

The State of U.P. Vs Ram Charittar and Kishori Lal, Ram Kumar and Smt. Chandrawati

Court: Allahabad High Court

Date of Decision: Dec. 14, 2005

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Penal Code, 1860 (IPC) â€” Section 302, 307, 34

Hon'ble Judges: Vinod Prasad, J; M.C. Jain, J

Bench: Division Bench

Advocate: N.A. Moonis and A.G.A, for the Appellant; P.C. Srivastava, G.S. Chaturvedi, S.S. Tewari and A.R. Gupta, for the Respondent

Judgement

M.C. Jain, J.

In this crime, a young widow aged about 30 years and her tow infants aged about 5 and 2 years were done to death in a

most merciless manner by pouring acid for the greed of property. The accused respondents are the own kins of the deceased. Accused Ram

Charittar and Kishori Lal are the brothers of the deceased husband of the widow. Ram Kuma accused respondent is the son of Kishori Lal and

the fourth accused respondent Chandrawati is the wife of the first accused respondent Ram Charittar. All the accused respondents have been

acquitted by the impugned judgment and order dated 12.5.1981, passed by Sri C. Mohan, the then Session Judge, Basti passed in Sessions Trial

No. 134 of 1980.

2. The incident took place in between the night of 28/29th March 1980 in village Gaayghat, Police Station Kalwari, District Basti at a distance of

about 8 Kms. from the Police Station. The F.I.R. was lodged on 29.3.1980 a 6.15 A.M. by one Bhagwait PW 2, neighbour of the accused and

the deceased.

3. The broad essentials of the case as per the F.I.R. and the evidence adduced in the Court may be set forth. Ram Chet-husband of the deceased

Sushila died in the month of Asharah before the incident. Thereafter, the accused persons started quarreling and harsassing her in different ways so

as to force her to transfer her property to them. In the evening preceding the night of the incident also, they quarrelled with her and threatened to

burn her and her daughters with acid. They had also stopped Sushila's father from coming and meeting her. In between the eventful night at about 3

o'clock, cries and shrieks emanating from the house of Sushila attracted her neighbours-Bhagwati PW2, Ram Din PW 3, Mangroo PW 4, Prem

Narain PW 5 and several others to the scene. They saw the accused Ram Charittar, Kishori Lal, Ram Kumar and Chandrawati in the house of the

deceased near the place where they were sleeping. Ram Charittar came out of the house along with a bottle of acid. The other accused also came

out. Seeing the witnesses, Ram Charittar dropped the bottle of acid in the verandah of the deceased. The bottle was broken and the acid splashed

on the floor. The witnesses succeeded in apprehending the accused Ram Charittar, Kishori Lal and Chandrawati at the spot. But Ram Kumar

made his escape good. Ram Charittar applied some acid to his face and some acid fell on the face of this wife accused Chandrawati. In the

meantime, Sushila came out with her younger daughter Nandini rolling on the floor and both of them died near her door. Bindu elder daughter of

Sushila was also badly burnt with acid. She told crying that Badka Dada had thrown acid on them. She being badly burnt with acid was taken to

the District Hospital. She also happened to die there in hospital on 30.3.1980 at 9.30 A.M.

4. Bhagwati PW 2 got a report of the incident (Ex.Ka-6) scribed by Baijnath PW 6. He took the same to Police Station Kalwari where it was

lodged. A chick F.I.R. was prepared at the Police Station by Head Constable Rame Mant Dubey PW 10 and case was registered u/s 302/307

I.P.C. with entry in G.D. The investigation was taken up by Ram Nath PW 9, Station Officer of Police Station Kalwari who was present at the

Police Station at the time of lodging of the F.I.R. He reached the place of occurrence at about 8.30 A.M., held inquest on the dead body of

Sushila and that of her younger daughter Nandini. He prepared inquest reports and other necessary papers. Both the dead bodies were properly

sealed separately and sent to the mortuary through Constables Raj Narain and Rajdeo. The Investigating Officer recorded the statements of the

witnesses. He took in his custody the three accused Ram Charittar, Kishori Lal and Chandrawati apprehended by the prosecution witnesses at the

spot. Inspecting the place of occurrence, he prepared the site plan. He also examined the torch of the informant Bhagwati PW 2 and Dhibri

(Earthen lamp) glowing in the house of Sushila at the time of incident. Both these items were given in the custody of the informant through Ex Ka-7.

He also took in possession broken bottle, acid and scrapping of the floor where the acid was spread. The Investigating Officer also took in

possession three Katharies, Dari, Chaddars, pieces of bangles and Dhoti of accused Kishori Lal. All these articles were burnt partly with acid.

They were properly sealed separately and recovery memos Ex.Ka-8 to Ka-12 were prepared in respect thereof. The recovered article were sent

to the Chemical Examiner.

5. The Chemical Examiner submitted his report Ex.Ka-29 showing that sulphuric acid had been found on the three Katharis, Dari, Chadar, broken

pieces of bottle as well as on the scraping of the floor mentioned at Serial No. 7 of the report. He also found sulphuric acid on items No. 1 to 7

and 9 to 24 inclusive of pieces of bangles and male Dhoti which Kishori Lal was wearing at the time of being apprehended and was taken in

possession by the Investigating Officer (after getting it put off by him). It should be stated for the sake of clarity that three green coloured bangle

pieces and five red coloured bangle pieces mentioned at Serial No. 10 of the Chemical Examiner's report were those which had been collected by

the Investigating Officer from the spot. One red coloured bangle piece and one green coloured bangle piece mentioned at Serial No. 11 were

those which were on the wrist of the accused respondent Chandrawati and had been taken in possession by the Investigating Officer. They were

sealed separately. The Chemical Examiner reported that the three green coloured pieces of bangles shown at serial No. 10 were similar to one

another and out of five pieces of red coloured bangle pieces, four were similar to one another and the 5th one was slightly thicker than the rest.

The bangle piece of red colour at serial No. 10 matched with red coloured thick bangle piece at serial No. 11. Similarly, green coloured bangle

pieces at serial No. 10 matched with green coloured bangle piece at serial No. 11. To say shortly, the bangle pieces of green and red colours found

on the floor at the spot (wherefrom broken pieces of bottle had been collected alongwith scrapping of the floor) matched with red and green

coloured bangle pieces that had been found on the wrist of Chandrawati accused.

6. To pick up the thread, post mortem over the dead body of Sushila was conducted on 30.3. 1980 at 3.30 P.M by Dr. K.K. Tripathi PW 8. The

outcome of the post mortem was as follow:

7. The deceased was aged about 30 years and about 11/2 days had passed since she died.

8. The following ante mortem injuries were found on her person:

(1) Acid burn on the whole of the face in an area of 25 cm x 15 cm including both sides of face, both ears and both upper and lower lips and

whole of the chin and in area below the chin. The skin brownish black parchment like and no vesicles formed.

(2) Acid burn on the whole of the neck all around including the front both sides of neck and back of neck. Skin brownish black parchment like and

no vesicles formed.

(3) Acid burn on the whole of the upper part of chest in an area of 26 cm x 20 cm including both the breasts and nipples. Skin brownish black and

no vesicles formed.

(4) Acid burn on the right side abdomen in an area of 6 cm x 5 cm, 5 cm above the umbilicus. Skin brownish black and no vesicles formed.

(5) Acid burn on the whole of the left upper limbs including the inner and outer side of the shoulder upper arm, elbow, forearm, wrist, hand and

fingers. Skin brownish black and no vesicles formed.

(6) Acid burn on the outer side of the right upper arm and whole of the right forearm, elbow, wrist and fingers.

(7) Acid burn on the upper part of the back of the chest in an area of 20 cm x 15 cm, both scapular region involved. Skin brownish black in colour

and on vesicles formed.

(8) Acid burn 10 cm x 8 cm on the right buttock. Skin brownish black parchment like and no vesicles formed.

(9) Acid burn 12 cm x 6 cm on the medial side of the left thigh. Skin brownish black colour.

9. This internal examination revealed slight congestion of pleura. Larynx, trachea and bronchi were congested. Both the lungs were deeply

congested. Both chambers of heart were empty. Tongue was white and dry and oesophagus was congested. Stomach was blackened and

blackish semi fluid material was found in the stomach. In the opinion of the Doctor, death had occurred due to shock as a result of ante mortem

burn injuries.

10. Post mortem over the dead body of infant female chilled Nandini was also conducted by the same Doctor at 4 P.M. She was aged about 2

years and about 11/2 days had passed since she died. The following ante mortem injuries were found on her person:

(1) Acid burn on the lower part of the face in the area of 15 cm x 7 cm, 2 cm below, both eyes, including both cheek both upper and lower lips,

chin and the area below the chin. The skin brownish black parchment like. No vesicles seen.

(2) Acid burn on the front and both sides of the neck in the area of 8 cm x 4 cm. The skin brownish black parchment like and no vesicles seen.

(3) Multiple acid burns on the left side of the chest in the area of 10 cm x 6 cm. Skin brownish black and parchment like with no vesicles seen.

(4) Acid burn on the whole of the outer side of the left upper limb including shoulder, upper arm, forearm, wrist. Skin brownish black and

parchment like. No vesicle formed.

(5) Acid burn on the whole of the right upper limbs including the shoulders, upper arm, forearm and the wrist. Skin brownish black. No vesicles

seen.

(6) Multiple acid burn on the whole of the abdomen in the area of 16 cm x 14 cm.. Skin brownish black in colour. No vesicles seen.

(7) Acid burn on the whole of the outer side of the left finger knee and outer side of the left leg, foot and sole. Skin brownish black in colour.

(8) Multiple acid burn on the right lower limb including the right thigh, leg, foot and sole. No vesicles formed.

(9) Acid burn on the back of the chest in the area of 8 cm. x 6 cm. on the left side including left scapular region. Skin brownish black in colour. No

vesicles seen.

(10) Acid burn on the left side of buttock 8 cm x 6 cm. Skin brownish black in colour. No vesicles seen.

11. On internal examination congestion of pleura, larynx, trachea and both lungs was noted. Both the chambers of the heart were empty.

Abdominal cavity contained dark black fluid. Tongue was white coated and black at places. Stomach was perforated. Bladder was empty. Small

intestine contained pasty material and large intestine contained faecal matter. As per the Doctor, death occurred due to shock as a result of ante

mortem acid burn injuries.

12. As stated earlier, Km. Bindu died in district Hospital on 30.3.1980 at 9.35 A.M. Her inquest report was prepared by S.I. Ram Adhar Yadav

PW 1. Post mortem over her dead body was conducted by Dr. Ram Ujagir Pandey PW 7 on 31.3.1980 at 2 P.M. She was aged about 5 years.

Rigor mortis was present in all the four limbs.

13. The following ante mortem injuries were found on her person/

1. Burn (corrosive acid) on whole of face, front and both sides of neck. Colour of skin yellowish brown. NO red lining around the burn area. No

vesicles. No scorching of hairs.

2. Whitish discolouration of tongue and inner aspect of both lips.

3. Burn (corrosive acid) on whole of left forearm. Colour of skin yellowish brown, no red lining around the burn area. No vesicles, no scorching of

hairs.

4. Burn (corrosive acid) front part right forearm. Colour of skin yellowish brown, no vesicles, no red lining around the burn area. No scorching of

hairs.

13. Internal examination revealed that the right chamber of heart contained blood, whereas the left chamber was empty. Peritoneum was congested

at posterior part of sternal. Lips and tongue were whitish in colour. Stomach was congested and empty and perforated at posterior wall at places

in an area of 1 cm x 1 cm. Small intestine and large intestine contained gases. As per the Doctor, the death was caused due to shock as a result of

perforation of stomach and peritonitis due to corrosive acid burns.

14. The defence was of denial and false implication due to enmity.

15. At the trial, the prosecution examined 10 witnesses. Out of them, Bhagwait PW 2 was the informant, He, Ramdin PW3, Mangaroo PW 4 and

Prem Narain PW 5 were the eyewitnesses and had reached the spot on hearing the shrieks emanating from the house of Sushial and had seen the

four accused Ram Charittar, Kishori Lal, Ram Kumar and Chandrawati. Ram Kumar had managed to escape before their eyes. We shall related

the gist of their testimony a short while later. Baijnath PW 6 was the scribe of the F.I.R. Rest of the witnesses comprised of two Doctors and other

police personnel including the Investigating Officer. The accused also examined two witnesses. Ram Saran Yadav DW 1 was A.R.K of Police

office who brought the application of Ram Kumar, Ram Charittar and Kishori Lal from the record Room and filed the same. Ram Kishun DW 2

proved the signature of Kishori Lal and Ram Charittar on the applications dated 20.6.1980, 23.6.1980, 28.7.1980 and 5.8.1980, marked/Ex.

Kha-6 to Kha-9 respectively made to S.P., Basti.

16. The trial court acquitted the accused respondents on these ground: The F.I.R. was not free from doubt and it was fabricated; there was delay

in the examination of the witnesses by the Investigating Officer; the prosecution did not examine the injuries of the accused; The availability of light

at the spot was doubtful; the witnesses examined by the prosecution did not see the incident themselves; there was no independent witness and

ram Kumar was not chased.

17. We have heard Ms. N.A. Moonis, learned A.G.A. from the side of the State and Shir G.S. Chaturvedi, learned Sr. Advocate from the side of

the accused respondents. It has been argued for the State that the impugned judgment is based on perverse reasoning and is wholly unreasonable.

She urged that the acquittal has been recorded by unnecessarily finding fault with the prosecution evidence. It has been stressed that convincing

evidence and material have unjustifiably been ignored. On the other hand, learned counsel of the accused respondents argued that the trial judge

has given cogent and convincing reasons for finding the accused not guilty of the charge leveled against them and the impugned judgment does not

call of any interference whatsoever.

18. It is well settled that in an appeal against acquittal, the appellate court is entitled to re-appreciate the evidence on record. We are, however,

conscious that having done so it will not interfere with the order or acquittal unless it finds the view of the court acquitting the accused to be

unreasonable or perverse. Therefore, the evidence has to be re-appreciated for the purpose of ascertaining whether the guilt of the accused was

proved beyond reasonable doubt for which they were charged. Before proceeding further, we think it proper to relate the gist of the testimony of

the four material witnesses, namely, Bhagwati PW 2, Ramdin PW 3, mangroo PW 4 and Prem narain PW 5.

19. The house of informant Bhagwati PW2 is in the immediate neighbourhood of the place of incident. The incident took place at the house of

Sushila situate in the west of market Gaayghat. The house of the accused was situated in the east of the said Bazar Gaayghat and the house of this

witness was in the north of that of Ram Charittar accused after the house of Radhey Shyam. The house of Kishori Lal accused was just in the

south of Ram Charittar. So, This witness was a close neighbour of the deceased as well as the accused. He stated that after the death of Sushila's

husband, the accused used to quarrel and harass her so as to grab her property. They had quarreled with her in the evening preceding the night of

incident also and had threatened her to burn her with acid. As to the actual incident, he stated that at about 3 o'clock, he was present at his house.

When he heard the cries of Sushila he rushed to her house with a flashing torch. Ram Din, Prem Narain, Mangroo and a number of other persons

also reached there. He saw the four accused coming out of the house of Sushila. A dhibri (earthen lamp) was also glowing inside the house of

Sushila. Ram Charittar had an acid bottle in his hand which he threw. The bottle broke down with fizzing on the floor. That is, the acid spread on

the floor started producing corrosive effect. He applied some acid on his face and some drops sprinkled on the person of Chandrawati also. Ram

Charittar, Kishori Lal and Chandrawati were encircled and caught there but Ram Kumar managed to run away. Sushila with her younger daughter

Nandini came out rolling form inside and died. Her elder daughter Bindu also came out crying ""Badke Dada Ne Tejab Dala Hai"". He also proved

the F.I.R. got scribed by him and then lodged at the Police Station.

20. The house of Ramdion PW 3 was in the south of the house of Sushila. Just adjacent to the house of Sushila in the south was Pucca house of

Kishori Lal accused whose another house was in the east of the bazaar Gaay Ghat as depicted in the site plan. Ramdin PW 3 supported Bhagwati

PW 2 on the above material aspects.

21. Corroborative evidence was rendered by Mangroo PW 4 and Prem Narain PW 5. The of Mangroo was after 2-3 houses of Ram Charittar. It

came down from the cross-examination of Prem Narain that his house was after intervention of 8 or 9 houses form the house of Ram Charittar in

the southern side.

22. We propose to deal with the case of the accused respondents Ram Kumar and Chandrawati first. On consideration of the evidence and

material on record, we are of the opinion that the acquittal of these two does not call for any interference. The reasons may be stated. Ram Kumar

is the son of Kishori Lal accused. Kishori Lal had a house just adjacent to Sushila's house and another in the eastern side across the market lane.

So far as he is concerned, there is no evidence against him except that he managed to make his escape good. Obviously, the victims and the

accused were close relatives residing in the same vicinity. It is the own case of the prosecution that the shrieks of Sushila emanating from her house

attracted the neighbours. It is there in the testimony of Bhagwati PW 2 that nearly 50 persons had collected at the spot on the shrieks. The

possibility cannot be ruled out that though not involved in the crime, Ram Kumar ran away apprehending that he would also be misunderstood to

be one of the culprits involved in the crime. His mere running away could not be sufficient to hold him guilty.

23. So is the case with Chandrawati also who is the wife of the accused Ram Charittar. Her presence at the spot was not inconsistent with her

innocence. It was within the range of probability that she woke up from the shrieks emanating from Sushila's house and was driven to that direction

by sudden impulse, not finding her husband also inside her own house and was caught in the web there, mistaken as one of accomplices of the

crime. When the witnesses could reach in time to apprehend some of the accused and one of them Ram Charittar dropped the acid bottle on the

verandah of Sushila, Chandrawati who was residing still nearer in point of proximity could also reach there on hearing the shrieks. The

Investigating Officer had found a few black dark spots on the right side of her face and right hand. The same could be possible during the course of

scuffle and with the dropping of acid bottle by the Ram Charittar on the floor. Taken as a whole, evidence was not sufficient to nail her as one of

the culprits. It is there in the testimony of Bhagwati PW 2 that the place where she was caught was the part of her house. Of course, he so stated

about Ram Charittar also but his case stands on different footing because he held a bottle of acid in his hand which he threw on the floor of the

verandah coupled with the res gestae evidence of the elder daughter of Sushila that Badka Dada (eldest grandfather) had thrown acid. We shall

discuss his case separately. The possibility cannot be ruled out that hearing the shrieks, she reached the spot and was misunderstood by the witnesses

and other persons collected there to be one of the culprits. As they tried to apprehend her too, some of her bangles got broken and fell on the

floor, the pieces whereof were collected by the Investigating Officer and were found to be matching with green and red coloured bangles taken

from her wrist. We veer around the conclusion that she was not privy to the criminal act designed by her husband and brother-in-law (Ram

Charittar and Kishori Lal) to exterminate Sushila and her two infant daughters by pouring acid over them. The criminal act which they translated

was only their brain child so as to grab Sushila's property. Judged in the right perspective, she too deserved to be afforded the benefit of doubt.

24. Now we propose to discuss the case of the accused Ram Charittar and Kishor Lal. On appraisal and dispassionate scrutiny of evidence, the

prosecution case stood full proved against them and none of the reasons assigned by the trial judge holds water as we shall deal with in the

succeeding discussion. Of course, none saw them pouring acid on the victims but the circumstantial evidence was clinching to establish beyond any

doubt whatsoever that they were the culprits who committed this crime.

25. At times, motive goes a long way to prove the authorship of the crime. In the instant case, the two accused Ram Chrittar and Kishori Lal

(brothers of the husband of deceased Sushila) had a strong motive to liquidate her alongwith her two infant daughters so as to grab her property.

On liquidating them, they were the immediate heirs and beneficiaries to succeed to the estate left by the .husband of deceased Sushila. It has come

in the testimony of Bhagwati PW 2 that after the death of her husband, Sushila used to reside in her Pucca house. She had 10-12 thousand Rupees

deposit in Bank besides land and a grove. He also clearly stated that the accused used to quarrel and harass her to get her property. None else

except these two brothers Ram Charittar and Kishori Lal accused could have any enmity with the helpless widow who had two infant daughters

aged about 5 years and 2 years respectively.

26. As we said a little earlier, four witnesses, namely, Bhagwati PW 2, Ramdin PW 3 Mangroo PW 4 and Prem Narain PW 5 examined by the

prosecution resided in the neighbourhood of the place of incident and could have very well reached the spot on hearing the shrieks of Sushila at the

dead of night. They were, in fact, natural witnesses about what they deposed before the court. The trial judge was absolutely wrong in holding that

there was absence of independent witnesses. We note that no enmity could be proved by the defence against any of these witnesses who were

subjected to searching and grueling cross-examination. Minor contradictions on insignificant aspects could not overshadow the main substratum of

their testimony which remained unshaken on the vital aspects which were thus: They had reached the spot on hearing the shrieks of Sushila

emanating from her house; these two accused had been apprehended at the spot coming out of her house; one of them Ram Charittar had a bottle

of acid in his hand which he threw on the floor on seeing the witnesses; the bottle broke down falling on the floor with the splashing of some acid

on the floor; Sushila and her younger daughter came rolling crying from inside and died there; the elder daughter of Sushila came out with acid

burns crying that Badka dada had thrown acid on them.

27. The criticism made by the trial judge was wholly unjustified and uncalled for that the witnesses did not see the incident themselves. Of course,

they did not see the pouring or throwing acid by the two accused on the victims but it did not justify the disbelieving of the prosecution case. As a

matter of fact the testimony of the witnesses had a ring of truth that they deposed only what they saw with their own eyes. Had there been any

intention on the part of the witnesses to fabricate evidence, they could pose themselves to be eyewitnesses of throwing of acid also by the accused

on the victims. They did not do anything of the kind. Their testimonial assertions were unjustifiably rejected by the trial judge without any basis

whatsoever. Nor was it material at all that Ram Kumar was not chased. We do not see as to how could it be a ground for disbelieving the

prosecution case and evidence as against Ram Charittar and Kishori Lal qua whom solid circumstantial evidence was lined up to clungly

establish their culpability in the commission of this ghastly crime.

28. It appears that the trial judge was simply fumbling for excuses to back acquittal and in the same strain also unjustifiably held that there was

delay in examination of witnesses by the Investigating Officer. The statement of the Investigating Officer was that the statements of witnesses had

been recorded by him at the spot itself after preparing the inquest reports by him at the spot itself after preparing the inquest reports of the two

dead bodies. To justify his uncalled for criticism, the trial judge observed that Ramdin PW 3 stated that S.I. Ram Adhar Yadav PW 1 had

recorded his statement after 2-3 days but he could not say whether he was examined in the morning, midday or in the evening. According to him,

Prem Narain PW 5 stated that the Investigating Officer examined him after 5-6 days but he did not know which prosecution witnesses were

examined that time. He simply tried to justify the acquittal by putting premium on trivialities. Such minor variations are attributable to lapse of time

and consequent failure of memory of the witnesses. It has also to be kept in mind that the time is not the essence of the life of rustic villagers as the

witnesses in the present case were.

29. The applications made by the accused to S.P. Basti, subsequent to the incident (Ex.Kha-6 to Kha-9) could not score any point for them. They

were simply out to create false defence with legal consultation concocting baseless stories to get away from the consequence of the serious crime

committed by them. All the applications (Ex.Kha-6 to Kha-9) were made either by Ram Kumar or other accused after they had been released on

bail in the present crime.

30. We find that the trial judge doubted the availability of light at the spot on wholly conjectural basis that the fact of glowing of Dhibri in the house

of Sushila and of the torch being held by Bhagwati PW 2 had not been mentioned in the F.I.R. Needless to say, F.I.R. is not an encyclopaedia of

every minute detail. Further, it has to be kept in mind that the F.I.R. was made by a rustic villager, and not by a legal expert. As a matter of fact,

the omission of the factum of light in the F.I.R. rather indicated its spontaneity that it was free from any concoction or deliberation. Bare facts of the

crime were mentioned in the F.I.R. lodged promptly by a natural witness Bhagwati PW 2 who was residing in the close proximity of the place of

incident and had reached there with flashing torch on hearing the shrieks emanating from the house of Sushila. He, as earlier stated, was one of the

those who had encircled some of the accused at the scene of the incident. The availability of source of light in the form of glowing Dhibri inside the

house of Sushila and the flashing torch held by Bhagwati PW 2 was beyond every pale of doubt. Sushila was sleeping inside her house with two

infants. One of the infants was aged only two years. It was very natural that she had kept a Dhibri glowing in the night to meet needed requirement

of the child of feeding, urinating etc. Further, availability of light there was must because it could be only with the availability of light there that the

accused could locate their targets for committing this crime. It was very natural on the part of Bhagwati also that on hearing the shrieks from the

house of Sushila, he ran to the scene from his house with a flashing torch. The Investigating Officer had examined his torch as well as Dhibri with

the preparation of Fard also in this behalf (Ex.Ka-7). It is there in his testimony too (examined as PW 9) that he had inspected the torch of

Bhagwati and Dhibri that was glowing in the house of Sushila and after preparing Fard Ex.Ka-7 in this behalf, he had made over the same on the

custody of Bhagwati. So, the finding of the trial judge doubting the availability of light at the spot is wholly perverse.

31. Another finding of the trial judge designating the F.I.R. to be fabricated is wholly without any foundation. The distance of Police Station from

the place of occurrence was about 8 Kms and for an incident taking place at about 3 o'clock in the night, the F.I.R. was promptly lodged by

Bhagwati PW 2 at 6.15 A.M. after getting it scribed by Baijnath PW 6. Bhagwati PW 2 categorically stated that after the incident, he got scribed

the F.I.R. in Gaay Ghat Bazar by Baijnath. He read it over to him whereafter he signed it. He took it to the Police Station where he lodged. It is

the in the testimony of Baijnath PW 6 also that in Gaay Ghat Bazar, he had scribed the F.I.R. at the instance of Bhagwati PW 2 at the shop of

Laxmi at about 4.30 A.M. It was Rama Kant Dubey PW 10 who was head Constable at the concerned Police Station at the relevant time who

received the F.I.R. and prepared the Chik report with entry in G.D. registering the case. The Investigating Officer S.O. Ram Nath PW 9 testified

that the F.I.R. had been presented at the Police Station at 6.15 A.M. on 30.3.1980 in his presence whereafter he started for the spot reaching

there at 8.30 A.M. There is nothing is nothing to castigate the genuineness of the F.I.R. and it lodging at the given time. It could not be designated

to be fabricated as has wrongly been done by the trial judge. Rather, it appears that he wrongly and whimsically found artificial holes in prosecution

case on every aspect of the matter. He did so on wholly untenable grounds, such as Bhagwati PW 2 stated that the only reason why he lodged the

report was that the accused had committed a very heinous crime, though he had no other concern with the accused. It cannot be appreciated as to

how could it be a ground to take the F.I.R. to be fabricated. In right perspective, it indicated that the F.I.R. had been lodged by an uninterested

person who had no enmity whatsoever against the accused persons and that it was a genuine document.

32. Yet another finding of the trial judge that the prosecution did not get examined the injuries of the accused is also highly unreasonable. True, it

was, inter alia, stated to in the F.I.R. that when the witnesses reached the scene on hearing sharing shrieks emanating from the house of Sushila and

spotted the accused coming out of her house, Ram Charittar had a bottle in his hand which he dropped on the floor on seeing the witnesses; the

bottle broke down and some of the acid spread on the floor; with the help of his palms Ram Charitter rubbed some acid on his face and a few

sprinkles few sprinkles fell on the face of his wife Chandrawati also. It is there in the evidence adduced in the court too. The trial judge reasoned

that the prosecution did not examiner any doctor who could support its case and state that the injuries found on the person of the accused could be

caused as alleged by it and this was a deliberate concealment of truth. We cannot appreciate as to how could it be taken to be taken to be a

ground creating dent in the prosecution case. We find from the scrutiny of record that on reaching the spot, the Investigating Office had found a

few black spots, of acid on the head, forehead and left side face of the accused Ram Charitttar. he had also found a few such black sports on the

right wrist and right side face of his wife Chandrawati. It was not at all necessary for the prosecution to get medically examined these two accused

for such few black spots. It cannot be lost sight of that major part of the acid contained in the bottle had been consumed by the Ram Charittar in

pouring on the three unfortunate victims at the place where they were sleeping. Naturally, only little amount of acid would have remained in the

bottle which spread on the ground when he (Ram Charittar) dropped the acid bottle on the floor of the verandah on coming out of the room where

the three victims had been poured acid on. Every action of a culprit is not based on reason. We have dealt with it while dealing with and discussing

the case of Chandrawati as to how could she come in contact with few sprinkles of acid. Very little amount of acid on the palms of Ram Charittar

could cause black spot cause black spot on his head forehead and left side face when involuntarily he took his palms to those parts of the body.

The possibility was equally there of few sprinkles there of few sprinkles of acid from the broken bottle getting up and causing such black spots. It

was hardly material or necessary for the prosecution to go for medical examination of Ram Charittar or his wife Chandrawati for such a few black

spots, particularly when they had been apprehended at the spot by the witnesses and were found there when the Investigating Officer reached

immediately at about 8.30 A.M. consequent upon the lodging of the F.I.R. It did not cause any ripple in the prosecution case at all.

33. It having been amply demonstrated that the findings recorded by the trial Judge to strike at the prosecution case are manifestly erroneous and

contrary to the evidence, we propose to take stock below of the proof crystallizing against the accused Ram Charitter and Kishori Lal:

1. Both of them (Ram Charitter and Kishori Lal) had a strong motive to commit this crime by exterminating Sushila and he infants so as to clear

their way to succeed to their estate, they being the nearest heirs as brothers of late husband of Sushila. Firm evidence was there coming through the

testimony of Bhagwait PW 2, the nearest neighbour that they used to quarrel and harass Sushila ever since the death of her husband, pressing her

to transfer her property to them. They were not even letting her father come and meet her. Besides cash in Bank, she had land and a grove also left

by her husband. So, having covetous and evil eye on her property the two accused Ram Charittar and Kishori Lal had a very strong motive to

commit this crime.

2. Both of them had been apprehended at the spot by the witnesses who had reached the scene on hearing the shrieks of Sushila emanating from

her house.

3. It was Ram Charittar who had dropped the acid bottle on the floor or verandah, that he had wherewith he had come out of the rooms of the

victims.

4. So far as the accused Ram Charitter is concerned, there was res gestae evidence also in the form of statement of Indu (the elder daughter of

Sushila) who cried at the spot itself that Badka Dada had poured acid on them. She was aged about 5 years. It was at the in point of time while

she was crying in extreme pain immediately after the incident. The possibility of any tutoring was completely obliterated. This res gestae evidence

was mentioned in the earliest version of the promptly lodged F.I.R. made by the Bhagwati PW 2 and it was there in the evidence of the witnesses

produced before the Court also that she so uttered at the spot. The term Badka Dada could relate only to him (Ram Charittar) and none else. He

was elder to his brother Kishori Lal accused. He gave his age as 45 years in his statement u/s 313 Cr.P.C. whereas Kishori Lal stated his age as

40 years in his such statement. So, there cannot be the slightest doubt that Badka Dada could be none else then Ram Charittar accused.

5. For the accused respondent Kishori Lal also, it is conclusively established that he was associated in the commission of this crime with his elder

brother Ram Charittar. We shall make our meaning clear by little discussion in this behalf. it has to be kept in mind that out the three victims, two

were infant daughters of Sushila who were aged 5 years and 2 years respectively. Obviously, they were incapable of offering any meaningful

resistance during the commission of crime. The only resistance could be offered by Sushila who was a young lady aged about 30 years. She was

required to be rendered completely immobile. To say in other words, resistane from her side was to complete sealed and at lest two persons were

required to accomplish the hob. The reason is that the instinct of self preservation is strongest in all living beings. It shall be noted form her post

mortem report that acid burns were there on her face, neck, upper part of chest, abdomen, upper limbs, buttocks and thighs. They go a long way

to indicate that she had been caught hold of from the side of her feet so as to render her completely incapable of offering any resistance while acid

was being poured on her. This catching as done by Kishori Lal while Ram Charitter poured acid on her, starting from upper limbs upto thighs while

she was in supine position. The acid burns found on her body clearly indicate that she was in supine position when acid was poured on her by the

accused Ram Charittar. Since Kishori Lal was catching hold of her feet sitting down on the ground, Ram Charittar in order to save him (Kishori

Lal) from acid burns did not pour acid on Sushila"s body below thighs. Some acid poured on naval and trunk part spread on the back, finding its

way through split on back side too and it was for this reason that acid burns were also found on upper part of back, chest and right buttock (ante

mortem injuries no. 7 and 8). May be that while catching hold of the feet of Sushila, Kishori Lal had wrapped his worn Dhoti on his hands to avoid

effect of sprinkling acid. But the nature operates in its own way providing evidence against the real culprit(s). In the present case, Dhoti worn by

the accused respondent Kishori Lal at the time of incident off by the Investigating Officer in his possession through Ex. Ka-12 and it had been

found to be partially burnt with acid. It was sealed at the spot and ultimately sent to chemical examiner who found sulphuric acid on it also in his

report Ex. Ka-29 (Sulphuric acid was found on several other articles also, namely, Kathris, Dari, Chaddar, apparel, other belongings of the

deceased etc). He (Kishori Lal) did not offer any explanation about acid burns on his Dhoti though question no. 13 was also put to him in this

behalf u/s 313 Cr.P.C. Therefore, the accused Kishori Lal is also conclusively connected as one of the culprits who committed this ghastly crime.

34. Obviously, the lower court did not analyse the evidence in proper perspective and acted on surmises and conjectures in acquitting the two

accused respondents Ram Charitter and Kishori Lal. The approach of the trial court in acquitting these two accused is wholly perverse and

manifestly erroneous being contrary to the evidence. Over-exaggerated devotion to the concept of benefit of doubt is bound to result in miscarriage

of justice. This concept should not become a fetish. We need hardly reiterate that unmerited acquittals are wholly unjustified and must be guarded

against to sustain the confidence of the public in justice delivery system. Nothing is ever free from all doubts. If absolute certainty was pre-

condition for decision, judicial process would be paralysed. Though it was a case of circumstantial evidence, but the guilt of the two accused

namely, Ram Charittar and Kishori Lal stood proved conclusively beyond every reasonable doubt on dispassionate, proper and judicious analysis

of the evidence brought on record by the prosecution.

35. These two accused respondents (Ram Charittar and Kishori Lal) behaved as wolves in human shape in committing this ghastly crime of

mercilessly exterminating the young widow of their own brother as also two innocent budding flowers aged about 2 years and 5 years (daughters

of the deceased Sushila). They did not have even a grain of mercy or human kindness. As a matter of fact, the crime committed by them falls in the

category of rarest of rare cases, warranting extreme penalty of death and we could issue notice to them in this behalf, but the appeal against

acquittal has come up for hearing nearly after 24 years. One of them, namely, Ram Charittar must now be about 70 years of age and the other one

Kishori Lal in the neighbourhood of 65 years. We, therefore, settle their punishment to be life imprisonment which is lesser of tow alternative

punishments provided by the statute for the offence of murder.

36. Our final order is as under:

The Government Appeal is allowed in part. We find the accused Ram Charittar and Kishori Lal to be guilty of the triple murder of Sushila and her

two infant daughter-Nandini and Bindu aged about 2 and 5 years by pouring acid over them punishable u/s 302 I.P.C. read with Section 34 I.P.C.

We accordingly convict them u/s 302/34 I.P.C. and sentence each of them to undergo rigorous imprisonment for life.
The Chief Judicial

Magistrate, Basti shall cause them to be arrested and lodged in jail to serve out the sentence awarded.

37. Benefit of doubt being afforded to the other two accused respondents Chandrawati and Ram Kumar, their acquittal is affirmed.

38. Certify the judgment to the lower court immediately for reporting compliance within two months.