

**IN THE COURT OF SURUCHI ATREJA SINGH,
ADDITIONAL SESSIONS JUDGE, GURUGRAM.
UID No. HR 0191**

Session Case No. : 24
Date of Institution : 10.4.2017.
CIS No. : SC/216/2017
CNR No. : HRGR01-004552-2017
Date of decision : **17.9.2018.**

State Versus Govind Singh S/o Ramdev @ Ompal,
resident of 20/16, 002, Shanti Nagar,
Gurgaon, City Gurugram.
.....Accused.

FIR No.1359 dated 14.12.2016.
U/Ss:346,326-A,364,307 of IPC.
Police Station: City, Gurgaon.

Present : Shri Raj Kumar, Public Prosecutor for the State assisted by
Ms. Sneha Mukherjee, counsel for the complainant.
Accused Govind Singh in custody
represented by Shri K.K. Yadav, Advocate.

JUDGMENT:

The above named accused has been sent to face trial for the commission of offences punishable under sections 346,326-A,364,307 of Indian Penal Code, 1860 (for short 'IPC') in case FIR No. 1359 dated 14.12.2016 registered at Police Station City, Gurgaon (Now Gurugram).

2. The prosecution case in brief is that on 14.12.2016, complainant Soni wife of Yamuna Prasad moved a complaint in the Police Post, addressed to Incharge, Police Post Khandsa Road, Gurgaon alleging therein that she was a resident of 623/2/21 Shanti Nagar, Gurgaon. She

further stated that her son namely Aditya Raj @ Lucky, aged 2½ years, was playing in the street and around 6.00 PM, some unknown person took him away by giving allurements. She further gave the description of the dress worn by his son i.e. Badami colour t-shirt, Black colour jacket and Black-Red colour shoes and further stated that he is of wheatish complexion having long face and is 2½ feet tall. She further stated that they searched for him in the locality but could not trace him and further maintained that his son has been abducted by some unknown person and prayed that legal action be taken against the accused. Since, the contents of the aforesaid complaint revealed commission of an offence punishable under Sections 346 of IPC, therefore, present FIR was registered.

Investigation was carried out by ASI Rupesh. During investigation, abducted child was recovered on 14.12.2016 and got admitted in Govt. Hospital, Gurugram who was later on shifted to SJH, New Delhi. On 17.12.2016 CCTV footage was taken into police possession and Certificate under Section 65B was prepared. During investigation on 18.12.2016 father of the victim namely Jamna Parsad and Rahul S/o Bhole came to the police post and CCTV footage was shown to them on the laptop in which they identified the kidnapper as Govind Singh S/o Ramdev @ Ompal. Sections 326A, 364/307 IPC were incorporated. Special report was sent. On 18.12.2016 accused Govind was arrested. On 19.12.2016 accused suffered his disclosure statement. One day police remand was obtained. Accused again suffered his

disclosure statement, pursuant to which he demarcated the place of occurrence and from where the child was recovered. Accused also got recovered plastic bottle of fluid and bottle of acid from place of recovery of child victim which were taken into police possession. Accused also got recovered the clothes which were worn by him at the time of commission of crime from his house. On 20.12.2016 accused was produced in the court. On 3.3.2017 discharge summary was obtained from SJH, New Delhi . On 4.3.2017 scaled site plan was got prepared. Father of the victim could not produce the birth certificate of his son Aditya Raj @ Lucky and in this regard he has handed over the affidavit and copy of Aadhar card which were taken into police possession. The case property was deposited with the FSL, Madhuban for examination. Statements of the witnesses were recorded. On completion of all the other formalities, challan was filed against the accused for the commission of offence punishable under Sections 326A, 364/307 of IPC.

3. After supplying copies of final report under Section 173 Cr.P.C. and other documents relied upon by the prosecution to the accused, as envisaged under section 207 Cr.P.C., Shri Gagandeep Mittal, the then learned Chief Judicial Magistrate, Gurgaon, vide order dated 27.3.2017, committed the case to the Court of learned Sessions Judge, Gurgaon and was subsequently received by this Court for trial.

4. After hearing learned counsel for the accused, learned Public Prosecutor for the State and perusing the record of the case file carefully, a prima facie case for committing the offence punishable under Sections 364,326A and 307 of IPC was found to be made out against the accused. Therefore, he was charge sheeted accordingly vide order dated 3.6.2017 by the court of Shri R.P.Goyal, the then learned Addl. Sessions Judge, Gurugram to which charge he pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined the following witnesses:

| | |
|------|---|
| PW1 | Dharampal Draftsman |
| PW2 | HC Baljeet Singh |
| PW3 | HC Dharambir |
| PW4 | Imran Khan |
| PW5 | Inspector Vikram Singh |
| PW6 | Soni |
| PW7 | Badrudin |
| PW8 | Jamna Parsad |
| PW9 | Rahul |
| PW10 | ASI Khalil Ahmed |
| PW11 | HC Dham Singh |
| PW12 | Dr. Rajdeep Yadav |
| PW13 | Dr. Upender kumar |
| PW14 | ASI Rupesh Kumar |
| PW15 | Ct. Sampat |
| PW16 | Dr. Shalabh Kumar |
| PW17 | Dr. Joyee Rufeena Jes udass, Senior Resident Safdarjang Hospital, New Delhi. |

FSL report Ex.P25 was tendered in evidence by learned Public Prosecutor for the State and thereafter prosecution evidence was closed by court vide order dated 4.9.2018.

6. All the incriminating circumstances and evidence appearing on record, were put to the accused in his statement under section 313 Cr.P.C. He controverted the same. As per him, he is innocent and has been falsely implicated. He opted to lead evidence in defence. However, no evidence in defence was led on behalf of accused.

7. I have heard learned Public Prosecutor for the State and learned defence counsel and have gone through the record of the case.

8. Learned Public Prosecutor for the State assisted by learned counsel for the complainant has vehemently contended that in the present case the guilt of accused stands established beyond the shadow of reasonable doubts as it stands established that accused had kidnapped Lucky @ Aditya Raj aged 2 ½ years to venge out his grievance which he was having against the father of the victim and has also given him acid burns which were dangerous to life and the same has been opined by the doctor. The factual matrix of the case clearly shows the reasons for kidnapping of minor child Lucky @ Aditya Raj and the accused has been identified post his recovery after a CCTV camera footage was

shown to the father of the victim who identified the accused. The evidence on the record is consistent throughout and in such circumstances the conviction of the accused for commission of the offence charged with has been prayed for.

9. Learned counsel for the accused on the other hand has contended false implication of the accused and it has been contended that the CCTV camera recording can not be relied upon as the certificate under Section 65-B of the Evidence Act is not on the prescribed format and has been merely signed by PW4 Imran Khan. The identification of the accused thus can not be believed and also it can not be said that the accused has caused acid burns to the victim as the doctor have clearly stated during their cross-examination that the said injuries on the person of victim can also be sustained by pouring of hot water and hot oil. No proof of ownership has been taken by PW4 Imran that he is the owner of the house and the said CCTV footage has been taken from him. The complaint does not bear the signatures of Rahul and Rani and it has been deposed by the complainant during her testimony that three persons have signed on the complaint and therefore the complaint given is different from the one which has been reported to the police. In such circumstances when the injuries can not be said beyond the shadow of reasonable doubt to have been suffered from acid burns and the identity of the accused goes unestablished acquittal of the accused has been

prayed for. Also, no test identification parade has been conducted in the present case which also shows that the identity of the accused has not been established and in such circumstances accused is entitled to acquittal. In support of his contentions, learned counsel for the accused has relied upon : **Ajmer Singh alias Rana Vs. The State of Punjab 2009 (2) RCR (Crl.) 32, Mahabir Vs. State of Delhi 2008 (3) RCR (Criminal) 5, Dana Yadav @ Dahu & Ors. Vs. State of Bihar 2002 (4) RCR (Criminal) 314, State of Rajasthan Vs. Netrapal and others 2007 (2) RCR (Crl.) 151.**

10. After hearing the submissions from both the sides and going through the record of the case, the following point arises for determination :

“ Whether on 13.12.2016 at about 6.00 p.m. in Shanti Nagar, Gurugram falling within the jurisdiction of P.S. City Gurugram accused kidnapped Lucky @ Aditya aged 2½ years from the lawful custody of his parents in order that the said Lucky @ Aditya might be murdered or might be so disposed of as to be put in danger of being murdered and thereby committed an offence punishable under Section 364 of IPC?

Whether on the said date, time and place accused voluntarily caused grievous hurt to Lucky @ Aditya by use of acid, so as to cause permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of said Lucky @ Aditya or caused grievous hurt by throwing acid on aforesaid Lucky or by using any other means with the intention of causing or with the knowledge that

accused is likely to cause such injury or hurt and thereby committed an offence punishable under section 326A of IPC.?

Whether on the said date time and place accused after kidnapping aforesaid Lucky @ Aditya caused grievous injuries by throwing acid upon him with such an intention and under such circumstances that by that act accused had caused the death of Lucky @ Aditya, accused would have been guilty of murder and that accused thereby caused the hurt to said Lucky @ Aditya and thereby committed an offence punishable under section 307 of IPC?”

11. In order to establish the guilt of the accused for commission of the offence under Section 364 of IPC, it is essential for the prosecution to establish that minor child has been kidnapped by the accused and secondly, it has to be established that such kidnapping or abduction has been with an intention to murder the victim or he may be disposed of to be put in danger being murdered.

12. In order to establish the guilt of the accused for commission of the offence under Section 326-A IPC it is essential for the prosecution firstly to establish that the grievous hurt has been caused by throwing of acid or by administering acid to the person. Secondly, it is essential to establish that the injuries which has been caused by such acid having been thrown upon the victim has caused permanent or partial damage or has disfigured or disabled any part or parts of the body of the victim and thirdly it is also essential to establish that there has been intention or

knowledge of causing such injury to the victim by the accused.

13. Section 307 of IPC postulates that whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to [imprisonment for life], or to such punishment as is herein before mentioned.

14. In order to establish the guilt of the accused the prosecution has examined as many as 17 witnesses and it is essential to consider the nature of evidence which has been adduced on the record in order to arrive at the finding with regard to the commission of the aforesaid offences by the accused.

15. The present case has been registered upon the complaint Ex.P13 given by PW6 Soni mother of the victim that her son Aditya @ Lucky aged 2 ½ years who was playing in the street has been kidnapped i.e. taken away by some unknown person on 13.12.2016. Her deposition shows that her son has been found near Beriwala Bagh in front of tea kiosk on 14.12.2016 and it is after due identification that her son has been handed over to her in the presence of tea vendor Mr. Badruddin. The identification memo Ex.P14 has been attested by PW6 Soni and PW7

Badrudin. The witness PW6 Soni has deposed regarding recovery of her son on 14.12.2016 at about 7.30 a.m. who was found standing in front of the tea shop of Badruddin and seeing her, her son started crying. Lady Constable Rani thereafter took the victim to Civil Hospital for treatment and she also identified the accused present in the court .

16. PW7 Badruddin who is the tea vendor in front of whose shop the recovery of child victim has taken place has also deposed similarly. He deposed that on 14.12.2016 at about 6.30 a.m. when he was present at his tea shop one person came to his shop along with the child and left him over there and at that time 3-4 persons were standing there, who informed the police and police as well as mother of the child also arrived at the spot. He also proved the recovery memo Ex.P14 which has been prepared by the investigating officer and that the child has been given after identification to the mother by the investigating officer. The child was thereafter taken by the police and the mother to the hospital.

17. Thus, the testimony of PW6 Soni is corroborated by the testimony of PW7 Badruddin with respect to the recovery of child victim which has taken place and from the testimony of PW6 Soni also stands established that a complaint has been given by her with regard to the kidnapping of her minor child Aditya @ Lucky by some person and she has also identified the accused present in the court who has given effect to

the said occurrence.

18. The cross-examination of PW6 Soni mother of the complainant shows that she knows the accused Govind from before and the observations made in the court also shows that the witness was carrying the minor child in her lap at the time of her testimony being recorded who was having acid burns on his face, left shoulder and his left hand. Also the left thigh of the victim is stated to be having acid burns and the photograph of the victim was also tendered in her evidence. The witness has thus identified Govind whom she knows before and she deposed with respect to the recovery which has been effected of her minor child. Learned counsel for the accused has contended that the complaint Ex.P13 is not the one which has been given by the complainant in the light of the cross-examination of the complainant whereby she stated that her signatures have been obtained by the police along with the signatures of Rahul and Rani. This statement of the complainant does not mean that the case set up by the prosecution is false when the complaint Ex.P13 stands proved by the complainant and when the recovery of the child also stands effected. In the complaint the name of the accused has not been given and it is only after the accused has been identified after seeing the CCTV footage PW8 Jamna Parsad and PW9 Rahul, the identity of the accused was gathered by the police. Further, the said contention of the learned counsel for the accused that the complaint has been tampered is not tenable in view of the fact that

immediately after the complaint was given by complainant Soni, PW14 ASI Rupesh has sent the tehrir Ex.P26 through constable Sampat for registration of the FIR. PW3 HC Dharambir has deposed to have registered the FIR on 14.12.2016 Ex.P10 and has made the endorsement Ex.P11 upon the complaint. The endorsement Ex.P11 shows that the complaint has been registered promptly at 2.40 a.m. which has been mentioned as the time on the complaint upon which FIR Ex.P10 has been registered. Also, PW3 HC Dharambir has denied the suggestion that FIR is ante timed and ante dated. PW15 Ct. Sampat has also deposed regarding the application Ex.P13 to have been given to him by the investigating officer ASI Rupesh and tehrir Ex.P26 has been sent through him for registration of the FIR.

19. With respect to the identity of the accused the testimony of PW8 Jamna Parsad and PW9 Rahul is relevant as both these witnesses have deposed that the police has shown them the CCTV footage on 18.12.2016 and that they identified accused Govind to be accompanying the minor victim who has carried the child in his arms. The incident of kidnapping of child has occurred on 13.12.2016 and the child has been recovered on 14.12.2016 and it is on 18.12.2016 that the identity of the accused Govind has been ascertained by the police after accused has been identified by PW8 Jamna Parsad and PW9 Rahul and both these witnesses testified to the same. The testimony of PW8 Jamna Parsad shows that he has identified the accused and also his cross-examination

shows that he knows accused Govind from before with whom he was not maintaining cordial relation and it was on this account he shifted the rented accommodation when he was residing previously when accused Govind has started misbehaving with his wife. He has deposed categorically in his cross-examination regarding the act and conduct of accused Govind of forcibly entering his room with evil intention and he was outraging the modesty of his wife which made him change the accommodation. The witness PW8 Jamna Parsad has also testified that Govind has occasionally visited his new accommodation and with revengeful intention he has kidnapped his child and poured acid on his body. Thus, there is motive of the alleged occurrence. The identity of the child also stands established in the present case and the copy of Aadhar card Ex.P18 and the affidavit Ex.P17 and the same were taken into police possession vide recovery memo Ex.P16. The witness has deposed that at the time of CCTV footage was shown to him he and Rahul were present and he identified the accused Govind to be carrying his child and similarly ASI Rupesh has deposed in his testimony as PW14 before the court that the identification of the accused has been done by father of the injured and Rahul on 18.12.2016 when they were shown the CD of the CCTV and they identified the kidnapper to be Govind.

20. PW9 Rahul has deposed that on 13.12.2016 at around 5.30 p.m he saw Govind to be standing in front of his house near a chowk and

he was also carrying one bottle of glass of acid which was carrying in his pant. He thought it was for the cleaning of the toilets and bathrooms as he was involved in doing such type of work. The testimony of PW9 Rahul also lends corroboration to the case of the prosecution that the accused was carrying acid with him on the date of alleged occurrence which has been given effect by the accused by pouring acid upon the victim. The identification of the accused has taken place after seeing the CCTV footage which has been taken into police possession on 17.12.2016 as has been deposed by PW4 Imran Khan vide recovery memo Ex.P12 and the CD Ex.P13 and the certificate U/s 65-B of the Evidence Act Ex.P14 has been given by him. It has been contended by learned counsel for the accused that the certificate under Section 65B of the Evidence Act has not been given in the prescribed format, however the said contention does not appeal to this court as any ordinary citizen would not be aware of the technicalities of law and what is essential is the fact that the intention of the law is complied in letter and spirit. The certificate under Section 65B of the Evidence Act Ex.P14 having been given by PW4 Imran shows that the witness has testified to the contents that the CCTV footage has been taken from him and the recovery of the CD has been from him and the same has also been deposed by him in his testimony as PW4 and therefore, there is no reason to discard the testimony of PW4 Imran. Also there is no animosity of PW4 Imran Khan with the accused and it can not be said that any fabrication has been done

on his part to produce the tampered CCTV footage to the police. The contention of learned counsel for the accused is thus bereft of merits that the said CCTV footage can not be relied upon for identification of the accused.

In **Sonu Versus State 2017(3) RCR (CrL.) 786**, it has been observed by Honb'le Supreme Court that it was not the case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial Court without a certificate as required by Section 65B (4). It was observed that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by the Court, is whether the defect could have been cured at the stage of marking the document.

Applying this test to the present case, if an objection was taken to the CCTV footage being exhibited without a proper certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. An objection that CCTV footage are unreliable due to violation of the procedure prescribed in Section 65 B (4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.

21. Further, with respect to the identification of the accused, this court is of the considered view that in the present case the accused

Govind was known to the complainant Soni as well as father of the victim Jamna Parsad from before and therefore, test identification parade was not essential. The witness PW6 Soni and PW8 Jamna Parsad both know the accused Govind from before and it is on account of animosity with complainant and her husband that accused has given effect to the alleged occurrence and in such circumstances when both the witnesses have categorically identified the accused in the court and PW8 Jamna Parsad has also identified accused in the CCTV footage who has given effect to the occurrence and has kidnapped his minor child, therefore, the identity of the accused stands established.

22. PW14 ASI Rupesh has also deposed regarding the identity of the accused and that the accused has been identified by the father of the injured and Rahul and he also identified the accused in the court and similarly accused has been identified by PW11 HC Dham Singh who has also deposed regarding the husband of the complainant Jamna Parsad to be identifying the accused from the video recording of the CCTV footage. This witness PW11 HC Dham Singh has also deposed regarding the accused having been apprehended from near Devi Lal Stadium when the secret information was received at traffic booth to Rajiv Chowk when he was accompanying the investigating officer ASI Rupesh and after the arrest of the accused place of occurrence Ex.P20 has been demarcated by him. The testimony of ASI Rupesh is thus corroborated by the testimony

of PW11 HC Dham Singh with regard to the apprehension of the accused pursuant to the information being received by him and thereafter the place of occurrence having been identified by the accused. PW1 Ct. Dharampal Draftsman prepared the scaled site plan Ex.P1.

23. PW14 ASI Rupesh has deposed regarding the investigation which has been conducted by him in the present case and that after the complaint Ex.P13 was given by the complainant he has sent tehrir Ex.P26 through constable Sampat for registration of FIR and he prepared the rough site plan of the place of occurrence Ex.P27. He has also deposed regarding the child victim having been recovered from Beriwala Bagh near tea vendor Badruddin's kiosk and that the mother of the child also identified the victim who started crying after seeing his mother. The victim was found to be in a burnt condition and has been sent and the mother to the Civil Hospital. He also corroborated the testimony of PW7 Badruddin that the child was left by some unknown person and thereafter information was given to the police. The rough site plan of the place of recovery of the burnt child is Ex.P28 and the ash from the spot was collected vide recovery memo Ex.P29 and the ash as Ex.P29/1. Constable Baljeet has taken the photographs of the place and the same were also proved by him in his testimony as PW2. Constable Baljeet has deposed that the photographs Ex.P2 to Ex.P8 were taken by him and the same were taken into police possession vide recovery memo Ex.P9. The

recovery memo of the child Ex.P14 has also been proved by the investigating officer and that he collected the clothes and shoes of the child from the doctor at Civil Hospital, Gurgaon vide recovery memo Ex.P30 and he identified the same when the sealed parcel opened in the court as Ex.P30/1. He also deposed regarding the CCTV footage which has been taken into police possession on 17.12.2016 from Imran Khan vide recovery memo Ex.P12 and identification of the accused on 18.12.2016 by father of the injured and Rahul S/o Bhole. On 18.12.2016 accused was arrested near Rajiv Chowk and he suffered the disclosure statements Ex.P33 and Ex.P34, pursuant to the disclosure statement of the accused the place where he burnt the minor child with acid Ex.35 was demarcated and he also got recovered plastic bottle of white colour from the bushes which was used for commission of the act and the same were taken into police possession vide recovery memo Ex.P36. The said sealed parcel was opened and the plastic bottle was identified by the witness Ex.P36/1. The glass bottle in which acid was containing Ex.P37/1 has also been identified by the witness and the same was taken into police possession vide recovery memo Ex.P37. Rough site plan of the place of recovery is Ex.P38. Accused also got recovered his slippers and clothes used at the time of commission of crime which were taken into police possession vide recovery memo Ex.P30 and Ex.P31. Rough site plan of the place of recovery is Ex.P31/1 and the slippers recovered from the accused house are Ex.P30/1 and the clothes are Ex.P30/2 which has also

been identified by the witness. The memo was attested by PW Sampat Singh.

Though the disclosure statement can not be read against the accused but the recovery effected pursuant to the disclosure statement is protected in view of the provisions of Section 27 of the Indian Evidence Act.

Though, the confession given in police custody is not admissible in evidence in view of the bar created by Section 25 and 26 of the Indian Evidence Act, 1872, however, only such part of confession is relevant pursuant to which a recovery has been effected as it relates distinctly to the fact thereby discovered in view of Section 27 of the Indian Evidence Act.

In **Dhananjay Chatterjee @ Dhanna Vs. State of West Bengal 1994 (1) RCR (Cri.)429**, it has been observed by Hon'ble Supreme Court of India that the entire statement made by an accused person before the police is inadmissible in evidence being hit by Section 25 and 26 of the Evidence Act but that part of the statement which led to the discovery of an article is clearly admissible U/s 27 of the Act. It was also observed that court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. It was further observed that discovery of the fact in this connection includes the discovery of a part, the place from which

it is produced and the knowledge of the accused as to its existence.

In the case of **Gola Kondas Venkateswara Rao Vs. State of Andhara Pradesh 2003 (4) RCR (Crl.) 581**, this proposition of law was again reiterated by the Hon'ble Supreme Court of India observing that the discovery statement of an accused leading to recovery of crime article from concealed place even though the discovery statement and the recovery memo did not bear the accused signatures but when the recovery was in consequence to the information given, fortified and confirmed the discovery of the wearing apparel skeletal remains of the deceased and therefore, the information and statement can not be held false. In **Parveen Kumar Vs. State of Karnataka 2003 (12) SCC 199**, the same view was reiterated.

24. Thus, the evidence adduced on the record is consistent throughout regarding the arrest of the accused which has taken place pursuant to the complaint which has been filed by complainant PW6 Soni and the investigation which has taken place and there is no inconsistency in the case of the prosecution with regard to the said facts of kidnapping of victim Aditya and thereafter the recovery of the victim from Beriwala bagh near tea kiosk and the subsequent identification of the accused by PW8 Jamna Parsad and Rahul and the recoveries effected pursuant to the disclosure statements from accused Govind. The recoveries have been effected from the accused pursuant to the disclosure statements made by him and the recovered articles have also been sent to the FSL. PW10 ASI

Khalil Ahmad in his evidence given by way of affidavit Ex.P19 has deposed regarding the case property i.e. clothes and slippers of accused, clothes and shoes of the victim, ash , glass bottle , empty plastic bottle to have been deposited with him and the same was sent to FSL vide RC No. 320 dated 9.3.2017 and till the time the case property remained in his possession, the same was not interfered with. The FSL report has been tendered as Ex.P25 and the same is material and the description of articles in the report is mentioned herein under :

| Parcel No. | No. & seal impression | Description of parcel (s) |
|------------|-----------------------|---|
| 1. | 4-RP | One sealed cloth parcel enclosing exhibit-1. Exbt-1 One multi coloured child's pant stuck with some blackish coloured material at places, one multi coloured, cut and torn child payjama stuck with blackish coloured material, one black coloured T-shirt (child's) stuck with blackish coloured material at places, one cut and torn, white coloured baniyan stuck with blackish coloured material at places, one cut and torn, partially burnt, pink coloured child's jacket stuck with blackish coloured material at places and two small sized, red coloured dirty, children shoes. |
| 2. | 4-RP | One sealed cloth parcel enclosing a polythene pack containing exhibit -2. Exbt.-2 Some ash approx 40 gm along with a aluminum foil and vegetative material. |
| 3. | 3-RP | One sealed cloth parcel enclosing a polythene pack containing exhibit-3. Exbt.-3 One empty, small sized, white coloured plastic dibbi without lid labeled as 'Correction pen, multi purpose and quick dry'. |
| 4. | 4-RP | One sealed cloth parcel enclosing exhibit-4. Exbt-4: One glass bottle containing some yellowish coloured liquid approx 3 ml. |
| 5. | 4- RP | One sealed cloth parcel enclosing exhibit-5. Exbt.-5: One cream coloured gent's shirt having |

| | | |
|--|--|---|
| | | sticker labeled as 'THC, The art of dressing classic COTT' and one blackish coloured gent's pant labeled as 'Richmand' stated to be clothes of accused, Govind Singh. |
|--|--|---|

The FSL report Ex.P25 shows that corrosive acid has been observed in exhibits 1,2,4 and 5 and it is only on plastic bottle which has been labeled as correction pen no corrosive substance has been observed. Thus, the FSL report Ex.P25 also corroborates the fact that on the clothes and shoes of the child some blackish material was there and this blackish material has been found to be hydrochloric acid during the analysis. Similarly, on the clothes parcel containing the shirt of the accused the blackish colour has been observed to be hydrochloric acid in the report and also the ash which has been reflected from the place of occurrence has been found to be containing hydrochloric acid. The glass bottle with some yellowish coloured liquid is also to be observed hydrochloric acid and therefore the FSL report Ex.P25 also corroborate the version of the prosecution that the substance which has been poured on the victim is hydrochloric acid which is corrosive acid thereby ruling out the version of the accused that the injuries has been sustained by way of pouring of hot oil or hot water.

25. The medical evidence adduced on the record is also consistent with the case of the prosecution. PW12 Dr. Rajdeep Yadav, Medical Officer, General Hospital, Gurugram has prepared the MLR of

the victim Aditya on 14.12.2016 and he has deposed in his testimony regarding burnt injuries over face, left hand and shoulder and superficial on right hand and superficial to deep and the second injuries were not visible which have been referred for surgeon opinion and the MLR Ex.P21 bears his signatures. He has also sent police intimation Ex.P22 and in his cross-examination he has deposed specifically that the MLR has been prepared on the basis of visible injuries and with respect to other injuries surgeon opinion has been advised. Similarly, PW13 Dr. Upender Kumar has deposed regarding the treatment given to the victim and the investigating officer has given an application Ex.P23 for opinion on the type of injuries and its nature. The witness PW13 Dr. Upender Kumar has deposed specifically that injured Aditya was given oxygen by mask and intravenous fluid since he was having high pulse at about 100 per minute and blood pressure (BP) was 100/60 MMHG and the nature of injuries were life threatening and dangerous to life as patient was having low BP and heart rate was high he needed intravenous fluid and oxygen by mask for inhalation. The report Ex.P24 has been given by him with respect to the treatment which has been given to the victim. The testimony of PW13 thus establishes the nature of injuries which has been sustained by the victim and the same were dangerous to life. PW16 Dr. Shalabh Kumar has deposed that the injured Aditya 2½ years was admitted in the hospital with burnt condition and was discharged on 21.12.2016 and the discharge summary is Ex.P40. PW17 Dr. Joyee

Rufeena Jesudass, Senior Resident, Safdarjang Hospital, New Delhi has given his evidence by way of affidavit Ex.P41 with regard to the injuries of Aditya and that the child was examined and assessed to have 10% burn with facial burn with inhalation injury and the MLR Ex.P41/1 has been prepared by him.

26. Thus, the medical evidence adduced on the record also establishes that injured Aditya was brought in a burnt condition with injuries on his person and PW13 Dr. Upender Kumar has clearly opined that the injuries were dangerous to life and that intravenous fluid was instantly given to the injured and he required oxygen mask for inhalation as he was also having low BP and high pulse. Thus, the medical evidence adduced on the record also establishes that the injuries sustained were dangerous to life and the same were on account of the acid being poured by the accused upon the victim in order to take out his revenge thereby establishing the guilt of the accused for commission of the offence U/ss 364, 326A and 307 of IPC. The nature of injuries shows that the victim would require continuous medical treatment for long and the injuries are life threatening and the application filed under Section 311 Cr.P.C. moved by the prosecution also shows that the victim is still under treatment for the injuries which has been sustained by him.

27. In view of the aforementioned facts and circumstances, accused Govind Singh is held guilty for commission of the offence

punishable under Sections 364,326A and 307 of IPC and is convicted for the same.

To come up on 19.9.2018 for hearing the convict Govind Singh on the quantum of sentence under Section 235(2) Cr.P.C.

Announced in open court.

Dated: 17.9.2018.

(Tara)

(Suruchi Atreja Singh)

Addl. Sessions Judge,
Gurugram.

UID No. HR0191

Note : All the 25 pages of this judgment have been checked and signed by me.

(Suruchi Atreja Singh)

ASJ,Gurugram. 17.9.2018.

Present : Shri Raj Kumar, Public Prosecutor for the State assisted by Ms. Sneha Mukherjee, counsel for the complainant.
Accused-convict Govind Singh in custody
represented by Shri K.K. Yadav, Advocate.

ORDER ON QUANTUM OF SENTENCE:

I have heard learned Public Prosecutor for the State assisted by learned counsel for the complainant and learned counsel for the accused-convict on the point of sentence. Statement of the convict to that effect has also been recorded separately.

2. Accused-convict Govind has stated that he is having old age mother and there is no body to lookafter her and he is the only bread earner of the family. He is not a previous convict. He has stated that his father has already died during his custody. It is prayed that lenient view be taken in the matter of sentence.

3. Learned counsel for the convict has stated that considering the statement of the convict, a lenient view be taken on the point of sentence.

4. On the other hand, learned Public Prosecutor for the State assisted by learned counsel for the complainant has vehemently contended that a gruesome act has been committed by the accused and on account of his committing the offences the minor child victim aged 2 ½ years at the time of commission of the offence has to suffer throughout his life. The child victim is still under treatment and needs continuous

surgeries and the incident has left a deep scar on his life and in such circumstances maximum punishment be awarded to the convict.

5. After hearing the submissions from both the sides and going through the record of the case, this court is of the considered view that on account of grudge which the accused was nurturing against the complainant and her husband their minor child who was aged 2 ½ years at the time of occurrence was made a victim of acid attack so much so that the injuries sustained by him were life threatening and had immediate medical attention not being provided to him he would not have survived. The medical evidence adduced on the record shows that the child has been assessed with permanent disability and also the application filed under Section 311 Cr.P.C. by the prosecution shows that the injured victim is under continuous medical treatment. Hon'ble Supreme Court of India in **Laxmi Vs. Union of India 2015 (2) RCR (Criminal) 583**, has also observed that acid attack victims need to undergo series of plastic surgeries and other corrective treatments and it is while observing the same that it has been directed that the acid attack victims be provided adequate compensation.

Hon'ble Supreme Court of India again in **Privartan Kendar Vs. Union of India 2016 (1) RCR (CrI.) 336** has observed the medical care and treatment which are required to the acid attack victims and the compensation payable to the victims. Thus, the observations of the

Hon'ble Supreme Court of India in acid attack cases has also reflected the gruesome nature of the act whereby the life of the victim is permanently impaired. In such circumstances the quantum of punishment which needs to be awarded to the victim should be commensurate with the offence committed by the convict. In such circumstances, I hereby sentence the convict Govind Singh to undergo, as under:

| Offence | Punishment | Fine | Punishment in default of payment of fine |
|-----------------|---|-------------|---|
| 364 IPC | Rigorous Imprisonment for 10 years | Rs.5,000/- | Simple imprisonment for five months |
| 326A IPC | Rigorous Imprisonment for 10 years | Rs.5,000/- | Simple imprisonment for five months |
| 307 IPC | Imprisonment for life | Rs.5,000/- | Simple imprisonment for five months |

In Ankush Shivaji Gaikwade Vs. State of Maharashtra 2013 (2) RCR (Criminal) 1036 Hon'ble Supreme Court of India has directed under Section 357A Cr.P.C. compensation be awarded to the victim when the compensation awarded under section 357 Cr.P.C. is not adequate for safe rehabilitation of the victim. It is mandatory duty of the court to consider the question of award of compensation to victim of crime. Though award of compensation is the discretion of the court. A copy of this judgment be sent to District Legal Services Authority with the direction that the case of victim for granting him compensation under State Victim Compensation Scheme as has been recommended in this

judgment shall be taken up and decided in accordance with rules.

Sentences awarded to the convict on all the counts, shall run concurrently. The period of sentence already undergone by the accused-convict during investigation/trial shall be set off under the provision of section 428 Cr.P.C.

File be consigned to the record room after due compliance.

Announced in open court.

Dated: 19.9.2018.

(Tara)

(Suruchi Atreja Singh)

Addl. Sessions Judge,
Gurugram.

UID No. HR0191

Note : All pages of this order have been
checked and signed by me.

(Suruchi Atreja Singh)

ASJ, Gurugram. 19.9.2018.