the engagement of the convict with the victim, he (convict) once threatened victim to disfigure her face if she does not agree to marry him. This proves that it was a well thought of, well planned and an organized act of the convict.

18. During the course of arguments on quantum, the victim produced her six photographs, three before and three after the occurrence. These

photographs of the victim before and after the incident speak itself the extent of damage caused by the horrific act of the convict on the face of the victim by using the sulphuric acid which is a corrosive substance. It has not only caused severe physical trauma to the victim but, mental trauma as well. Her photographs after the incident but, before repairs by skin grafting, reveal the impact of the corrosive substance was such that the bone on right side of her forehead had got exposed, the nose, eyes and the whole face has got badly damaged. Despite 23 surgeries she has undergone as on date, the damage has not got repaired nor there are chances of its full repair.

19. It has been argued by the counsel for the convict that the convict is young, a first offender so a lenient view may be taken while awarding sentence to him so that he is reformed and is brought back to the society. If this argument is accepted then what would happen to the victim, a young girl who was possessing of a beautiful physique before the occurrence. She has now to carry the hideously disfigured face all along her life, who has lost hope forever to lead a normal life including the loss of chance of marriage etc., for none of her fault. When the victim appeared at the time of arguments, she was not able to see. She has lost eye sight of one eye and the eye sight of other has also got severely impaired. The badly effected eye sight of her both eyes shall make her a prisoner in her own house. In such circumstances, no one can imagine the plight of the poor parents of the victim, every day they have to look at the mangled face of their daughter. They have also to live their life with this emotional trauma.

20. The court understands the potential for rehabilitation and personal growth of the young convict. However, this understanding has to be balanced against the irreversible damage inflicted by him upon the victim.

The present scars left on the face and psyche of the victim would serve as a haunting reminder of the brutal act to the victim having the effect of forever altering the trajectory of her life. When the loss and trauma suffered by the victim is compared with the mitigating circumstances and the "chance" of rehabilitation of the convict, the tangible loss and life-long emotional trauma suffered by the victim by the horrible act committed by the convict far out-weighs any hypothetical chance of rehabilitation of the convict. Someone capable of holding such harmful and hateful mentality and the capability to willingly go through with it over a matter as trivial as envy and jealousy cannot be trusted to be reintegrated into the society. In such circumstances, the court is compelled to prioritize the sufferings of the victim as against the convict's potential for change and need to take a resolute stance against the convict.

21. Keeping in view the plight of the victim, one would feel that the ancient theory of punishment vis. eye for eye would only meet the ends of justice in this case but, that is not permissible now in the civilized society like ours which is governed by the law.

22. The Ld. Counsel for the convict during the course of arguments relied on two judgments of Hon'ble Supreme Court one titled *Mohammad Giasuddin Vs. State of Andhra Pradesh*, reported in 1977 AIR 1926 and another judgment in case *Pramod Kumar Mishra Vs. The State of U.P arising from SLP (CRL) No. 2190/2023*. In *Pramod Kumar Mishra's* judgment, the Hon'ble Supreme Court has also referred the *Giassudin's* judgment. In para 16 of the *Pramod Kumar Mishra's* judgment the Hon'ble Supreme Court has also referred the judgment of *Purushottam Dashrath Borate & Anr. Vs. State of Maharashtra (3 bench judgment)*. In the said judgment, Hon'ble Suprme Court has observed that it is necessary

for this court to notice the rising violent crimes against women and the sentencing policy adopted by the court, in such cases, ought to have a stricter yardstick so as to act as a deterrent. Para 16 of the *Pramod Kumar Mishra's judgment*, referred by the Ld. Counsel for the convict, is reproduced as under:

“This court has also noted the requirement for deterrence through punishments in certain categories of cases. In Purushottam Dashrath Borate & Anr. Vs. State of Maharashtra (3-judge Bench), it was observed that it would be necessary for this court to notice the rising violent crimes against women and the sentencing policy adopted by the courts, in such cases, ought to have a stricter yardstick so as to act as a deterrent”.

23. In view of the principle laid down in the aforesaid para by the Hon'ble Supreme Court, the courts have been ordained to adopt stricter yardstick while awarding sentence in cases of violent crimes against the women so as to act as deterrent.

24. The Hon'ble Supreme Court in a judgment dated 28, November, 2018 passed in a *criminal appeal No. 1469 of 2012 titled Suresh Vs State of Karnataka* rejected the plea of a convict in custody for 13 years for reducing the life imprisonment to a lesser sentence.

25. In another case the Bombay High Court in a judgment dated 18.02.2016 passed in *Criminal Appeal No. 324 of 2007 titled Shri Kailas Sitaram and Anr. Vs. State of Maharashtra*, having almost identical facts as that of the present case, wherein the trial court had awarded 7 years imprisonment with fine of Rs 2000/-. However, in the appeal the Bombay High Court held that the sentence awarded by the trial court is too meager and inadequate and enhanced it to life imprisonment by holding that the

life imprisonment can do the real justice to the victim and enhanced the fine from Rs. 10000 to Two lakhs. In another judgment titled *Mehashwar Vs State of Maharashtra, a Division Bench of the Karnataka High Court* in a case of almost identical nature, upheld the sentence of life imprisonment and fine of Rs 10 lakhs awarded to the convict for the offence under Section 326-A IPC. In all these cases the convicts were the first offenders with no criminal back ground.

26. The victim has produced the prescriptions and bills of her treatment and has also submitted the affidavit. As per affidavit, as on date she has undergone 23 major and minor surgeries at Chennai. She has also produced photocopy of the sale deed whereby her mother Shaheena, alongwith her other sibilings, has disposed of her share in a three storeyed house situated at Aram Masjid Khanyar on 31.03.2023 to one Irfan Ahmad Najar S/o Ghulam Qadir Najar R/o Chan Mohalla Chattabal for consideration amount of Rs. 4,19,500/-. As per the affidavit she has incurred total expenses of Rs 48,26,279/- on her treatment, which also includes travelling expenses to Chennai in connection with her treatment.

27. It cannot be over looked that the acid victims need to undergo series of plastic surgeries. The court cannot lose sight of the fact that such restorative surgeries cost a fortune. In terms of proviso to Section 326-A IPC, the fine imposed on the convict shall have to be just and reasonable to meet the medical expenses of the victim. During the course of argument on quantum of punishment, the victim stated that as on date, she has received 3 lakhs from legal Aid as interim compensation and also Rs one lakh from the Government. However, she has spent much more than the financial assistance provided to her till date either from the legal Aid or by the Government for her treatment. The victim has got treatment at Chennai,

whereas on date she has undergone 23 surgeries and still she has to undergo more surgeries. The bills submitted by the victim regarding the expenses she has incurred as on date, supported by an affidavit, appear to be genuine. In terms of proviso 1 to Section 326-A IPC the fine to be imposed on the convict has to be reasonable to meet the medical expenses on the treatment of the victim. Therefore, keeping in view the expenses which the victim has spent as on date on her treatment and future expenses which she may incur, I find that in the facts and circumstances of the case, the amount of Rs. 40 lakhs would be reasonable and genuine in terms of proviso 1 of Section 326-A IPC to defray the medical expenses of the victim.

28. After careful consideration of the submissions made by both the sides and having regard to the nature of the attack, the permanent disfiguration caused to the victim by the use of corrosive substance by the convict and the impact of the disfiguration on the future life of the victim both physical and emotional, I find that the convict does not deserve leniency and no other punishment except the maximum punishment of life imprisonment prescribed under law for his act can do the real and complete justice to the victim. Accordingly, the convict is hereby sentenced to suffer imprisonment for life and fine of Rs 40 lakhs for commission of offence punishable under Section 326-A IPC read with Section 34 IPC. In default of payment of fine, a warrant for levy shall be issued to the District Collector, Srinagar in terms of Section 421 (1) (b) of Cr.P.C authorizing him to realize the amount of fine as arrears of land revenue from the movable or immovable property or both of the convict. As and when the fine is recovered from the convict, same shall be paid to the victim in terms of proviso 2 to Section 326-A of IPC.

29. In view of the huge amount the victim has incurred on her treatment and the amount which is required for her further treatment, I deem it appropriate to recommend the case of the victim to the Member Secretary, J&K Legal Service Authority to award the maximum compensation to the victim in terms of the J&K Victim Compensation Scheme, 2019, of course subject to the adjustment of the interim compensation already paid to her under the scheme.

30. A copy of the judgment be sent to District Magistrate Srinagar under section 365 Cr.P.C.

31. The convict namely Sajid Altaf Sheikh (Rather) has been apprised about his right to prefer appeal against the judgment of conviction and the sentence order, if he desires to do so. The copy of the finding (Judgment) and the sentence order be provided to the convict free of cost.

Announced:
06.03.2024
(Danish dmj)

(Jawad Ahmed)
Principal Sessions Judge,
Srinagar