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Crl. Appeal No.548 of 2022

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

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THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR

THURSDAY, THE 25<sup>TH</sup> DAY OF SEPTEMBER 2025 / 3RD ASWINA, 1947

CRL.A NO. 548 OF 2022

CRIME NO.27/2019 OF Ramamangalm Police Station, Ernakulam

AGAINST THE JUDGMENT DATED 22.09.2021 IN SC NO.408 OF 2019 OF ADDITIONAL DISTRICT & SESSIONS COURT (FOR THE TRIAL OF CASES RELATING TO ATROCITIES AND SEXUAL VIOLENCE AGAINST WOMEN & CHILDREN), ERNAKULAM

APPELLANT:

XXXXXXX

BY ADVS.  
SRI.P.MOHAMED SABAH  
SRI.LIBIN STANLEY  
SMT.R.GAYATHRI  
SRI.SADIK ISMAYIL  
SMT.SAIPOOJA  
SRI.M.MAHIN HAMZA  
SMT.SAFIYA AKBAR  
SMT.AMBIKA DEVI, SPL PP

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

BY PUBLIC PROSECUTOR: ADV.BINDU O. V.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.08.2025, THE COURT ON 25.09.2025 DELIVERED THE FOLLOWING:



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C.R.

### JUDGMENT

#### **K. V. Jayakumar, J.**

This case arises from a night of unspeakable violence. Under the cover of darkness, the accused is alleged to have turned upon his own family and carried out a brutal acid attack on his wife and four innocent children.

2. The accused was charged as the perpetrator of this heinous crime and stood trial before the Additional District & Sessions Judge, Ernakulam, designated for cases involving atrocities and sexual violence against women and children, in S.C. No. 408/2019. He faced prosecution for offences punishable under Sections 450, 326A, and 307 of the Indian Penal Code.

3. The learned Sessions Judge found the accused guilty for the offences punishable under Sections 326A and 450 of IPC. The accused was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- for the offence under Section 326A IPC with a default sentence to undergo rigorous imprisonment for one year. The accused was further sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/- for the offence under Section 450 IPC with a default sentence to undergo rigorous imprisonment for six months. But he was found not guilty of the offence punishable under Section 307 IPC and thereby acquitted.



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### **Prosecution Case:**

4. On 17.01.2019 at 3:00 a.m., while the defacto complainant and her four minor children were sleeping on a cot in the bedroom of their rented residence bearing Door No. 1/176, situated within the limits of Pambakuda Grama Panchayat at Neythusalapady in Memury Village, the accused, who is the husband of the defacto complainant, allegedly committed a heinous act. It is alleged that, harbouring enmity towards the defacto complainant on suspicion that she was having illicit relationships with others, the accused, with the intention of causing grievous bodily harm and possibly death, poured acid into the bedroom through the window. As a result of the acid attack, his elder daughter sustained grievous injuries, including severe burns to her face and eyes, which resulted in permanent loss of her eyesight. His wife and three other minor children also suffered burn injuries on their faces and other parts of their body in the attack.

### **Proceedings before the trial court**

5. The final report in the present case was originally filed before the Judicial First Class Magistrate Court, Kolencherry. The learned Magistrate took cognizance of the offence and registered the case as C.P. No.12/2019. After the completion of the preliminary steps, the learned Magistrate committed the case to the Court of Sessions, Ernakulam, under Section 209 of the Code of Criminal Procedure, 1973. Subsequently, the Sessions Court, Ernakulam made over the case to the Court of the Additional Sessions Judge, Ernakulam, for trial and disposal. The learned Additional Sessions Judge, after hearing both sides, framed a charge against the accused.



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The charge was read over and explained to the accused in vernacular, to which he pleaded not guilty and claimed to be tried.

6. During the course of trial, PWs.1 to 19 were examined by the prosecution and Exts.P1 to P22 series were marked. Material objects 1 to 5 were identified and marked. After the close of the prosecution evidence, the accused was examined under Section 313(1)(b) of Cr.P.C. He maintained the plea of innocence. DWs.1 and 2 were examined as defence witnesses. After a full-fledged trial, the learned Sessions Judge convicted the accused for the offences punishable under Sections 326A and 450 of the Indian Penal Code, as aforesaid.

#### **The submissions of the learned counsel for the appellant**

7. Ms. Saipooja, the learned counsel for the appellant, submitted that the learned Sessions Judge erred in convicting the appellant without properly appreciating the evidence on record and by placing reliance on an incomplete and insufficient chain of circumstantial evidence. It was contended that the conviction and sentence imposed by the trial court are unsustainable in law. It was further submitted that the prosecution had failed to establish the guilt of the appellant beyond a reasonable doubt. The learned Sessions Judge, according to the appellant's counsel, failed to apply the correct legal principles while assessing the evidentiary value of the materials placed before it.

8. The learned counsel further contended that none of the victims had seen the person who allegedly poured acid on them during the night of the incident, and therefore, the identity of the perpetrator remained unproven.



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It was argued that the trial court erred in convicting the appellant merely on the basis of previous family issues and the existence of prior complaints, which, by themselves, are insufficient to establish the guilt of the accused. The learned counsel asserted that the appellant has been falsely implicated in the case by simply relying on speculations and assumptions.

9. The learned counsel for the appellant placed reliance on the principles laid down in **Rammi Alias Rameshwar v. State of M.P.**<sup>1</sup> and contended that recovery of the steel cup (MO-2) allegedly used for pouring the acid is not legal and therefore, the conviction cannot be sustained.

### **The submissions of the learned Public Prosecutor**

10. Smt. Ambika Devi, the Special Government Pleader and Smt. Bindu O. V., the learned Public Prosecutor, would submit that the prosecution has proved the charge against the appellant beyond a reasonable doubt. The trial court evaluated the evidence in the correct perspective, and no interference is warranted in this matter. The chain of circumstantial evidence is fully established, without any missing links.

### **The compendium of the prosecution case**

11. PW1 (Smitha Reny) is the wife of the appellant. She stated that she is currently residing at Onakkoor. Earlier, she had resided in a rented house at Pampakuda owned by Kuzhiyamattathu Thambi in a line building

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<sup>1</sup> 1999 KHC 1453



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with her four children. After the death of her first husband, Sasi, she fell in love with the appellant, Reni @ Kannayi, and they began living together. She had three children in her first marital relationship with the said Sasi. She had a daughter from her live-in relationship with the appellant. The appellant is a coolie worker. PW1 used to work as a home maid. Her husband used to consume liquor and torture her. He used to throw the food, TV remote etc. When his physical and mental abuse became unbearable, PW1 lodged a complaint before the Ramamangalam Police Station. On the basis of the said complaint, a crime was registered against the accused and he was in judicial custody for about 35 days.

12. Now, PW1 is residing in a house sponsored by a Church. During the year 2019, the construction of the house sponsored by the Church was started. On 16.01.2019 morning, PW1 went to the construction site and the children went to school. During that time, the accused was living separately. At about 5.00 p.m., when the children returned from school, they saw that the house had been set ablaze by someone. The bed, clothes and other household articles were burned. The children informed PW1 about the incident. She came back and cleaned the house.

13. Further, she stated that her first child, Nevin (PW3), was a student of the 10<sup>th</sup> standard. The second child, Smina (PW4,) was a student of the 8<sup>th</sup> standard at that time. The 3<sup>rd</sup> child, Smija (PW2), was aged 12 years and the younger kid, Sminu (CW5), was aged 5 years at that time. Between 10 p.m. and 11 p.m., they went to sleep in a cot near the window. At about 3.00 a.m., she felt that something was being poured on her face and she felt an unusual smell and burning sensation. Immediately, she rushed out of the



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bedroom. Thereafter, she called PW5 (Saju George), their ward member. In the meantime, the Police and PW5 reached the spot. PW5 took them to the Government Hospital, Piravom. Since the 3<sup>rd</sup> child, PW2, was affected severely, all of them were taken to Medical College Hospital, Kottayam. They came to know that acid was poured on them.

14. PW1 further stated that burn injuries were caused on the face of her 3<sup>rd</sup> child, PW2 and as a result, she lost her sight in that incident. Her sight was partially impaired, and she is now using spectacles. PW4 suffered burn injuries to her head. All of them suffered burn injuries in the acid attack.

15. The Police recorded her First Information Statement from the Medical College Hospital. The Police have seized the dresses worn by them at the time of the incident. She stated that they were admitted to the hospital for about 10 to 12 days. PW1 further stated that she had no animosity with anyone. The police had shown a photograph of a steel cup and she identified it as the one that was used in her house.

16. PW2 is the 3<sup>rd</sup> child of the PW1. She deposed that she is a student of the 7<sup>th</sup> standard. Her date of birth is 23.05.2007. She spoke about the torture to which they were subjected by her father, the accused. She further stated that on 16.01.2019, when she and her sister came back from school, they had seen that their household articles had been burned by someone. She summoned her mother from the textile shop, and together, they cleaned the house.

17. PW2 further deposed that at about 3.00 a.m., while they were sleeping, somebody poured acid through the window. She sustained burn injuries on the head and face. Her eyesight was impaired in the acid attack



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and she is now using spectacles. The ward member came there and they were taken to Piravom Hospital. From there, they were referred to Medical College Hospital, Kottayam.

18. PW3 would testify that he was aged 15 years and a student of the 10<sup>th</sup> standard at the time of the incident. He would also say that he sustained a burn injury in the incident. He had a similar version of PWs.1 and 2. PW4 also gave a similar version about the alleged incident. She also sustained injuries to her head.

19. PW5 (Saju George) is the Panchayat Member who reached the spot immediately after the incident. He would say that PW1 and her children were residing in a rented house. On 17.01.2019 at about 3.00 a.m., PW1 contacted him and stated that someone had poured acid on her body. He rushed to the spot and took PW1 and her children to Piravom Hospital. Thereafter, they were taken to Medical College Hospital, Kottayam, in an ambulance for better treatment.

20. The next day, the Police came to the scene. PW5 witnessed the recovery of the steel cup used by the accused for carrying acid, at the instance of the accused. He further stated that PWs 1 to 4 did not tell him who poured the acid.

21. PW6 (M.K. Biju) is an attester to Ext.P2 scene mahazar. PW7 (Suresh K.M.) is an attester to Ext.P3 seizure mahazar prepared by the Police, through which MO-2 steel cup was recovered from the property of one Kuriakose.

22. PW8 (Gijo K.J.) is an attester to Ext.P4 seizure mahazar through which MO-5 Can, MOs-3 and 4 dresses worn by the accused were seized by



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the police. PW9 (Santhosh) has witnessed the seizure of the dresses worn by PWs 1 to 4 as per Ext.P5 mahazar.

23. PW10 (Gopalakrishnan) is a neighbour of the accused. He has a rubber estate. He used to purchase acid for processing the rubber latex. He used to store the acid in a Green Can. He stated that about a year back, the Green can was stolen by someone. The Police have seized MO-5 Green Can from the bathroom of the house of the accused and shown it to PW10 and he identified the said Can.

24. PW11 (Alice Thampi) is the owner of the house in Neythusalapadi, a portion of which was leased to the accused. She stated that the accused and his family resided there for about 4 to 5 years. She stated that no rent deed was executed for the said transaction.

25. PW12 (Dr. Anoop G.) examined PW1, CW5 and PWs 2 to 4 on 17.01.2019 at about 4.20 a.m., when they were brought to Taluk Hospital, Piravom, with a history of acid burns allegedly inflicted by an unknown person while they were sleeping at their home. He issued Exts.P6 to P10 wound certificates.

26. In Ext.P6, wound certificate of PW1, he has noted multiple scattered burn scalds over the face. In Ext.P7, wound certificate of CW5, he noted multiple burn scalds over the face. In Ext.P8, wound certificate of PW2, he noted extensive burn scalds over the face, along with periorbital edema and facial edema. PW12 further stated that PW2 was referred to the Ophthalmology department at Medical College Hospital, Kottayam. In Ext.P9, wound certificate of PW3, and in Ext.P10, wound certificate of PW4, he has noted scattered burn scalds over the face. PW12 opined that the



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injuries were fresh and could have been caused due to an acid attack.

27. PW13 (Beena S.V.) is the Professor and Head of the Department of Pediatric Surgery in Medical College Hospital, Kottayam. She had treated PW2 in that hospital. She examined PW2 on 17.01.2019 and noted second-degree burns on her face, right arm and both eyes. She issued Ext.P11 certificate.

28. She asserted that the scattered burns could only be seen in cases of acid attack. She clarified that hot water will not cause such type of injuries. The injuries sustained by the victim are grievous in nature and that would affect her vision permanently.

29. PW14 (Dr. Aneesh P.K.) is the Scientific Officer, DCRB, Ernakulam Rural. He inspected the crime scene and collected burnt remnants, newspaper pieces and swabs for chemical analysis.

30. PW15 (Dr. Manoj T.M.) is the Senior Consultant and Assistant Police Surgeon, General Hospital, Muvattupuzha. He examined the accused, Reny, on 18.01.2019 at 4.00 p.m. and issued Ext.P13 certificate. He has noted the following injuries on the body of the accused.

- i. Oval shaped wound 0.5x0.3 cm on right side of face, 6 cms inner to ear and 1.5 cms below outer angle of eye.
- ii. Oval shaped wound 0.2x0.1 cms on right-side of forehead, 2 cms above eyebrow and 9 cms outer to midline.
- iii. Linear abrasion 1.5 cms on right side of face almost horizontal, 4.5 cms outer to midline and 4 cms below lower eyelid.



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- iv. Healing wound 0.5x0.2 cms on right-side of face, 0.5 cms outer to right ala of nose.
- v. Abrasion 1x0.3 cm on top of second toe of left foot, just behind nail bed.
- vi. Pale scar 5x0.5 cms on inner aspect of left forearm, 7.5 cms above wrist. Abrasion 0.2x0.2 cms at its inner lower end.

31. PW15 opined that injury Nos.1 and 2 were fresh and could be caused by corrosion. According to him, those injuries could be caused by acid.

32. PW16 (Sujatha K.C.) is the Village Officer who prepared Ext.P14 site plan of the rented house of the accused. PW17 (Jitha M. Nair) is the Secretary of Pambakuda Grama Panchayat, who was examined to prove Ext.P15 ownership certificate of the house.

33. PW18 (Eby M.P.) is the Sub Inspector of Police, Ramamangalam. He would testify that on 17.01.2019 at about 3.30 a.m., he got information that a lady residing at Neythusalapadi and her four children sustained acid burns and they were undergoing treatment at Medical College Hospital, Kottayam. On that day itself, he went to the Medical College Hospital, Kottayam and recorded Ext.P1 FIS of PW1. On the basis of Ext.P1 FIS, Ext.P16 FIR was registered.

34. On 18.01.2019, at about 10.00 a.m., PW18 visited the scene of occurrence and prepared Ext.P2 scene mahazar. He questioned the accused



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and recorded his arrest at about 11.30 a.m., after preparing Ext.P17 series documents. Thereafter, he recovered MO-2 steel cup, which was used for carrying acid as per the disclosure statement of the accused. He seized MO-3 and MO-4, the dresses worn by the accused at the time of the incident as per Ext.P4 seizure mahazar. He has noted burn injuries on different parts of his body. He took the accused to Taluk Hospital, Muvattupuzha. He also seized MO-1 series, the dresses worn by PWs. 1 to 4 through Ext.P5 seizure mahazar.

35. PW18 would further say that the accused is a drunkard and he used to torture PWs. 1 to 4. Earlier, he had registered a crime against the accused on the basis of the complaint of PW1. In that crime, the accused has been in judicial custody for about 35 days. He would further state that the accused has a suspicion about the chastity of PW1. Further, the accused had a suspicion that his wife and children would shift to the new house without consulting him. He would further say that the dresses seized were forwarded to the Chemical Lab in order to ascertain whether they contained acid.

36. PW19 (Sivalal S.), the Sub Inspector of Police, completed the investigation and laid the charge sheet.

### **The analysis**

37. Before we proceed to evaluate the evidence on record, it would be appropriate to refer to Sections 326A and 326B of IPC.

**Section 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



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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.

**326B. Voluntarily throwing or attempting to throw acid**

—Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1. - For the purposes of section 326-A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2. - For the purposes of section 326-A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

38. Sections 326A and 326B were inserted in the Indian Penal Code in the year 2013. The object of the newly inserted Sections is to ensure severe punishment to the offenders and also to award just and reasonable compensation to the victims.



39. Bearing in mind the intention of the legislature while introducing the amended Section 326A, we shall now proceed to evaluate the evidence on record. The material witnesses in this case are PWs. 1 to 5 and PWs. 12 to 15.

40. PW1 is the wife of the appellant. PW1 deposed that she had three children in wedlock with Sasi, her former husband. After the death of her husband (Sasi), she started living with the appellant and a girl child (CW5) was born in their relationship. She narrated the physical and mental torture to which she and her children were subjected by the appellant after consuming liquor. When his torture was unbearable, she lodged a complaint before the Ramamangalam Police Station. Pursuant to the complaint, a crime was registered and the accused was in judicial custody for about 35 days.

41. In her evidence, PW1 spoke about two incidents. The first incident was on 16.01.2019 at about 5.00 - 5.30 p.m., the household articles, bed, clothes etc., were burned by someone. She and her children removed the half-burned articles from their house and went to sleep at about 10.00 – 11.00 p.m. At around 3.00 a.m. on 17.01.2019, someone poured acid through the window and she and her children sustained injuries. At first, they were taken to the Taluk Hospital, Piravom by PW5 (Saju George) and thereafter, they were taken to Medical College Hospital, Kottayam. The Police came to the Medical College Hospital and recorded Ext.P1 FIS. She identified MO-2 steel cup, which was used for pouring the acid through the window. PWs. 2 to 4 also had a similar version about the incident, but none of them spoke about who the perpetrator of the crime was.



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42. The learned counsel for the appellant argued that in the absence of the identity of a person who allegedly poured acid through the window in the early hours of 17.01.2019, the conviction is not legally sustainable. It was pointed out that this is a case based on circumstantial evidence and the chain of circumstances should be fully established by the prosecution. It is also argued that the chain of circumstances should be complete, which would unerringly point out the guilt of the accused without any missing links.

43. The learned Sessions Judge has relied on the following circumstances to arrive at the conclusion as to the guilt of the accused.

- A) Motive.
- B) The Medical Evidence showing the burn injuries caused to the appellant and PWs. 1 to 4.
- C) The recovery of MO-5 Can from the bathroom of the house of the accused.
- D) The recovery of MO-2 steel cup from the property of Kuriakose.

44. Now, we shall proceed to examine the evidence with regard to each of the material circumstances.

A) The motive

45. PW1 had categorically stated that her relationship with the accused was strained. The accused used to torture her, both physically and mentally, after consuming liquor. Previously, a crime was registered and the accused was remanded for about 35 days on the basis of her complaint. PWs. 2 to 4, the children would also say in the same line. PW18, the Investigating



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Officer, would say that the accused suspected his wife's chastity and used to quarrel with her. PW18 would further say that the accused apprehended that his wife and children would shift to the new house built for them by the Church without any discussion with him. It has come out in evidence that PW1 and the appellant are living separately due to their strained relationship. The definite case of the prosecution is that due to his animosity, the appellant has committed this heinous act against his wife and children.

46. In **Vinod Kumar v. State (Govt. of NCT of Delhi)**<sup>2</sup>, the Apex Court held that the absence of motive is very relevant in cases based on circumstantial evidence and should be considered as a factor in evaluating the strength of the prosecution's case.

47. In **Jan Mohammad v. State of Bihar**<sup>3</sup>, the Apex Court observed that it is an important element in a chain of presumptive proof where the evidence is purely circumstantial, but it may lose importance in a case where there is direct evidence by witnesses implicating the accused.

48. Guided by the principles laid down in the judgments referred above, we have scrutinised the evidence of the material witnesses. We do not find any reasons to disagree with the conclusions of the learned Session Judge that the appellant has a strong motive to cause grievous hurt to his wife and children.

#### B) The Medical Evidence

49. PW12 (Anoop G.) examined PWs. 1 to 4 and CW5, the victims, and issued Exts. P6 to P10 wound certificates. In Ext.P6, the wound

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<sup>2</sup> 2025 KHC 7124

<sup>3</sup> (1953) 1 SCC 5



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certificate of PW1, he has noted multiple scattered burn scalds over the face. He has also noted multiple burn scalds on the bodies of other victims. PW13 (Dr. Beena S.V.), the Professor of Pediatric Surgery in Medical College Hospital, Kottayam, treated PW2. She has noted 2<sup>nd</sup> degree burns on her face, right arm and both eyes. She stated that scattered burns are only seen in an acid attack. She clarified that hot water will not cause such type of injuries. The injuries sustained by PW2 are grievous in nature and would affect her vision permanently.

50. PW15 (Dr. Manoj) examined the accused, Reny, on 18.01.2019 at 4.00 p.m. and issued Ext.P13 certificate. In Ext.P13 certificate, he has noted an oval-shaped wound on the right side of his face and on the outer angle of his eye. He has also noted oval shaped wound on the right side of the forehead and above the eyebrow. According to PW15, those injuries are fresh and could be caused by corrosion by acid.

51. The medical evidence in this case clearly indicates that both the accused and the victim sustained fresh burn injuries caused by the use of acid. No explanation has been provided by the accused regarding the cause of his burn injuries.

C) The recovery of MO-5

52. PW18, the Investigating Officer, would categorically say that he has seized MO-5 can from the bathroom of the house of the accused. The evidence of PW10 (Gopalakrishnan) would say that a Green Can, which he used to store acid, was stolen by someone. He also identified the Can. PW8



(Gijo), who witnessed the seizure of MO-5, also gave a clear testimony about the seizure of MO-5, Can.

D) The recovery of MO-2 steel cup

53. On the basis of the disclosure statement of the accused, MO-2 steel cup, which was used for pouring acid by the accused was recovered by PW18.

54. The learned Sessions Judge, after a scrutiny of the evidence of PWs.1 to 4, the medical evidence and the evidence of the Investigating Officer, has arrived at a conclusion that the accused had poured acid through the window of the bedroom, wherein, his wife and children were sleeping and thereby the accused committed the offence punishable under Section 326A of IPC. Even after a careful evaluation of evidence, we do not find any reason to disagree with the conclusion of the learned Sessions Judge.

**The offence of house trespass**

55. The trial court convicted and sentenced the accused for the offence punishable under Section 450 of the IPC. The learned counsel for the appellant submitted that the trial court had erred in convicting and sentencing the appellant under Section 450 of the Penal Code. Now, the question posed before us is whether the conviction under Section 450 of the IPC is sustainable on the basis of the evidence adduced by the prosecution in this case.

56. At this juncture, it may be useful to extract the relevant provisions of the Indian Penal Code.



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**“441. Criminal trespass.”**—Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”

**442. House-trespass.**—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.

**450. House-trespass in order to commit offence punishable with imprisonment for life.**— Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.”

57. Section 441 IPC defines the offence of criminal trespass. In order to attract the offence of criminal trespass, the prosecution has to prove the following ingredients:

- i. The offender has entered into or upon the property in possession of another with the intention to commit an offence or intimidate, insult or annoy the person in possession of the property, or,
- ii. The offender, after his lawful entry into or upon such property, unlawfully remained there with intent to intimidate, to insult or annoy the other person.



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58. If a person commits a criminal trespass by entering into any building, tent or vessel used as a human dwelling or any building used for worship, he is said to have committed the offence of house trespass under Section 442 of the Penal Code.

59. Section 450 IPC is an aggravated form of house trespass wherein the offender commits house trespass in order to commit any offence punishable with imprisonment for life.

60. On a careful reading of the above Sections, it is clear that in order to sustain a conviction under Section 450 of the Indian Penal Code, the ingredients of Section 441 shall be proved by the prosecution.

61. Section 441 IPC says that if a person enters into or upon property in possession of another or unlawfully remains there with the intent to commit an offence are said to commit the offence of criminal trespass.

62. In the case on hand, PW11 (Alice Thampi) would say that the house where the victims are residing is leased out to the accused and the accused and his family, residing therein. She further stated that no rent deed was executed by the accused. If that be so, the accused, being the lessee, is in exclusive possession of the house. Since the accused is in possession of the house, there can be no criminal trespass or house trespass in the instant case. Therefore, the conviction and sentence imposed by the learned Sessions Judge for the offence under section 450 of the IPC cannot be sustained.

63. The next submission by the learned counsel for the appellant is that the sentence of imprisonment for life awarded by the trial court is too harsh and excessive and therefore, interference from this Court is warranted in the sentence.



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64. Sections 326A and 326B of the IPC were enacted in the year 2013, as the number of acid attack cases reported throughout the country was increasing. Both Sections 326A and 326B IPC provide severe punishment for offenders involved in acid attack cases. In the instant case, there are five victims, who are none other than the wife and children of the appellant. Considering the facts and circumstances of the case, we are unable to accept the contentions of the appellant that the sentence of life imprisonment ordered by the trial court is harsh or excessive.

### **Compensation to the victims**

65. It is pertinent to note that the trial court has not ordered any compensation payable to the victims under Section 357A of Cr.P.C. Instead, the learned Sessions Judge has ordered to pay a fine of Rs.1,00,000/- (Rupees One lakh only) under Section 326A of IPC. It is further directed that if the fine amount is realised, it shall be paid to the victims of the case.

66. Section 357A of Cr.P.C. was inserted by Act 5 of 2009 with effect from 31.12.2009. The object of the Victim Compensation Scheme is to ensure adequate compensation for the victims/dependents who have suffered loss or injury as a result of the crime, for their rehabilitation. Section 357A reads as follows:

**357A. Victim compensation scheme –** (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who, require rehabilitation.



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(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

67. Now, we shall consider the law laid down by the Apex Court, emphasising the need to award compensation in acid attack cases.

68. In **Ankush Shivaji Gaikwad v. State of Maharashtra**<sup>4</sup>, the Apex Court has emphasised the concept of victimology. It would be worthwhile to extract paragraphs 26, 27 and 50.

“26. More than four decades back Krishna Iyer J, speaking for the Court in *Maru Ram and Others v. Union of India and Others*, 1981

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<sup>4</sup> 2013 KHC 4371



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KHC 491: 1981 (1) SCC 107: 1981 SCC (Cri) 112 : AIR 1980 SC 2147: 1981 (1) SCR 1196, in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the Court, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. In Hari Singh v. Sukhbir Singh and Others, 1988 KHC 717: 1988 (4) SCC 551 : 1988 (2) KLT SN 80 : 1988 SCC (Cri) 984 : AIR 1988 SC 2127, this Court lamented the failure of the Courts in awarding compensation to the victims in terms of Section 357 (1) of the CrPC. The Court recommended to all Courts to exercise the power available under Section 357 of the CrPC liberally so as to meet the ends of justice. The Court said:

".... Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused... It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

27. The amount of compensation, observed this Court, was to be determined by the Courts depending upon the facts and circumstances of each case, the nature of the crime, the justness of



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the claim and the capacity of the accused to pay.

(emphasis supplied)

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50. Applying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context in which it was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.”

(emphasis supplied)

69. In **Laxmi v. Union of India and others**<sup>5</sup>, the Apex Court had issued some guidelines as to the quantum of compensation payable to the victims. In that case, it was directed that the acid attack victims shall be paid compensation of at least Rs.3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost.

70. In **Parivartan Kendra v. Union of India and others**<sup>6</sup>, the Hon’ble Supreme Court made it clear that the directives issued in **Laxmi** (supra) will not be a bar for the State Governments to award more compensation to the victim. It was also noted that the Court has not put any

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<sup>5</sup> (2014) 4 SCC 427

<sup>6</sup> 2015 KHC 4784



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condition in **Laxmi** (supra) as to the degree of injuries which a victim has suffered due to an acid attack.

71. On going through Section 357A of Cr.P.C. and the principles laid down by the Apex Court in the above-referred cases, we are of the considered opinion that it is the mandatory duty of the court, at the conclusion of a criminal case, to apply its mind and ensure that just and proper compensation is awarded to the victim of the case. The award or refusal of compensation in a particular case may be well within the discretion of the court concerned. But, every criminal court has to apply its mind as to the award of compensation to the victims at the conclusion of a trial. The said duty to apply its mind and to award just, fair and reasonable compensation to the victim assumes more significance in a case of acid attack under Sections 326A and 326B of the Penal Code (or under Sections 124(1) and 124(2) of Bharatiya Nyaya Sanhita). However, the trial court has not properly applied its mind and ordered a meagre amount of Rs.1,00,000/-, as fine. No recommendation was also made under Section 357A(3) of the Code.

72. In view of the dictum laid down by the Apex Court, we are of the considered opinion that the learned Sessions Judge was not justified in not awarding compensation to the victims. The learned Sessions Judge has overlooked this vital aspect. In cases of acid attack, it is the bounden duty of the Courts to ensure that the victim is adequately compensated. In such cases, it is the imperative duty of the trial court to apply its mind and to pass appropriate orders to compensate the victim. The word "may" used in Sub Section (3) of Section 357A Cr.P.C. should be interpreted as mandatory. Therefore, we deem it appropriate to direct the State Government to pay a



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compensation of Rs. 3,00,000/- (Rupees Three lakhs only) each to PWs. 1 to 4 and CW5, the victims of this case.

In the result,

- i. The Criminal Appeal is allowed in part.
- ii. The conviction and the sentence imposed under Section 450 of the IPC are hereby set aside.
- iii. The conviction and the sentence imposed under Section 326A of IPC are hereby confirmed.
- iv. The State Government is directed to pay a compensation of Rs.3,00,00/- (Rupees Three lakhs only) each to PWs. 1 to 4 and CW5, the victims, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

**RAJA VIJAYARAGHAVAN V  
JUDGE**

Sd/-

**K. V. JAYAKUMAR  
JUDGE**

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