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

Date of Decision: 20th March, 2015

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Crl.A. 153/2010

CHAMAN S/O GURCHARAN

..... Appellant

Through: Mr.Ajay Verma, Advocate

Versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Fizani Hussain, Additional Public
Prosecutor for the state.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Appellant impugns the judgment dated 07.10.2009 and order on sentence dated 09.10.2009 passed by learned Additional District & Sessions Judge in Sessions Case No. 49/2008 arising out of FIR No.140/08 under Section 376(2)(f) IPC, Police Station Uttam Nagar whereby the appellant was convicted under Section 376(2)(f) IPC and was sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5000/- in default to undergo simple imprisonment for a further period of one month.

2. The prosecution case succinctly stated as follows:

On 12.04.2008 at about 2.30 pm prosecutrix 'K' alongwith Komal was going to her Jhuggi situated at Kali Basti. Accused met them on the way

and lured them with a toffee each. Thereafter, he took 'K' to one Jhuggi and bolted the same from inside. He also tried to push Komal inside the Jhuggi but she managed to flee away. She informed about the said act of accused to her bua Usha. Lot of people went to that Jhuggi and accused was caught and was thrashed by the public. 'K' was found bleeding from her private parts and her underwear was also found stained with blood. Police was informed. ASI Om Prakash alongwith Constable Sher Singh immediately reached the spot. Prosecutrix and accused were taken to DDU Hospital where their medical examination was conducted. Statement of Komal was recorded on the basis of which FIR Ex.PW-11/A was recorded by PW-11 Head Constable Ashok Kumar. Accused was arrested. At the hospital, the concerned doctor handed over one undergarment, blood sample and sample seal to ASI Om Prakash which were seized vide memo Ex.PW-12/C. Underwear of 'K' was also preserved and seized vide seizure memo Ex.PW-12/D. One white baniyan of accused having blood stains was recovered from one corner of room of a Jhuggi which was seized vide memo Ex.PW-12/E. The exhibits were sent to FSL. After completing investigation, chargesheet was submitted against the accused. Charge under Section 376(2)(f) IPC was framed against the accused. He however abjured the guilt and claimed trial.

3. Prosecution examined as many as 13 witnesses to substantiate its case. All the incriminating evidence was put to accused while recording his statement under Section 313 Cr.P.C. wherein he denied the case of prosecution, pleaded innocence and alleged false implication in this case. He examined his mother Smt.Savitri as DW-1 to testify that her son was having enmity with one Bunty and he was falsely implicated at the instance of Bunty.

4. After meticulously examining the evidence adduced by the prosecution and the defence, vide impugned judgment the appellant was convicted and sentenced, as mentioned hereinabove.

5. Feeling dissatisfied, present appeal has been preferred.

6. After hearing learned counsel for the appellant and learned Additional Public Prosecutor for the State, I am convinced that the findings of the learned Additional Sessions Judge does not suffer from any infirmity which calls for interference due to the following reasons:

7. As per the record, the date of birth of prosecutrix was 24.02.2004 as such, at the time of incident she was hardly three and a half years old. Keeping in view her tender age, her statement was not recorded during the investigation. As per the record, during the trial of the case she was brought by her mother in the court. She was, however, not matured enough to understand the proceedings of the court and to make statement before the court and, therefore, her deposition was not recorded by the court. That being so, there was no direct evidence available as nobody else witnessed the accused committing the gruesome crime. However, the circumstantial evidence coming on record was sufficient to prove the guilt of the accused beyond reasonable doubt.

8. The most material witness was PW-5 Komal. She was alongwith the victim at the relevant time. It was on her statement that the FIR was registered. Keeping in view the fact that she was also a child aged about 10 years, before recording her statement several court questions were put to her in order to satisfy whether she was in a position to understand the questions

and to answer them properly and that she was not under any influence. After according satisfaction in this regard, her statement was recorded albeit without oath keeping in mind her tender age. She deposed that she and 'K' were present at Jhanda Chowk and accused had given them toffees. Accused had taken 'K' to one Jhuggi claiming that he would give her one rupee and accused claimed himself to be her maternal uncle. She further deposed that accused was even calling her inside that Jhuggi but she went to call her bua Usha. When she returned with Usha, she saw 'K' lying unconscious inside the Jhuggi which was left open at that time and accused was not there. Pursuant to the questions put to her by the Public Prosecutor, she admitted that accused had taken 'K' inside the Jhuggi and bolted the same from inside and that when she returned with her bua Usha, Usha knocked the door of the Jhuggi from outside, and the door of the Jhuggi was opened from inside by accused. Her bua shouted for help and public tried to apprehend accused but he was able to run away. Accused was beaten up by the public. She admitted that she had put her right thumb impression on statement Ex.PW-5/A which was read over to her. She also proved her statement Ex.PW-5/B recorded under Section 164 Cr.P.C by the Metropolitan Magistrate.

9. Despite cross-examination by learned counsel for accused, nothing material could be extracted to create any doubt with respect to the veracity and correctness of the statement of this witness.

10. PW-4 Usha is the grandmother of victim 'K' and has deposed that on 12.04.2008 she returned home from her work at about 2.30-3.00 pm. Komal and 'K' were playing outside the Jhuggi. Komal informed her that accused lured them on the pretext of providing them with toffees and took them to a

vacant Jhuggi belonging to Bunty. Komal also informed that accused tried to bolt the door from inside upon which she ran away from there but 'K' remained inside the Jhuggi. On receiving this information, she alongwith Komal went to that Jhuggi and knocked at the door. Accused opened the Jhuggi after sometime. She went inside and saw 'K' lying unconscious on the floor of the Jhuggi and was bleeding from her private parts. She took her in her lap and shouted for help. Public came at the spot and apprehended the accused. In the meanwhile, police also reached at the spot. 'K' was taken to DDU Hospital and when 'K' gained consciousness, she claimed that accused was responsible for the bleeding. She also deposed that accused had committed rape upon 'K' and she could see that as doctor had given stitches on her private part. In cross-examination, she deposed that Jhuggi of Bunty was lying vacant at that time and accused was known to her from before. Jhuggi of accused was situated near the Jhuggi of Bunty. She denied the suggestion that she had not seen the accused coming out from the Jhuggi of Bunty on that day. Despite cross-examination the defence was unable to elicit anything which may caste any suspicion with regard to the testimony of this witness.

11. PW-6 Sudha is the mother of the prosecutrix. She deposed that on the fateful day her daughter was playing with Komal. After sometime 'K' came back and was bleeding from her private parts and she informed her that it was due to the act of the accused. She went to the house of accused and found that he had been locked inside his Jhuggi by his mother. Police was informed. Her daughter remained hospitalised for 8 days. As per the version of 'K', accused had raped her.

12. PW-7 Kailash is the father of the prosecutrix. He has also deposed that when he returned from the market, he noticed 'K' lying in Jhuggi and was bleeding from her private parts. Accused was apprehended and was given thrashing by the public.

13. Immediately after the incident, information was flashed to the police and PCR officials informed local police which resulted in recording of DD No.25A. On being entrusted with the investigation of the case, ASI Om Prakash alongwith Constable Sher Singh reached the spot where they met 'K' weeping and there were blood stains on her underwear. Accused was also apprehended by the public and was beaten. The police officials took 'K' and accused Chaman to DDU Hospital where they were medically examined. After medical examination accused Chaman was brought back at the spot. On the basis of statement of Komal, FIR was got registered . One white baniyan having blood stains was recovered from the corner of the Jhuggi which was seized vide memo Ex.PW12/E. The pant of the accused Ex.P-2 was also seized.

14. When 'K' was taken to hospital she was examined by PW-2 Dr.Anjali Sirohi. As per her deposition, on gynaecological examination, hymen was found to be torn and she noticed fresh oozing from margins. She also deposed that victim was examined by administering anaesthesia keeping in mind her tender age. 2 cm mid line second degree perennial tear was present. 4-5 abrasion marks were at the perennial area. Dr. Anjali proved the MLC Ex.PW2/A and her deposition indicate that 'K' was raped and sexually assaulted.

15. Underwear of the victim was seized. Baniyan of accused was seized from the Jhuggi and his wearing pant was also seized. Undergarment of accused was also seized at the hospital at the time of his medical examination. All the seized articles were sent to FSL. As per the report given by Sh. A.K.Srivastava, Assistant Director, FSL human semen was detected on the underwear of the accused and also on the underwear of victim and semen was of same group i.e., 'A' group. Human blood was also found on baniyan and pant of the accused as well as on the underwear of victim. The FSL report is a strong incriminating piece of evidence against the accused.

16. This was a case where the court did not have the benefit of statement of victim herself keeping in view her tender age. However from the testimony of Komal it was proved that 'K' was with her at the relevant time, date and place. Accused met them and lured them with toffees and gave them toffees. Thereafter he took them to a Jhuggi and was able to take 'K' inside the Jhuggi. Although he attempted to take Komal also inside the Jhuggi but somehow she managed to run away and informed Usha, grandmother of 'K'. Usha alongwith Komal reached at the Jhuggi which was found bolted from inside. When Usha knocked the door of the Jhuggi, the accused came out and the victim was found lying unconscious. The medical evidence amply proves that the victim was subjected to rape. The MLC of accused Ex.PW1/A proved that there was nothing to suggest that accused was not capable to perform sexual act. The FSL report finding human semen of the same group on the underwear of the accused as well as on the underwear of the victim and human blood on the baniyan and pant of the accused as well as on the underwear of the victim also proved beyond

reasonable doubt that it was the accused who committed the most heinous crime with a view to fulfil his lust with a child of a tender age of three and a half years of age.

17. The defence taken by him that he was falsely implicated at the instance of Bunty has no substance as except for taking this bald plea by his mother nothing has been brought on record to prove any enmity with Bunty for which reason the accused would be falsely implicated in such a serious case, more particularly, when overwhelming evidence in the shape of medical and scientific evidence has come on record to connect him with a crime. Under the circumstances, the findings of the learned Trial Court convicting the appellant under Section 376(2)(f) IPC does not call for any interference.

18. Coming to the quantum of sentence, **Mr. Thomas Szasz**, a US Psychiatrist, in his book ‘The second sin – Punishment’ 1973 has indicted that:

“If he who breaks the law is not punished, he who obeys it is cheated. This, and this alone, is why lawbreakers ought to be punished; to authenticate as good and to encourage as useful, law-abiding behaviour. The aim of Criminal Law cannot be correction or deterrence; it can only be the maintenance of the legal order.”

19. Expressing similar concern, about sentencing policy, Hon’ble Apex Court has observed in case of ***Dhananjay Chatterjee alias Dhana v. State of West Bengal***, 1994 SCC (CrI.) 358 that:-

“In recent years, the rising crime rate-particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished, thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of

course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an over-all view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration. The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

20. The observations made by Hon'ble Supreme Court in ***Shyam Narain v. State, (NCT of Delhi)***, (2013) 7 SCC 77 which was also a case of a brutal rape of 8 years old girl deserves to be reproduced as under:-

"14. Primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

*15. In this context, we may refer with profit to the pronouncement in *Jameel v. State of U.P.*, wherein this Court, speaking about the concept of sentence, has laid down that it is the duty of every court to award proper sentence having*

21. In **State of A.P. v. Bodem Sundara Rao** this Court noticed that crimes against women are on the rise and such crimes are affront to the human dignity of the society and, therefore, imposition of inadequate sentence is injustice to the victim of the crime in particular and the society in general. After so observing, the learned Judges had to say this : (SCC p. 232, para9)

“9....The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society’s cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court’s verdict in the measure of punishment. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment.”

22. In **State of Punjab v. Gurmit Singh** this Court stated with anguish that crime against women in general and rape in particular is on the increase. The learned Judges proceeded further to state that it is an irony that while we are celebrating women’s rights in all spheres, we show little or no concern for her honour. It is a sad reflection of the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. Thereafter, the Court observed the effect of rape on a victim with anguish: (SCC p. 403, para 21)

“21....We must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault – it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.”

23. In **State of Karnataka v. Krishnappa** a three-Judge Bench opined that the “[c]ourts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years...and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court.” (SCC pp. 83-84, para 18)

It was further observed that to show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.

24. In **Jugendra Singh v. State of U.P.**, while dwelling upon the gravity of the crime of rape, this Court had expressed thus: (SCC p.311, para 49)

“49. Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The

consequential death is more horrendous. IT is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu."

25. xxx xxxxxx xxxxxx

26. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended up to life. The legislature, in its wisdom, has left it to the discretion of the court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilised society. The age-old wise saying that "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with a traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers.

27. *Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilised norm i.e. "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have*

emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court.

28. *The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix, cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court."*

21. The only mitigating factor put forth by learned counsel for the appellant is the young age of the appellant but the factual matrix of the case does not allow any mercy upon the appellant. In *Shyam Narain (supra)* the appellant was sentenced to rigorous imprisonment for life and after making the aforesaid observations, Hon'ble Supreme Court was of the view that the mitigating circumstance which the appellant has set forth in that case that he had four children and in case the sentence is maintained, not only his life but also the life of his children would be ruined did not find favour by observing that the factual matrix cannot allow the rainbow of mercy to magistrate. In the instant case, the learned Additional Sessions Judge has imposed the minimum sentence as was prior to Criminal Law Amendment Act, 2013. There were no special reasons which warranted imposition of a sentence of imprisonment for a lesser term keeping in view the brutality of the crime.

22. The appeal being, sans of merit, stands dismissed.

23. The other aspect which needs to be examined is whether while

awarding sentence to the appellant the victim who was dealt with animal passion and her dignity and purity of physical frame was shattered should be forgotten in the criminal justice delivery system. With the afflux of time, she would grow up with a traumatic experience, and unforgettable shame. She may not be able to assert the honour of the women for no fault of hers.

24. 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.

25. 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."

26. 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.

27. 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.

28. 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".

29. 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.

30. 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.”

31. 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.”

32. 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.

33. 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.

34. 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."

35. This view was reiterated in *K.A. Abbas H.S.A. v. Sabu Joseph*, (2010) 6 SCC 230; *Ankush Shivaji Gaikwad vs. State of Maharashtra*, (2013) 6 SCC 770; *Mohd.Haroon vs. UOI*, (2014) 5 SCC 252; *Laxmi vs. UOI*, (2014) 4 SCC 427 and *Abdul Rashid vs. State of Odisha & Ors.*, (2014) 1 ILR CrI.L.J 202.

36. Applying the aforesaid principles, the present case is a fit case where victim is required to be compensated. 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 'K' as per the provisions incorporated in '*Delhi Victims Compensation Scheme, 2014*'.

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

Copy of the judgment alongwith trial court record be sent back.

Appellant be informed through Superintendent Jail.

(SUNITA GUPTA)
JUDGE

MARCH 20, 2015
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