

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Jail Appeal No. 296/1997

Sheru Khan son of Shri Gulab Khan, resident of Sankarna, Police Station Ahore, District Jalore, (presently lodged in Central Jail, Bikaner).

-----Petitioner

Versus

State of Rajasthan

-----Respondent

For Petitioner(s) : Mr. Aman Bishnoi Bola (Amicus Curiae)

For Respondent(s) : Mr. C.S. Ojha, PP

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE SUNIL BENIWAL**

Judgment

Reserved on : 08/07/2025

Pronounced on : 16/07/2025

(PER HON'BLE BENIWAL, J.)

1. The present appeal is being preferred by the accused-appellant being aggrieved by the judgment dated 29.05.1997 passed by the learned Sessions Judge, Jalore in Sessions Case No.51/1996, whereby he was convicted for the offences under Sections 452, 324, 326 and 302 IPC and was acquitted for the offence under Section 307 IPC.

2. The facts in nutshell arising to the present appeal are that a complaint was lodged by one Smt. Shayra wife of Nene Khan while contending that on 19.05.1996, at around 09.00 A.M., she was feeding her son Mustaq while sitting in her house outside her room and her second son Salim, her niece Zubeda were also sitting with

her. At that moment, accused-appellant Sheru Khan came with one steel canister in his hand and asked whereabouts of Nene Khan, her husband. On this, Shayra replied that he was not at home. On knowing this, accused-appellant opened the lid of the steel canister and threw acid on all four persons who were sitting there and after pouring acid on them, the accused-appellant ran away. It is further stated that later, on raising hue and cry by the injured persons, one Vija Ram Rebari (PW-7) came there and thereafter Sataar Khan (PW-4) also came and all the injured persons were taken to hospital where they were admitted. The motive for committing the said offence was that the accused-appellant was married to Zubeda, however later he divorced her. Since Zubeda was taken by Shayra to her home, the accused appellant intended to kill her and that is why he committed this offence of throwing acid on her and other persons who were sitting with her. On the said complaint, the investigation was commenced and on completion of investigation, charge-sheet was filed and later on charges were framed against the accused-appellant for the offences under Section 307, 326 and 452 IPC, however, one Mustaq died while under treatment and therefore offence under Section 302 was also added.

3. The prosecution in order to establish its case produced as many as 20 prosecution witnesses and 33 documentary evidence were exhibited and statement of accused-appellant under Section 313 CrPC was also recorded. The learned trial court after considering the entire evidence available on record, proceeded to convict the present appellant by the impugned judgment.

4. Learned counsel appearing for the appellant while challenging the impugned judgment made the following submissions:-

(i) The complainant PW-1 Smt. Shayra, who is also an eye witness, cannot be considered as trustworthy witness to the incident as she had improved her version in the statement given before the Court wherein she had stated that the incident was also witnessed by one Guddi who was in bathroom.

(ii) The PW-3 Salim who is brother of the deceased Mustaq has stated that he has named accused-appellant as told by PW-16 Zubeda and therefore his statement cannot be said to be a reliable statement.

(iii) Doctor B.L. Chouhan, PW-12, has clearly stated that medical opinion was not brought on record nor did he provide the medical opinion. Therefore, in absence of the same, the accused-appellant could not have been convicted.

(iv) The recovery of the steel canister was recovered from the open place and therefore the requirement of Section 27 of the Evidence Act was not complied with. Learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court in the case of Manjunath and Ors. Vs. State of Karnataka [2023 INSC 978] in order to contend that recovery of weapon from open place accessible to all is not at all a reliable recovery as required under Section 27 of the Evidence Act.

(v) The witness to the recovery of steel canister has turned hostile and therefore prosecution failed to establish the recovery of the steel canister in which accused brought the acid.

(vi) The independent eye witness PW-7 Vija Ram has turned hostile and has not supported the prosecution story and other witnesses are all family members of the deceased Mustaq and, therefore, all are interested witnesses.

(vii) There was no motive to cause any injury or to murder Mustaq and in absence of any motive being established by the prosecution, the accused-appellant cannot be convicted under Section 302 of IPC.

4.1 Counsel for the accused-appellant, after making the aforesaid submissions submitted that even if the guilt of the appellant-accused is established yet it cannot be said to be a case of Section 302 IPC as even as per the prosecution story, there was no motive at the behest of the appellant-accused to kill Mustaq and that being so, the present case would not fall under Section 302 of the IPC and should be considered as a case of culpable homicide not amounting to murder and, therefore, the sentence is required to be modified accordingly.

5. Per contra, learned counsel for the respondent-State while justifying the impugned judgment has made the following submissions :-

(i) the present incident occurred in day light and the said incident has happened in presence of PW-1 Shayra, PW-3 Salim, PW-6 Guddi and PW-16 Zubeda.

(ii) PW-1, PW-3 and PW-16 were eye witnesses as well as injured witnesses and, therefore, their testimonies cannot be disbelieved. All the three witnesses have categorically deposed that on 19.05.1996, the accused-appellant came and caused injury by acid attack. Out of the said attack, all the three above

referred witnesses sustained injuries including the deceased Mustaq who succumbed to those injuries and died after one and a half month of the incident. This clearly establishes the fact that the accused-appellant was the person who attacked on 19.05.1996 on account of which deceased Mustaq sustained injuries including PW-1, PW-3 and PW-16, so also the fact that he was present at the place of incident at the relevant time.

(iii) The recovery of steel canister was though from an open place but that was hidden in the bushes. Not only this, the name of the accused-appellant was ambushed on the canister and furthermore, the canister was having blackish colour inside it which was result of putting acid in it.

(vi) The PW-12 Dr. B.L. Chouhan who had examined the injuries, has clearly deposed that the acid injury which Mustaq sustained on account of acid attack was the prime reason for his death.

(vii) The PW-13 Dr. Vallabh Bhandari who examined the injuries sustained by PW-3 Salim Khan, PW-16 Zubeda and PW-1 Shayra, has clearly deposed that all these three persons sustained injuries on account of acid attack.

(viii) All the three eye witnesses as well as the injured witnesses namely PW-1, 3 and 16 while giving their statements before the Court have voluntarily shown the acid attack injuries to the Court.

(ix) The motive of causing injury by acid attack was fully established by the prosecution as accused-appellant was earlier married to Zubeda and, thereafter, they had a matrimonial dispute and since Shayra brought Zubeda to her home, therefore, appellant-accused planned to kill Zubeda as well as Shayra. In view of the said motive, appellant-accused had attacked and had

thrown acid on all four persons including Shayra, Zubeda, Salim and Mustaq. Unfortunately, Mustaq succumbed to those acid injuries and died while being treated after about one and a half month.

6. Heard learned counsel for the parties and perused the material available on record.

7. In order to appreciate the evidence available in the present case, it would be appropriate to first examine the statements of PW-1 Shayra, PW-3 Salim and PW-16 Zubeda, who are not only eye witnesses to the incident but also injured witnesses.

7.1. On perusal of the statement of PW-1 Shayra, who is also the first informant, it is revealed that on 19.05.1996, she was in her house sitting outside the room and was feeding milk to Mustaq who was aged about 4-6 months along with her son Salim (PW-3) and niece Zubeda (PW-16) who was the daughter of her brother, were also sitting with her. At around 09.00 A.M, on the said day, the accused-appellant came with one steel canister in his hand. After asking about Nene Khan, her husband and after knowing that he was not at home, accused-appellant opened the lid of the canister and poured the acid on all four persons including the deceased Mustaq. On account of such acid attack, PW-1, PW-3 and PW-16 and one Mustaq sustained acid injuries. On hearing the hue and cry of injured persons, PW-7 Vijaram reached the place of incident and few moments later, PW-4 Sattar Khan also arrived. Later, all four were taken to the hospital where they were admitted. The deceased Mustaq succumbed to those acid injuries and died after one and a half month.

7.2. PW-16 Zubeda deposed that she was married to the accused and they had two children out of the wedlock. The statement further reveals that the accused used to harass her and keep her confined in a locked room. The accused had divorced PW-16 Zubeda following which she returned to her maternal home. She further deposed that she had gone to attend a wedding ceremony in Mithdi where she met her aunt (*mami*) PW-1 Shayra. Thereafter, she went alongwith PW-1 Shayra to Jalore and stayed there. On the date of incident, she was sitting alongwith PW-1 Shayra, PW-3 Salim and Mustaq when the accused-appellant came and inquired about Nenu Khan (husband of PW-1 Shayra). On knowing about his absence, he opened the steel canister and threw the acid on all persons. Consequently, she suffered injuries and is not able to function properly.

7.3. The third witness PW-3 Salim, also narrated the incident as was narrated by PW-1 and PW-16, however, in his cross-examination, it is stated that he has named the accused-appellant as per what was told to him by Zubeda.

8. Learned counsel for the appellant has though contended that the statement of PW-1 Shayra is not trustworthy as she is exaggerating her version and has improved the story as to what was earlier narrated by her in the complaint, however, this Court is of the opinion that such exaggeration is not material and the consistent statement as made by her in the complaint, statement under Section 161 CrPC and the statement made before the learned trial court coupled with the fact that she herself sustained injuries is sufficient enough to establish the fact that she was a

victim and an eye witness to the incident which occurred on 19.05.1996.

9. As far as the statement of PW-3 Salim is concerned, it is contended by the counsel for the appellant that he has named the accused-appellant on the basis of what Zubeda told him. This Court is of the view that even if he has named the appellant-accused on the basis of what was said by Zubeda, however, fact is that he was present at the time of incident as he himself sustained acid injuries which is corroborated from the injury report (Ex. P/17) and statements of doctor PW-13 who had examined him. There is nothing available on record to negate the fact that PW-3 was absent at the time of incident.

10. The above statements clearly show that PW-1, 3 and 16 were present at the time when the incident in question happened which resulted in the death of Mustaq.

11. Learned counsel for the appellant submitted that one of the witnesses Vija Ram (PW-7) who was the first person to arrive at the place of incident has turned hostile. This Court is of the view that even if the statement of PW-7 Vija Ram is discarded yet the case against the accused-appellant is fully established. PW-1, 3 and 16 may be relatives of deceased Mustaq, yet their testimonies cannot be disbelieved solely on this ground, more particularly, when all these three witnesses have sustained acid attack injuries.

12. As far as the medical evidence is concerned, two witnesses namely PW-12 Dr. BL Chouhan and PW-13 Dr. Vallabh Bhandari have been examined by the prosecution. Another important medical evidence is Exhibit P/21, i.e. the injury report of accused-appellant.

12.1 PW-12 Dr. BL Chouhan in his examination-in-chief stated about the injuries which were noted on the body of deceased Mustaq. It is clearly opined that 70% injury on the person of Mustaq were burn injuries and those injuries were ordinarily sufficient enough to cause death. Even if the medical report was not prepared yet the description of injury as noted by Dr. BL Chouhan and also his opinion as to the cause of death was sufficient enough to establish the fact that on account of the acid attack made by the accused-appellant, Mustaq succumbed to those injuries and resultantly, he died.

12.2 Dr. Vallabh Bhandari PW-13 who examined injured witnesses Salim Khan, Zubeda and Shayra has also given details of their injuries in the respective injury reports (Ex.P/17, Ex.P/19 and Ex.P/20) which were noted when all these three injured witnesses were examined which clearly shows that these three persons sustained injuries on account of acid attack.

12.3 The Exhibit P/21 which is the injury report of the accused-appellant also indicates that while he attacked on Mustaq and other persons, he himself sustained injury on account of acid attack.

12.4 The depositions of the two Doctors i.e. PW-12 and 13, the injury reports of injured witnesses i.e. Exhibits-P/17, 19, and 20 and injury report of accused i.e. Exhibit P/21 clearly establish the fact that on 19.05.1996, the accused-appellant attacked by using acid upon Mustaq and other injured persons which ultimately resulted in death of deceased Mustaq.

13. Coming on to the mode/method used for carrying out the offence in question, it is noted that the act of throwing acid was

committed using a steel canister which was recovered during investigation by the police upon furnishing information by the accused-appellant under Section 27 of the Evidence Act (Ex.P/28). So far as the recovery of the steel canister is concerned, it is noted that the witness to the recovery proceeding namely PW-8 Narayan Lal did not turn hostile and stated in his examination-in-chief that the canister was found in the bushes. He stated in his cross-examination that he saw the police pulling out the canister from a ditch which was covered by mud.

13.1 There are two important facts which require consideration, firstly, the canister recovered was bearing name of the accused-appellant and secondly, the inside surface of the canister was found to be black on account of storing acid in it.

13.2 There is another aspect which is to be seen in the present case is that the canister is not the weapon used in the present incident but was only a container. As a matter of fact, it was an acid attack and it is the acid which has caused injury to the injured witnesses namely PW-1, 3 and 16 and the deceased Mustaq. It is further noted that the canister was recovered from the bushes and pulled out from a ditch covered with mud, therefore, it cannot be said that it was a completely open place visible to every person.

13.3 Moreover, the police has also seized the clothes of the victims vide Ex.P/7 to Ex.P/10 so also the accused-appellant vide Ex.P/26. The steel canister (Article-8) as well as the clothes of the victims and accused-appellant (Articles-3 to 7) were sent for forensic examination. The FSL report (Ex.P/33) clearly shows the presence of acid. It was opined as under:-

“On micro-chemical analysis:-

The distilled water extracts of the clothe cuttings contained in each of the packet marked A-3; A-4; A-5; A-6 and A-7 gave positive tests for the presence of sulphuric acid.

The distilled water extract of the container contained in the packet marked A-8 gave positive test for the presence of sulphuric acid.”

13.4 Thus, the prosecution has been successful in establishing the fact that the victims so also the accused-appellant were present at the place of incident and the acid was used as weapon.

14. The counsel for the appellant has also argued that since there was no motive of killing Mustaq, therefore, the appellant cannot be held guilty for the offence under Section 302 IPC. On the other hand, learned counsel for the State submitted that the accused in broad day light committed the offence with premeditated intention to kill the injured as well as deceased Mustaq.

15. Before adjudicating upon the conviction under Section 302 IPC, a perusal of the provisions contained in Section 300 IPC is necessary. The relevant part of the said section reads as under:-

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2ndly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4thly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for

incurring the risk of causing death or such injury as aforesaid.”

15.1 A perusal of this section reflects that in the third limb, that is, clause (c) of Section 300 IPC, culpable homicide is classified as murder if the act by which death is caused is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In the opinion of this Court, the act of the accused clearly falls within the ambit of Section 300 IPC clause (c). The evidence on record demonstrates that the accused intentionally inflicted severe bodily injuries upon the deceased child by deliberately throwing acid on all persons present, fully aware of the child's presence in his mother's lap.

15.2 The Hon'ble Apex Court in the case of ***Virsa Singh v. State of Punjab (1958 SCR 1495)*** observed as under:

“The prosecution must prove the following facts before it can bring a case under s. 300, 3rdly: First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved; these are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under s. 300, 3rdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.”

15.3 This Court is of the view that the legal test laid down by the Hon'ble Apex Court in **Virsa Singh (supra)** provides the settled framework for examining whether a culpable homicide falls within clause (c) of Section 300 IPC. The Hon'ble Supreme Court observed that "the prosecution must prove the following facts before it can bring a case under s. 300, 3rdly:

15.3.1. First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved; these are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

15.3.2. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature.

15.4 These ingredients, as laid down, create a clear and structured approach to applying clause (c) of Section 300 IPC. The first two elements require purely objective proof: there must be evidence establishing that a bodily injury was actually present on the victim, and the precise nature, location, and extent of that injury must be proved, typically through medical testimony. The third element introduces a subjective component: it must be shown that the accused intended to inflict that very bodily injury which is found on the deceased, excluding any possibility of accident or mistake. This means the prosecution must prove that

the injury was not unintended or of a different kind than what was actually caused.

15.5 This Court further notes that the fourth element, as explained by the Hon'ble Apex Court, is again an objective and inferential enquiry. It requires the court to determine whether the injury so intended and inflicted is, by its very nature, sufficient in the ordinary course of nature to cause death. The Supreme Court clarified that this part of the enquiry has nothing to do with the offender's knowledge or intention regarding the consequence of death. Once it is established that the accused intended to cause the particular injury, the only remaining question is whether, on a fair and objective medical or forensic assessment, that injury is sufficient to cause death in the ordinary course of nature. If these four elements are proved, the law treats the offence as murder under Section 300, clause (c), even if the accused had no intention to kill or knowledge that death would result.

16. This Court finds that, applying the test laid down by the Hon'ble Apex Court in ***Virsa Singh*** (supra), the act of the accused in the present case clearly falls within clause (c) of Section 300 IPC. The first requirement under the test is that there must be a bodily injury present and proved. The evidence on record unequivocally establishes that the deceased Mushtaq, an infant of six months, suffered 70% burn injuries as a direct result of acid being thrown on him. P.W.12 Dr. B.L. Chauhan, who conducted the post-mortem, has categorically stated that such injuries were present, and PMR (Ex.P/16) confirms that more than half of those injuries had not healed at the time of death. This establishes

objectively that there was a severe, identifiable bodily injury inflicted on the deceased.

16.1 Secondly, the nature of the injury has been clearly proved on the record through reliable medical evidence. P.W.12 Dr. Chauhan has opined that the injuries were extensive, covering 70% of the child's body, and were of such nature as to be sufficient in the ordinary course of nature to cause death. The doctor further confirmed that the actual cause of death was syncope and shock resulting directly from these burn injuries. Additionally, P.W.13 Dr. Vallabh Bhandari, who prepared the injury report (Ex.P.18) at the time of Mushtaq's admission, deposed that such injuries could lead to death. This medical testimony precisely establishes both the nature and gravity of the injury in objective terms, leaving no ambiguity about its lethal character.

16.2 Thirdly, it is evident that there was an intention on the part of the accused to inflict that particular bodily injury, and fourthly, the injury so inflicted was sufficient in the ordinary course of nature to cause death. The facts show that the accused entered the complainant's house carrying a steel canister filled with acid, enquired about the husband's presence, and upon learning he was absent, deliberately opened the canister and threw acid on all four persons present, including the infant Mushtaq who was being fed in his mother's lap. This act was neither accidental nor indiscriminate in a legally excusing sense; rather, it was a deliberate, targeted assault designed to injure everyone present, including the child whose presence was manifest. Once the intention to cause that particular bodily injury is established, the

remaining enquiry is purely objective and inferential. In this case, the expert medical testimony confirms that the injuries were sufficient in the ordinary course of nature to cause death. Accordingly, this Court finds that all four ingredients of the *Virsa Singh* test are fully satisfied, and the act of the accused amounts to murder under Section 300 IPC, clause (c), punishable under Section 302 IPC.

17. The Hon'ble Apex Court with respect to acid attacks medical jurisprudence in the case of ***Sudershan Kumar vs. State of Delhi (AIR 1974 SC 2328)*** observed as under:

"9. In the present case, it is established beyond all reasonable doubt that the accused intended to cause injuries by throwing acid and injuries were caused on the person of Maya Devi. Dr. V. K. Jain, who treated Maya Devi in the City Clinic has stated in his evidence that the injuries suffered by Maya Devi were sufficient collectively, in the ordinary course of nature, to cause death. The opinion of Dr. Jain is corroborated by the evidence of Dr. K. S. Raj Kumar. He said that the burns were to the extent of 35 per cent of the body, that if the burn exceeded 30 per cent, the same would be dangerous to life and that the injuries on Maya Devi were dangerous to life. Dr. S. S. Kaushal who conducted the postmortem examination was of the view that death was due to toxæmia and septi-semia from actions of toxine on account of the extensive superficial ulceration of the body caused by some corrosive material. The evidence of these doctors would show that the injuries caused to Maya Devi were of a dangerous character. The fact that Maya Devi lingered for about 12 days would not show that the death was not the direct result of the act of the appellant in throwing acid on her. The medical evidence is clear that 35 per cent of the surface of the body of Maya Devi was burnt as a result of the injuries received by her.

The involvement of one-third to one-half of the superficial surface of the body is likely to end fatally". (see Modi's Medical Jurisprudence and Toxicology, 17th ed., p.196).

*In Suppurative cases, death may occur after five or six weeks or even longer(*ibid*, p. 198).*

Taylor says that after the fourth day of the injury, "the chief danger to life is the occurrence of sepsis in the burned areas"

18. This Court notes that in the present case the deceased child Mushtaq suffered 70% burn injuries as established by the post-mortem report (Ex.P/16) and the testimony of P.W.12 Dr. B.L. Chauhan, who further opined that such injuries were sufficient in the ordinary course of nature to cause death, making it clear that the burns in this case far exceed the fatal threshold recognised in medical jurisprudence and confirm the lethal nature of the acid attack beyond any doubt.

19. This Court further notes that P.W.13, the medical officer who prepared the injury report (Ex.P.19) of P.W.16 Zubeda, has stated that Zubeda sustained an injury to her eye resulting in corneal damage. In her testimony, Zubeda (P.W.16) has deposed that as a consequence of the acid attack, she lost her eyesight. The nature of the injury, affecting a vital organ, establishes the grievous and permanent damage inflicted upon her. P.W.13 has also testified that P.W.1 Sharya and P.W.3 Salim sustained injuries due to the same acid attack. This consistent medical and ocular evidence supports the prosecution's case that the accused, by throwing acid on the complainant and her family members, caused grievous and disfiguring injuries to multiple victims. The injury to Zubeda's eye in particular constitutes grievous hurt, and reflects the deliberate and destructive nature of the accused's act.

20. In view of the foregoing discussion and the evidence on record, this Court finds that the learned Trial Court was fully justified in convicting the accused-appellant for the offences under Sections 452, 324, and 326 of the Indian Penal Code. The prosecution has proved beyond reasonable doubt that the accused

committed the said offences. No ground has been made out for interference with the findings made by the Trial Court. Consequently, the appeal is found to be devoid of merit and is hereby ***dismissed.***

21. All pending application(s), if any, shall also stand disposed of.

(SUNIL BENIWAL), J.

(DR.PUSHPENDRA SINGH BHATI), J.

skm/-