



DD No.80-B was recorded at PS GTB Enclave, which was received from GTB Hospital regarding acid burn of one Sapna, pursuant to which, SI Ashish Dahima alongwith Ct. Santosh reached at GTB Hospital, and collected the MLC of victim Sapna, who was found under treatment there. SI Ashish Dahima recorded the statement of Sapna. Rukka was prepared and present case FIR was registered. Further investigation was carried out. Statement of victim Sapna was also got recorded u/s. 164 Cr.P.C. Accused persons were arrested. Charge-sheet was prepared and filed before the court.

2. On appearance, in compliance of section 207 IPC, copies were supplied to both the accused, and as offence punishable u/s. 326-A IPC is triable by the Court of Sessions, present case was committed to Sessions Court.
3. Charge against both the accused persons u/s.326-A/34 IPC was framed, to which they pleaded not guilty and claimed trial.
4. To substantiate the charge, prosecution has examined 25 witnesses in all.
5. PW-1 Ms. Sapna, who is complainant/victim has deposed that on 30.01.2013, she met accused Bharat in the marriage

of her cousin (Tau's son) Deepak and that accused Bharat is brother in-law of Deepak. She further deposed that accused Bharat took her mobile number and used to call her to ask about the well being of his sister. She deposed that once accused gave her a marriage proposal, to which she refused, on which accused had threatened to kidnap her and disfigure her face. She deposed that since she did not want the relationship of her cousin Deepak to be spoiled, she did not complain against accused to anyone. She deposed that on 25.06.2013, at about 5.30 pm, when she was alone at home, accused Bharat came and proposed her for marriage. On refusal, accused Bharat slapped her and also removed SIM of her mobile phone and took away the same. She deposed that in the morning of 07.08.2013, accused Bharat talked to her on the phone of her friend namely Rakhi and asked her to meet him in the evening, which she refused. She deposed that on the same day i.e 07.08.2013, at about 7.30 pm, she alongwith her friends Laxmi and Rakhi was returning to her house from the factory situated at Dilshad Garden and when she reached near Gate No.11 of GTB Hospital, accused Bharat alongwith his associate came on a motor-cycle and threw acid on her and thereafter, ran away. She further deposed that at that time she could not know as to who out of the two persons, was driving the motor-cycle. She deposed that motor-cycle was of black colour and that she could not note down the complete number of motor-cycle and number noted by her was 601. She went

to GTB Hospital, where her cousin Deepak also came, to whom she narrated the entire incident. She deposed that Deepak also talked with accused Bharat on phone but she did not know what conversation took place between the two. She deposed that thereafter, her cousin Deepak advised her not to lodge the FIR and even threatened her that in case she lodged the FIR, she would be removed from the house. She, however, lodged the FIR and proved her complaint as Ex.PW1/A given to the police. She deposed that her wearing clothes i.e green colour shirt, purple colour salwar and green colour dupatta and a jean bag carried by her at the time of incident, were seized by the police vide memo Ex.PW1/B. She had also shown the place of incident to the police. She deposed that at the time of incident, accused Bharat was driving the motor-cycle while co-accused Mahender was sitting as a pillion rider. She deposed that accused Bharat after stopping the motor-cycle, threw acid on her. She further deposed that after registration of FIR, family members of accused Bharat came to her house for compromise but they refused. Her cousin Deepak disconnected their electricity and threw their goods outside threatening her to withdraw the case. She deposed that at the time of incident, accused Mahender was wearing a blue colour T-shirt and that both accused were wearing handkerchiefs on their faces and accused Bharat was also wearing helmet.

When asked by Ld. Addl. PP in the form of leading

question, she admitted that when in the morning of 07.08.2013, accused talked to her on mobile phone of her friend Rakhi, he told that “ Yadi tum sham ko mujhe nahi mili to tujhe kisi aur ke layak bhi nahi chhodunga or aisa haal kar doonga ki tu apni shakal ayne me bhi na dekh sake”. She further admitted that she wanted to marry one boy namely Anoop and that accused Bharat was opposed to the same and wanted to marry her without her consent. Pleading ignorance about the fact that accused Mahender is the son of maternal uncle of accused Bharat, she admitted that in the process of throwing acid on her, some acid had also fallen on the left hand of accused Mahender. She identified her clothes i.e burnt shirt, salwar and bag, which she was carrying at the time of incident as Ex.P1.

In her cross-examination by Ld. Defence Counsel for accused Bharat, admitting that she did not tell her parents about the incident of accused having slapped her and having removed SIM of her mobile phone, she volunteered that she did not want the relationship of her cousin and his wife to be broken because of accused. On some points, she was confronted with her statement EX.PW1/A.

In her cross-examination done on behalf of accused Mahender, she stated that she does not remember whether her signatures were obtained on her statement or not and stated that she had put thumb impression on the statement. She deposed that she had

handed over her clothes at the PS. She deposed that on the day of incident, she was carrying mobile having no. 9210714924, which was earlier being used by her father.

6. PW-2 ASI Ashok Kumar is the duty officer, who on the intervening night of 07.08/08/13 at about 9.10 pm, on the basis of rukka received from Ct. Santosh sent by SI Ashish, registered the present case FIR Ex.PW2/A and made his endorsement Ex.PW2/B.

7. PW-3 Sh. Daya Kishan is the father of victim/complainant. He deposed that on 07.08.2013, at about 8 pm, he received an information from his nephew Deepak that two boys on a motor-cycle had thrown acid on his daughter Sapna near GTB Park, Gate No.11. He alongwith his wife Usha rushed to the GTB hospital. He deposed that they found Sapna on the check post, near GTB Hospital, where PCR officials were recording her statement. They then took Sapna to the hospital for treatment. SI Ashish came in the hospital and recorded statement of victim Sapna. Witness deposed that father of accused Bharat came and met him in the hospital and tried to compromise stating that Bharat had committed a mistake. He deposed that he was still getting threats from his nephew Deepak to withdraw the case, failing which he would throw acid on them.

8. PW-4 is Smt. Laxmi, who deposed that she, Rakhi and victim Sapna were working in a packing factory at Dilshad Garden. She deposed that on 07.07.2013, she, Rakhi and Sapna together were going towards their respective houses from factory and when at about 7.15/7.30 pm, they reached at the gate no.10 of GTB Hospital, two boys came on a bike and threw something on Sapna due to which she started crying. She deposed that those boys fled away at a fast speed. She could not note down the number of motor-cycle and could not see the faces of those boys.
9. PW-5 Rakhi also deposed on the lines of PW-4 Smt. Laxmi. In her cross-examination by Ld. Addl. PP, she admitted that on 07.08.2013 at about 9 am, a call was received at her mobile phone no. 9971194175 and that caller did not tell his name, however, he wanted to talk to Sapna. She further admitted that Sapna had told her that she wanted to marry with Anoop.
10. PW-6 Inspector Narender, who was then posted as SHO, PS. GTB Enclave proved certificate u/s. 65-B of Indian Evidence Act, Ex.PW6/A.
11. PW-7 Dr. Varun Kulshreshtha, deposed that in the year 2013 he had examined and treated one Sapna D/o. Dayu Kishan and

proved the opinion given by him on nature of injuries as Ex.PW7/A. As per him, injuries were grievous in nature.

12. PW-8 is Sh. Anup Kumar, who deposed that earlier he and Sapna were working in the same factory and that they started liking each other and were in relationship. He deposed that on 01/02.08.2013, Sapna had made telephone call to him and told that accused Bharat, who was brother of her sister in-law was harassing and following her. Thereafter, he reached near Janta Flat, GTB Enclave and met Sapna, who told him that Bharat was following her on a motor-cycle. Thereafter, he dropped Sapna at her house. He deposed that he after taking the number of accused Bharat from Sapna, tried to talk to him but he did not pick up his call. He deposed that on 07.08.2013, he came to know about the incident of throwing acid on Sapna. He deposed that on 08.08.2013, on his asking, Sapna told him that acid was thrown on her by accused Bharat and that she had seen him throwing acid on her.

13. PW-9 Sh. Sanjeev Kumar deposed that accused Bharat was working at his shop of Gold Smith and that accused used to come at his shop after 3 pm and during day time, he used to drive the school van. He deposed that on 07.08.2013, at about 4.30 pm, he had sent accused Bharat at the shop of his brother in-law situated at Nand



Nagri, to bring goods in his Santro Car, from where, accused Bharat returned at about 7.45/8pm. He deposed that after few days police lifted accused Bharat from his shop and when they reached PS, they were told that accused Bharat had thrown acid on a girl and that accused was on a bike at the time of incident. He deposed that he had told the police officials that Bharat had taken his Santro Car but they did not listen him and took his signature. He further stated that on the directions of the police, he handed over an old bike of the accused, which was out of order to the police.

In his cross-examination by Ld. Counsel for accused Bharat he deposed that the aforesaid bike was brought to PS in tempo and he had paid Rs.700/- to the tempo driver.

14. PW-10 Sh. Mukesh is brother of victim Sapna. He deposed that on 07.08.2013, he received a telephonic call from Deepak, who is son of his Tau that Sapna had met with an accident and is hospitalised. He came back to his house and found that hand of Sapna was under bandage.

15. PW-11 Ct. Yogesh on receiving the telephonic information that Sapna daughter of Daya Kishan was got admitted at GTB Hospital by Ct. Pramod with acid burns, had recorded DD No.80-B Ex.PW11/A, which was marked to SI Ashish.

16. PW-12 Ct. Gaurav joined the investigation of this case with SI Ashish, Inspector Rakesh Kumar and Ct. Amar Pal on 22.08.2013. He deposed about the arrest of accused Bharat from the shop of a Jewel smith at Weaver Colony vide memo Ex.9/B. He also deposed that accused Bharat got recovered the motor-cycle, which was seized vide memo Ex.PW9/A, thereafter, motor-cycle was driven by him to PS. Accused pointed out the spot vide memo Ex.PW12/A. He deposed that bottle of acid could not be recovered. He deposed about disclosure statement Ex.PW12/B made by accused.

In his cross-examination by Ld. Defence Counsel for accused Bharat, he denied the suggestion that at the time of seizure bike was out of order with no petrol or that the bike was taken to the PS in a tempo.

17. PW-13 is Dr. Sushma, who proved the MLC of victim prepared by Dr. Manish Chhabra, who had left the hospital.

18. PW-14 Smt. Usha is the mother of victim. She deposed that on 07.08.2013, from Deepak, who is son of her Jeth, she came to know regarding burn injuries suffered by her daughter Sapna near Gate No. 11, GTB Hospital. She alongwith her husband immediately went to GTB Hospital and found her daughter Sapna standing near

PCR Van parked outside the gate of GTB Hospital. They took Sapna to the hospital, where her statement was recorded by the police.

19. PW-15 Sh. Pawan Singh is the Nodal Officer from Idea Cellular Ltd., who proved the Customer Application Form (CAF) Ex.PW15-A and copy of ID Card provided by customer as Ex.PW15/B and deposed that as per record, mobile no. 8512088815 was issued in the name of Bharat. He also proved the call detail records of above said mobile number from 20.07.2013 till 22.08.2013 as Ex.PW15/C and Cell ID location Chart as Ex.PW15/D. Certificate u/s. 65-B of Indian Evidence Act was proved as Ex.PW15/E.
  
20. PW-16 Smt. Kamlesh deposed that her daughter Rakhi was using her mobile SIM of Airtel Company and when suggested by Ld. Addl. PP in the form of leading question, she admitted that mobile number was 9971194175. She also admitted that her photo is appearing at point A on Customer Application Form (CAF) Ex. PW16/B.
  
21. PW-17 Sh. Surender Kumar is the Nodal Officer, from Bharti Airtel Ltd. He proved the customer application form (CAF) of mobile number 9971194175 alongwith photocopy of election I Card of customer as Ex.PW17/A registered in the name of Kamlesh.

He also proved the call detail record and ID Chart of abovesaid mobile phone from 07.08.2013 to 07.08.2013 as Ex.PW17/B and Ex.PW17/C. He also proved the certificate u/s. 65-B of Indian Evidence Act as Ex.PW17/D.

22. PW-18 Dr. P.K.Phukan, deposed on behalf of Dr. Sober Chaturvedi, who had left the hospital and whose whereabouts were not known. He proved the Medical Examination Report of accused Mahender prepared by Dr. Sober Chaturvedi as Ex.PW18/A.
23. PW-19 Constable Santosh had gone to GTB Hospital with SI Ashish on receipt of DD No. 80-B. He deposed that statement of victim Sapna was recorded in the hospital, rukka was prepared and through him FIR was got registered. He deposed that at the instance of victim Sapna, site plan of the place of occurrence was prepared by IO/SI Ashish.
24. PW-20 Ct. Narender joined the investigation of this case on 12.08.2013 and deposed that father of victim Sapna namely Daya Kishan had brought Rakhi and Laxmi, friend of Sapna, to the police station, where their statements were recorded by IO/SI Ashish. He again joined the investigation of this case on 15.08.2013 when statement of complainant's brother Mukesh and his friend were

recorded. He deposed that on 16.08.2013, victim Sapna had come to the PS and had confirmed that Acid was thrown on her by accused Bharat. She had also handed over her clothes, which she was wearing at the time of incident, to the IO, which were seized vide memo Ex.PW1/B. He also deposed about statement of Kamlesh recorded by IO on 19.08.2013 regarding SIM Number, which was being used by her daughter Rakhi. He identified the clothes and one jean bag of victim as Ex.P1.

In response to the leading question put Ld. Adl. PP, he admitted that SIM Number was 9971194175 and that name of friend of Mukesh was Anoop.

This witness was recalled after filing of supplementary charge-sheet for further examination and he deposed about his taking of two sealed parcels to FSL Rohini on 21.10.2013.

25. PW-21 Ct. Suraj Mal, joined the investigation of this case on 23.08.2013 alongwith IO/SI Jitender Singh. He deposed about arrest, personal search and disclosure statement of accused Mahender vide memos Ex.PW21/A, Ex.PW21/B and Ex.PW21/C. He also deposed about recovery of clothes of accused Mahender i.e one Jeans and one T-Shirt having spot of acid from his house, which were seized vide memo Ex.PW21/D. He also deposed that during personal search of accused, they noticed some acid burn spot on his

left hand. He also identified the clothes recovered from accused Mahender i.e T-Shirt of faded blue colour and one dark trouser of blue colour as Ex.P2.

26. PW-22 is Dr. Kanak Lata Verma from FSL. She deposed that she had received two parcels for examination and after examining, the exhibits were found containing Mineral acid; Hydrochloric Acid and Sulphuric Acid. She proved her report as Ex.PW22/A.

In response to a court question, she deposed that mixture of Sulphuric Acid and Hydrochloric acid can be used for the purpose of committing offence or for causing injury.

27. PW-23 HC Vedprakash is the MHC(M). He deposed about depositing of parcels in the malkhana by IO/SI Ashish Dhahima on 16.08.2013 and 22.08.2013 vide entry Ex.PW23/A and Ex.PW23/B and by SI Jitender on 23.08.2013 vide entry Ex.PW23/C. He also deposed that on 21.10.2013, he had sent two parcels alongwith sample seal to FSL Rohini vide RC No. Ex.PW23/D and that after depositing the same Ct. Narender handed over him the receipt Ex.PW23/E. He also deposed about receiving of FSL result on 07.01.2014.

28. PW-24 SI Ashish Dahima deposed that on 07.08.2013 on receiving of DD No.80-B at about 8.25 pm regarding acid burn of Sapna, he alongwith Ct. Santosh reached GTB Hospital, where he collected the MLC of victim Sapna and recorded her statement. He got registered the FIR and prepared the site plan at the instance of victim. He also deposed about recording of statement of prosecution witnesses namely Laxmi, Rakhi, Daya Kishan, Anooa and Mukesh on 12.08.2013 and 15.08.2013. He also deposed that on 16.08.2013, victim had handed over her clothes, which she was wearing at the time of incident and one bag, which were seized by him on 16.08.2013. He had also got recorded statement of Sapna u/s. 164 Cr.P.C. He also deposed about arrest, personal search and disclosure statement of accused Bharat on 22.08.2013. He deposed that accused had produced his motor-cycle used in the commission of offence, which was seized by him vide memo Ex.PW9/A. He had also obtained the CDRs of mobile nos. 8512088815 and 9971194175. He had also seized the mobile phone alongwith SIM recovered in the personal search of accused Bharat. He had also sent the exhibits to FSL and obtained the result of FSL. He also deposed about arrest, personal search and disclosure statement of accused Mahender conducted by PW-25 SI Jitender. He also identified the clothes and bag of victim as Ex.P1 and motor-cycle No. DL8SM 6601 as Ex.P2.

In his cross-examination by Ld. Counsel for accused

Bharat, he deposed that the motor-cycle recovered at the instance of accused Bharat, was driven to the PS by PW-12 Ct. Gaurav.

29. PW-25 SI Jitender is the second IO, who received the case file of the present case on 23.08.2013. He deposed that on being interrogated, accused Bharat disclosed that he with the help of Mahender, who was the son of his maternal uncle, had thrown acid upon complainant/victim Sapna. He also deposed about arrest, personal search and disclosure statement of accused Mahender. He also deposed that accused Mahender had disclosed that in the process of throwing acid upon Sapna, some drops of acid had also fallen on his hand. He deposed that accused Mahender got recovered one pant of colour black/dark blue and one T-shirt of navyblue colour round collar full sleeved, which were seized by him vide memo Ex.PW21/D. He identified the above mentioned clothes when produced in the court as Ex.P2.

30. Statement of both the accused were recorded u/s. 313 Cr.P.C., wherein they claimed themselves innocent and opted to lead defence evidence and examined Sh. Deepak Kumar as DW-1, who deposed that he is the owner of shop no. 32, B-5 Market, Nand Nagri and that he had allowed his uncle Daya Kishan (father of complainant/victim) to reside at the first floor of this property



alongwith his family. He deposed that when he tried to get his property vacated, a quarrel took place between him and his uncle and since his brother in-law i.e accused Bharat intervened, Daya Kishan threatened to see him. He also deposed that he had lodged certain complaints to SHO, PS. Nand Nagri DCP and ACP Ex.PWDW1/A.

In his cross-examination by Ld. Addl. PP, a suggestion was given to him that he moved application Ex.DW1/A dt. 21.08.2015, after about two years of the incident, which he denied. His attention was also drawn to document Mark DW1/DX, wherein it is mentioned that Sh. Daya Kishan resides at shop No. 9/32 with him family for last 20-22 years. He admitted that he did not stand as surety for accused Bharat.

31. Arguments were heard by Sh. Sanjay Kumar, Ld. Addl. PP for the State assisted by Ms. Shalini Rana, Ld. Counsel for complainant as also by Sh. N.K.Rathi, Ld. Defence counsel for accused Bharat and Sh. Sunil Chaudhary, Ld. Counsel for accused Mahender.

32. Ld. Counsel for accused Bharat argued that complainant in her first statement given to the police as well as in her statement u/s. 164 Cr.P.C, stated that two boys came on a motor-cycle and that pillion rider threw acid upon her while in her testimony before the

court, she deposed that accused Bharat, who was driving the motor-cycle had thrown acid upon her, as such there is contradiction in the testimonies of complainant. He further argued that there was a property dispute between Deepak, brother in-law of accused and father of complainant, which is why accused has been falsely implicated in the present case. He argued that PW-4 & PW-5 have not supported the case of the prosecution and PW-5 Rakhi denied to have received the call of accused Bharat on her mobile phone on the day of incident. He further argued that PW-8 Anoop Kumar deposed that he had come to know about the incident on 07.08.2013, however, PW-1 nowhere stated that she informed about the incident to PW-8 on the day of incident itself. He further argued that PW-9 has proved that the motor-cycle was out of order and he had paid Rs.700/- as fare of tempo for taking the motor-cycle to the PS as against the statement of PW-12 who deposed the motor-cycle was driven to the PS by him. He argued that as per PW-15 Sh. Pawan Singh, Nodal Officer from Idea Cellular Ltd., the range of tower varies from 0 to 3 km and that PW-9 has deposed that accused had gone to bring goods from the shop of brother in-law situated at Nand Nagri that falls within the area of 3 kms from the place of incident. He further argued that victim has given three different versions regarding the incident and that motor-cycle was planted upon the accused.

33. Ld. Defence Counsel for accused Mohinder argued that Ct. Pramod and ASI Harbeer, who had admitted complainant/victim in the hospital, have not been made witness. He further argued that PW-21 Ct. Suraj Mal told that pullandas were not prepared in his presence and that Ct. Neelam can tell as to where were the clothes recovered from the house of accused Mahender were converted into parcel. He further argued that clothes of victim were not seized at the first instance and that later on she herself produced the same in the PS. He deposed that T-shirt and Pant having spot of acid burn as shown to have recovered from accused Mahender are planted and that PW-21 Ct. Suraj Mal deposed that Jean Pant was recovered from the house of accused Mahender, however, when case property was produced in the court, it contained a dark trouser of blue colour and not the jean. He further argued that both sleeves of the T-Shirt were intact. He further argued that complainant/victim has not named accused Mahender even in her statement u/s. 164 Cr.P.C and stated that she could identify him as he was wearing helmet at that time. He further argued that clothes of accused Mahender were seized on 23.08.2013, however, the same were received at FSL after about two months i.e on 21.10.2013.

34. Sh. Sanjay Kumar, Ld. Addl. PP for the State assisted by Ms. Shalini Rana, Ld. Counsel for complainant argued that from the

evidence adduced on record, it has been proved that complainant/victim suffered an acid attack by accused and his associate, who came on a motor-cycle and threw acid upon complainant near gate no.11, GTB Hospital. It has been further argued that prosecution witnesses have corroborated each other materially and the medical evidence has also supported the case of prosecution. He argued that prosecution has been able to prove its case beyond reasonable doubt.

35. I have perused the record as well as the written submissions filed on behalf of complainant and have given my thoughtful consideration to the arguments advanced by both the sides.

36. Initially, when first statement of complainant was recorded immediately after the incident, she had only told about the incident happened with her. She did not specify the names of accused persons since by that time she was not in such state of mind, so as to recollect all the things, which had happened with her in the past and could only tell about the incident took place on that day in brief, since she had suffered an acid attack, which not only harmed her physically but had completely shattered her mentally also. She narrated the incident in detail with the events, which took place in past also, in her statement u/s. 164 Cr.P.C since by that time she had been able to link

the present incident with the acts done and threatenings given by accused Bharat in past. In both the above statements recorded during a short span of time, she deposed that accused Bharat had thrown acid upon her while sitting as a pillion rider, whereas in her testimony before the court recorded on 23.05.2014, she deposed that accused Bharat was driving the motor-cycle. She however, remained firm on her stand not shaken in cross-examination that it was accused Bharat, who had thrown acid upon her and did not change her version by saying that it was accused Mahender, who had thrown acid upon her. Her mentioning in her deposition before the court that accused Bharat was driving the motor-cycle may be because of forgetfulness or lapse of time during which she had to undergo many physical as well as mental hardships because of the acid attack suffered by her. She, however, remained consistent throughout her statement that it was accused Bharat, who had thrown acid upon her. Further, Complainant was not confronted with her earlier statements, wherein she stated that accused Bharat was sitting as a pillion rider. She must have been afforded an opportunity to explain the contradiction coming in her testimony and in absence of a clarification having been sought from the witness on this issue, the fact mentioned in the earlier statements cannot be considered as against the evidence given in the Court and seeming factually correct. This can be considered as an innocuous act for the case of prosecution.

37. The Hon'ble Supreme Court in its judgment in **2011 (2) ACJ 076 (SC)** differentiated normal discrepancies and the contradictions. It was held that : “ *In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about truthfulness of the witness and other witnesses also make material improvements while deposing in the court, such evidence cannot be safe to rely upon. However minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not effect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.*”

**Hon'ble Supreme Court in 2012 (2) RCR(Criminal)231, Sampath Kumar Vs Inspector of Police Krishangiri referring to Vadivelu Thevar Vs. State of Madras AIR 1957SC614 spoke of three category of witnesses:** those that are wholly reliable, those that are wholly unreliable and who are neither wholly reliable nor wholly unreliable. In the case of the first

category the courts have no difficulty in coming to the conclusion either way. It can convict or acquit the accused on the deposition of single witness if it is found to be fully reliable. In the second category also there is no difficulty in arriving at an appropriate conclusion for there is no question of placing any reliance upon a deposition of a wholly unreliable witness. It is only in the case of witnesses who are neither wholly reliable nor wholly unreliable that the Courts have to be circumspect and have to look for corroboration in material particulars by reliable testimony direct or circumstantial. The Hon'ble Supreme Court thus held that the testimony of a witness who is not wholly reliable or wholly unreliable, can be relied if it is corroborated on material aspects. PW1 is the witness of third category but has given a consistent statement on material aspects, which is corroborated by the evidence of other public witnesses and the evidence of witnesses of investigation and medical examination.

**In Inder Singh & Anr. Vs. The State (Delhi Administration), (1978) 4 SCC 161 at page 162,** the Hon'ble Supreme Court held:

*“Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof of beyond reasonable doubts should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly,*

*it is argued that it is artificial; if a case has some flaws, inevitably because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubts is a guideline, not a fetish, and guilty man cannot get away with it because truth suffers from infirmity when projected through human processes. Judicial question for perfect proof often accounts for police presentation of **tool- proof** concoction. Why take up? Because the court asks for manufacture to make truth look true? No, we must be realistic?”*

38. It is relevant that PW-1 has suffered an acid attack, which not only physically harmed her but also ruined her mentally as well as socially. She suffered acid burn wounds over right arm, forearm, neck, right cheek & mandible region, left hand and lower forearm and the injuries suffered by her were opined to be grievous in nature. The incident might have affected her judgment of recollecting the exact facts also. Additionally, her evidence in the court has been recorded at an interval of around one year. Surprisingly, the prosecution also did not make any effort to put the earlier versions of the witness to her or to get the latter version clarified. The witness in any case remained consistent on several aspects as discussed above,



which shows that it was accused Bharat who alongwith co-accused came on a motor-cycle and threw acid upon complainant. In view of all these facts and the judgments of the Hon'ble Supreme Court cited above, the evidence of the witness appears truthful and trustworthy.

39. PW-1 complainant Sapna has deposed that accused Bharat had proposed her for marriage, to which she refused and that on 25.06.2013, accused Bharat had come to her house when she was alone and had again proposed her for marriage and on getting refused from her, slapped her and removed her mobile phone. She has also deposed that accused had talked with her on the mobile phone of her friend Rakhi, in the morning of 07.08.2013 and had asked her to meet him in the evening and when she refused, he had threatened her to spoil her face while saying “ Yadi tum sham ko mujhe nahi mili to tujhe kisi aur ke layak bhi nahi chhodunga or aisa haal kar doonga ki tu apni shakal ayne me bhi na dekh sake”. She in her cross-examination has stated that she did not tell these facts to her parents since she did not want the relationship of her cousin and his wife to be broken because of accused. The above testimony of complainant proves that accused had both intention as well as motive to commit the offence as he was deeply infatuated with her and wanted to marry her but since the complainant was in love with PW-8 Sh. Anup Kumar he was jealous of her relationship with him.

40. PW-15 Sh. Pawan Singh Nodal Officer has proved on record the call detail record of mobile number 8512088815 being used by accused Bharat at the relevant time, alongwith Cell ID location Chart, which proves the location of accused near the place of incident at the time of occurrence. PW-5 has also admitted the fact of receiving calls on her mobile phone in the morning of 07.08.2013 and further that caller had talked to Sapna. Call detail record of accused Bharat when compared with call detail record of PW-5 Rakhi, who at the relevant time was using mobile no. 9971194175, which fact has also been proved by the testimony of PW-16 Smt. Kamlesh, mother of Rakhi, proved that accused Bharat in the morning of 07.08.2013 had called twice on the mobile phone of Rakhi within a very short span of time and talked with complainant/victim. The first call was only for 6 second and thereafter, he again called at Rakhi's mobile and talked with complainant for a total 8 minutes and 7 second, which strengthens the version of complainant as detailed above that accused slapped her and took away SIM of her mobile and that is why called at her friend's number and that on the refusal of complainant to marry him and to meet him in the evening of 07.08.2013, he alongwith co-accused gave shape to his evil plan and as per his threatening, threw acid upon complainant. A combined reading of all the statements of complainant alongwith call detail record of accused Bharat and PW-5

Rakhi shows that her each statement is explanation to earlier one and cannot be termed as improvement and proved the guilt of accused.

41. Further, complainant/victim Sapna has stated in her testimony before the court that her cousin Deepak had come in the hospital after the incident and that she had narrated the entire incident to him, on which he had talked with accused Bharat and thereafter, asked her not to file a case or else he would throw them out of the house. Cousin of complainant namely Deepak, who is also the brother in-law of accused Bharat and has been examined as DW-1 has denied having any talk with accused Bharat, as alleged by complainant. However, call detail record of accused Bharat further proves that he received two calls (one at 8.30 pm and another at 8.34 pm) from the mobile phone of DW-1 Deepak after the incident on 07.08.2013 as has been deposed by the complainant. With this material on record, the entire evidence of DW-1 becomes unbelievable and version of complainant becomes more trustworthy.

42. PW- 4 Laxmi and PW-5 Rakhi though have not identified accused persons as the perpetrator of crime, however, have supported the case of prosecution on the facts and deposed that when on 07.08.2013, they alongwith complainant were going towards their houses, two boys came on a motor-cycle and threw acid upon

complainant, due to which complainant sustained injuries.

43. PW-1 Complainant Sapna, though could not tell the entire number of license plate of the motor-cycle, however she told the last three digits as '601' and that motor-cycle was of black colour. This statement of complainant finds corroboration from the testimony of PW-12 Ct. Gaurav & PW-24 SI Ashish Dahima, who deposed that accused Bharat got recovered a black colour motor-cycle with license plate no. DL8SM 6601, thus proving that the abovesaid motor-cycle was in fact used in the commission of offence.

44. Arguments of Ld. Counsel that motor-cycle recovered from accused Bharat was out of order with no petrol and that the same was lifted in a tempo and PW-9 Sanjeev Kumar had paid Rs.700/- to the tempo driver, is highly unbelievable since he had failed to explain as to why a prudent man, who has no concern with the matter, will pay the fair of a vehicle, which is being taken to PS by the police officials alongwith the accused. Further, from the deposition of PW-12 Ct. Gaurav and PW-24 SI Ashish Dahima, it is proved on record that motor-cycle was driven to the PS by PW-12 Ct. Gaurav after starting the same with ignition wire as the keys of the same were not provided. Further, no receipt of fare allegedly given to the Tempo driver was collected nor he was examined as a defence

witness to prove the defence of accused. Thus, PW-9 Sanjeev Kumar being the employer of accused Bharat appears to have been biased towards accused and deposed at the instance of accused just to save him from legal punishment.

45. The argument regarding false implication of accused Bharat because of property dispute between father of complainant and her cousin Deepak is baseless. Though, it has not been proved on record that there was any property dispute between father of complainant and Deepak (brother in-law of accused) prior to the incident, even if, we assume that there was a property dispute between Deepak and father of complainant, why would they implicate brother in-law of Deepak and not Deepak himself, is a question, which needs to be answered and understood.

46. Accused Mahender is the son of maternal uncle of accused Bharat. Complainant in her very first statement had mentioned about two persons, who came on motor-cycle and identified only one as Bharat and later on accused Bharat disclosed the name of co-accused Mahender, who was arrested on 23.08.2013. During personal search of accused Mahender some, acid burn spots were noticed by the police party on his left hand, which fact has also been corroborated by PW-18 Dr. P.K.Phukan, who proved the

medical examination report of accused Mahender Ex.PW18/A and deposed that there was an old wound over left forearm.

Accused Mahender had also got recovered clothes i.e T-Shirt and pant, which he was wearing at the time of incident. The clothes were also having acid burn spot. As per FSL report Ex.PW22/A, cloths recovered from accused Mahender were found to contain Mineral acid: Hydrochloric Acid & Sulphuric Acid, which acid was also detected on the clothes of complainant/victim, which proves the version of complainant that in the process of throwing acid on her, some drops of acid were also fallen on accused Mahender also. The argument of Ld. Counsel that PW-21 Ct. Suraj Mal deposed that Jean Pant was recovered from the house of accused Mahender, however, when case property was produced in the court, it contained a dark trouser of blue colour and not the jean, hardly makes any difference since recovery of clothes having acid burn spot, from accused Mahender has been proved by other prosecution witnesses including PW-25 SI Jitender, who deposed that accused Mahender got recovered one pant of colour black/dark blue and one T-shirt of navyblue colour round collar full sleeved, which were seized by him vide memo Ex.PW21/D and Prosecutrix, who has also deposed that accused Mahender was wearing a blue colour T-shirt at the time of incident. Further, 'Dr. Morepen Burnol Cream' for burns was also recovered in the personal search of accused Mahender. With regard

to arguments of Ld. Counsel, that the sleeves of T-shirt of accused Mahender were found intact, the testimony of PW-25 SI Jitender is relevant, who in his cross-examination stated that “ It is correct that the front portion of the T-Shirt which is produced in the court is absent as already cut and the sleeves are intact and left leg of the pant is already cut and the right leg lower portion is also cut”. Explaining the same, it was submitted by Ld. Addl. PP that the case property was sent to FSL and the same was examined by the expert. There is nothing surprising in sleeves of the T-Shirt of accused having been found intact, since accused might have been wearing the T-shirt after folding the sleeves. No suggestion to this effect has been given to the witness, as such, he was not given any opportunity to explain the fact of T-shirt of accused Mahender found with sleeves intact. Further, report of PW-18 Dr. P.K.Phukan Ex.PW18/A which says that on examining the old wounds present over left forearm, nature of injury due to acid cannot be ruled out, proves the version of complainant that in the process of throwing acid upon her, accused Mahender also sustained burn injuries on his left arm.

47. Non-examination of Ct. Pramod and ASI Harbeer, who had admitted complainant in the hospital, does not affect the case of prosecution in any way when the incident and fact of complainant's having suffered acid burn injuries, have otherwise been proved on

record.

48. In view of above, the evidence of prosecution witnesses including complainant, medical evidence and other material brought on record, is sufficient to conclude that both the accused shared a common intention and to give effect to the same, threw acid upon complainant, thereby causing disfigurement of her face and other bodily injuries. Thus, both the accused are held guilty and convicted for the offence punishable u/s. 326-A/34 IPC. Let they be heard on the point of sentence.

**Announced in the open court  
on 05.05.2017**

**(Sanjeev Kumar Malhotra)  
ASJ/FTC/E-COURT  
Shahdara/KKD/Delhi**