

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12th September, 2014

+ **CRL.A. 412/2012 & Crl.M.B.984/2014**

GHANSHYAM @ BITTU Appellant
Through: Mr. M.L. Yadav, Advocate

versus

STATE

..... Respondent
Through: Mr. M.N.Dudeja, Additional
Public Prosecutor with Inspector
Manoj Pant, SHO, PS Gandhi
Nagar along with Complainant in
person.

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 26th August, 2011 passed by Additional Sessions Judge, FTC, Delhi in Sessions Case No.69/2010 convicting the appellant for offence under Section 307 IPC and order on sentence dated 29th August, 2011 sentencing him to undergo rigorous imprisonment for a period of 7 years with fine of Rs.2000/- in default to undergo SI for two months.

2. Learned counsel for the appellant at the outset did not contest

the appeal on merits and it was submitted that the appellant was only 19 years of age at the time of commission of offence. He has the responsibility of maintaining his mother and two unmarried sisters. He is not involved in any other case. He has remained in jail for a period of more than four years. As such, he be released on the period during which he remained as under trial in this case.

3. Mitigating circumstances referred by the learned counsel for the appellant were not seriously disputed by learned Additional Public Prosecutor for the State. However, it was submitted that dangerous injuries were caused on the person of the complainant with the result, one of his kidney and spleen had to be removed. The complainant is liable to be compensated.

4. In this regard, it is submitted by the learned counsel for the appellant that the financial condition of the appellant is not sound, inasmuch as, he could not even engage a private advocate and, therefore, he had to be provided legal assistance through Delhi High Court Legal Services Committee. Under the circumstances, it was submitted that the appellant will not be able to pay any compensation to the complainant.

5. As per the prosecution case, the incident took place on a very trivial issue as the complainant had gone to the shop of Amil Hair Dresser in Gali No.18, near his house for having a hair cut along with his cousins Raj Kumar and Atul. While Raj Kumar sat on the chair, he sat behind him and was waiting for his turn. Atul was standing outside the shop. Accused came inside the shop and started combing his hair. The mud stained shoes of accused hit the right foot of the complainant. He asked him to walk carefully. This annoyed the accused who hurled abuses on him whereupon the complainant slapped him. The accused thereafter took out a knife from the right pocket of his pant and stabbed him on the left side of his abdomen and then on his left arm. Complainant started bleeding and fell down on the floor. He was removed to JPN hospital where his MLC, Ex.PW1/A was prepared by Dr. Fahim. As per the MLC, victim sustained stab wound on left hypochondrium region 2x1 cm and incised wound 1½ x 1 cm on his left forearm. Spleen and left kidney of the victim was acutely damaged and due to this reason, both the organs were completely removed. The patient had lost four litres of blood and was kept in ICU for 2-3 days. Injuries were opined to be

dangerous for life.

6. Prosecution examined 15 witnesses in order to substantiate its case. In his statement recorded under Section 313 Cr.P.C., accused took a plea of alibi and alleged his false implication at the instance of Head Constable Raj Kumar who is uncle of injured. He examined DW1 Smt. Vimla, his mother in support of his defence.

7. After meticulously examining the evidence led by prosecution which stand proved from the testimony of injured duly corroborated by other witnesses and medical evidence, learned Additional Judge rightly convicted the appellant for offence u/s 307 IPC. The findings do not call for interference and are upheld.

8. However, keeping in view the mitigating circumstances, i.e., his being first offender, his age and family responsibility, he was sentenced to undergo 7 years and to pay fine of Rs.2000/-.

9. As per the nominal roll, the appellant has undergone sentence for a period of 3 years, 2 months and 1 day besides earning remission of 10 months and 21 days as on 10th July, 2014. His overall conduct has been reported to be satisfactory. Under the circumstances, keeping in view the fact that the incident in question took place on a

spur of moment, appellant is not involved in any other case, his young age and family responsibilities, substantive sentence of the appellant is reduced to five years while keeping the sentence of fine as unaltered.

10. The only other aspect that needs to be examined is whether while awarding lesser sentence to the appellant keeping in view the surrounding circumstances, the victim should be forgotten in the criminal justice delivery system whose one kidney and spleen had to be removed due to the acts of the accused.

11. Victims are unfortunately the forgotten people in the criminal justice delivery system. The criminal justice delivery system tends to think more of the rights of the offender than that of relief to the victims. The Court has to take into consideration the effect of the offence on the victim. No term of months or years imposed on the offender can reconcile the agony suffered by the victim but then monetary compensation will at least provide some solace.

12. In *Rattan Singh v. State of Punjab*, (1979) 4 SCC 719, Krishna Iyer J., held that it is a weakness of our jurisprudence that the victims of the crime do not attract the attention of law. It will be

useful to reproduce the relevant portion of the judgment as hereunder:-

“6. The victimisation of the family of the convict may well be a reality and is regrettable. It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the legislature. We can only draw attention to this matter. Hopefully, the welfare State will bestow better thought and action to traffic justice in the light of the observations we have made.”

13. Again in ***Maru Ram v. Union of India***, (1981) 1 SCC 107, Krishna Iyer J., held that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn.

14. In ***Dayal Singh v. State of Uttaranchal***, (2012) 8 SCC 263, the Supreme Court held that the criminal trial is meant for doing justice to all - the accused, the society and the victim. Then alone can law and order can be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that the

guilty man does not escape.

15. The Code of Criminal Procedure of 1898 contained a provision for restitution in the form of Section 545, which stated in Sub-clause 1(b) that the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court".

16. The Law Commission of India in its 41st Report submitted in 1969 discussed Section 545 of the Code of Criminal Procedure of 1898 extensively and stated as follows:

“46.12. Under Clause (b) of Sub-section (1) of Section 545, the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court." The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The word "substantial" appears to have been used to exclude cases where only nominal damages would be recoverable. We think it is hardly necessary to emphasise this aspect, since in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice, they are not particularly liberal in utilizing this provision. We propose to omit the word "substantial" from the clause.

17. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Code of Criminal Procedure Bill, 1970, which aimed at revising

Section 545 and introducing it in the form of Section 357 as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows:

"Clause 365 [now Section 357] which corresponds to Section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the Court imposes a fine the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the Court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.

18. The Code of Criminal Procedure of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Objects and Reasons that Section 357 was *"intended to provide relief to the proper sections of the community"* and that the amended Code of Criminal Procedure empowered the Court to order payment of compensation by the accused to the victims of crimes *"to a larger extent"* than was previously permissible under the Code. The changes brought about by the introduction of Section 357 were as follows:

"(i) The word "substantial" was excluded.

(ii) A new Sub-section (3) was added which provides for payment of compensation even in cases where the fine does not form part of the sentence imposed.

(iii) Sub-section (4) was introduced which states that an order awarding compensation may be made by an Appellate Court or by the High Court or

Court of Session when exercising its powers of revision."

19. The amendments to the Code of Criminal Procedure brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where "*the compensation awarded Under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated.*" Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.

20. Despite the fact that the power vested in Courts under Section 357 and 357A of the Code, the provisions have by and large been mostly neglected/ignored.

21. In ***Hari Singh v. Sukhbir Singh and Ors.***, (1988) 4 SCC 551, Hon'ble Supreme Court lamented the failure of the Courts in

awarding compensation to the victims in terms of Section 357 (1) of the Code of Criminal Procedure. The Court recommended to all Courts to exercise the power available under Section 357 of the Code of Criminal Procedure liberally so as to meet the ends of justice. The Court said:

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

22. In ***K.A. Abbas H.S.A. v. Sabu Joseph***, (2010) 6 SCC 230, the Supreme Court again noted that Section 357 Cr.P.C. is an important provision but the Courts have seldom invoked it, perhaps due to the ignorance of the object of it. The relevant portion of the said judgment is reproduced hereunder:-

“18. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but the courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing

judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. It may be noted that this power of the courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all the courts to exercise this power liberally so as to meet the ends of justice in a better way."

21. In ***Roy Fernandes v. State of Goa***, (2012) 3 SCC 221, the Supreme Court again observed that the Criminal Courts do not appear to have taken significant note of Section 357 Cr.P.C. or exercised the power vested in them thereunder. The relevant portion of the said judgment is reproduced hereunder:-

"41. The provision of payment of compensation has been in existence for a considerable period of time on the statute book in this country. Even so, the criminal Courts have not, it appears, taken significant note of the said provision or exercised the power vested in them thereunder...."

22. In ***Ankush Shivaji Gaikwad v. State of Maharashtra***, (2013) 6 SCC 770, the Supreme Court again noted with despair that Section 357 Cr.P.C. has been consistently neglected/ignored by the Courts despite series of pronouncements to that effect. The Supreme Court cited with approval ***Sarwan Singh & Ors. vs. State of Punjab*** (1978) 4 SCC 111, ***Maru Ram*** (supra), ***Hari Singh*** (supra); ***Balraj vs.***

State of U.P. (1994) 4 SCC 29; *Baldev Singh v. State of Punjab*, (1995) 6 SCC 593 and *Dilip S. Dahanukar* (supra). The Supreme Court held that Section 357 Cr.P.C. is mandatory and has to be applied in every criminal case and the Courts are required to record reasons for such application. The relevant portions of the judgment are reproduced hereunder:-

“28. The only other aspect that needs to be examined is whether any compensation be awarded against the appellant and in favour of the bereaved family under Section 357 of the Code of Criminal Procedure, 1973. This aspect arises very often and has been a subject-matter of several pronouncements of this Court. The same may require some elaboration to place in bold relief certain aspects that need to be addressed by the courts but have despite the decisions of this Court remained obscure and neglected by the courts at different levels in this country.

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48. The question then is whether the plenitude of the power vested in the courts under Sections 357 and 357A, notwithstanding, the courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the courts. In other words, whether courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

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54. Applying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context in which it was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite the legislature having gone so far as to enact specific provisions relating to victim compensation, courts choose to ignore the provisions

altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on the courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.

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61. Section 357 Cr.P.C. confers a duty on the court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the court must disclose that it has applied its mind to this question in every criminal case.

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66. To sum up: while the award or refusal of compensation in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

*67. Coming then to the case at hand, we regret to say that the trial court and the High Court appear to have remained oblivious to the provisions of Section 357 Cr.P.C. The judgments under appeal betray ignorance of the courts below about the statutory provisions and the duty cast upon the courts. Remand at this distant point of time does not appear to be a good option either. **This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.***

23. Applying the aforesaid principles, the present case was a fit

case where victim was required to be compensated inasmuch as injuries were sustained by him in the incident on 8th February, 2010, he gained consciousness only on 16th February, 2010 and was discharged from the hospital on 25th February, 2010 and as per the opinion of the doctor he suffered dangerous injuries resulting in removal of one of his kidney and spleen. The complainant was also called in person and he narrated his pathetic tale by submitting that due to loss of his kidney, his condition has deteriorated and he is not in a position to work properly. He was only 20 years of age at the time of incident. However, the accused himself belongs to poor strata of society, with the result he could not even afford to engage an advocate and had to be provided legal assistance through legal aid and, therefore, is not in a position to pay compensation to the victim.

24. Under the circumstances, in view of Section 357A of the Code, the case is recommended to the Delhi State Legal Services Authority to award compensation to the victim Jitender as per the provisions incorporated in '*Delhi Victims Compensation Scheme, 2014*'.

25. Copy of the judgment be sent to Member Secretary, Delhi State Legal Services Authority for immediate compliance.

26. The appeal stands disposed of accordingly. The pending application, if any, also stand disposed of.

The appellant be informed through Superintendent Jail.

Copy of the judgment along with Trial Court record be sent back.

(SUNITA GUPTA)
JUDGE

SEPTEMBER 12, 2014

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