

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 231 of 2006

Order reserved on: 10.03.2017

Order passed on : 11.04. 2017

Babulal S/o. Rameshar Sahu, aged about 45 years, Resident of village Tundra, Police Station Bilaigarh, District Raipur (C.G.)

---- Applicant

versus

The State of Chhattisgarh through Police Station Bilaigarh District Raipur (C.G.)

---- Respondent

For Applicant : Mr. Palash Tiwari, Advocate

For Respondent/ State : Mr. Sanjeev Pandey, G. A.

Hon'ble Shri Justice Anil Kumar Shukla

C. A. V. ORDER

1. This revision is directed against the judgment dated 23.03.2006 passed by the First Additional Sessions Judge, Balodabazar, in Criminal Appeal No. 70/2005 by which the learned Additional Sessions Judge, modifying the judgment dated 16.02.2005 passed by the Judicial Magistrate, First

Class, Baloda Bazar, in Criminal Case No. 1558/2004, convicted the applicant under Section 325 IPC and sentenced him to the period already undergone by him in judicial custody during the trial i.e. 4 months 10 days and imposed upon him fine of Rs 5000/- and also directed him to pay a sum of Rs. 2,000/- separately as compensation to the complainant.

2. Being aggrieved by the judgment passed by the learned Additional Sessions Judge, the applicant has preferred the present Criminal revision.
3. Case of the prosecution in brief is that there was a property dispute regarding a piece of land and construction of house between the applicant and complainant Narayan Sahu. The applicant used to demand land and money from the complainant, but the complainant refused to give him. On account of this issue, the applicant had rivalry with the complainant. On 11.03.1995, in order to guard his articles of wood, complainant Narayan was sleeping on a cot near Luniya Pond. In the night, at about 12.45 hours, the applicant came there and assaulted him with an axe on the head, the right and left elbows. The complainant snatched the axe from the possession of the applicant and shouted for help. Having heard the voice of the complainant, son of his uncle namely Mohit came there. Having seen Mohit coming,

the applicant fled from there. Thereafter, the complainant was taken to his home by the villagers and the complainant narrated the incident to the villagers at his home. Later on, First Information Report (Ex.P-5) was lodged in Police Station Bilaigarh, District Raipur. The complainant was sent to hospital for medical examination wherein he was advised for X-ray. X-ray report is Ex.P-3 wherein the doctor found fracture of left elbow joints bone.

4. After completion of the investigation, a charge sheet was filed against the applicant for offence punishable under Section 326 IPC in the Court of Judicial Magistrate, First Class, Balodabazar. On framing of charge, the applicant denied the guilt and claimed for trial. After conducting the trial, the Judicial Magistrate First Class, Balodabazar convicted the applicant for the offence punishable under Section 326 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs. 5000/- with default stipulation.
5. Being aggrieved by the judgment passed by the learned Judicial Magistrate First Class, Balodabazar, the applicant preferred an appeal, being Criminal Appeal No. 70/2005 before the Court of First Additional Session Judge, Balodabazar. The learned First Additional Sessions Judge,

Balodabazar altered and modified the conviction imposed upon the applicant by the learned Judicial Magistrate First Class, Balodabazar and convicted and sentenced him as mentioned in the first paragraph of this order. Hence, this revision.

6. Learned counsel appearing for the applicant submits that the applicant does not want to challenge the conviction and sentence awarded to him. He only challenges the imposition of compensation of Rs. 2000/- payable to the complainant. He claims that this imposition by the Appellate Court is illegal and not sustainable in the eyes of law, therefore, the same deserves to be rejected.
7. On the other hand, learned counsel appearing for the State, supporting the impugned judgment passed by the learned Additional Sessions Judge, opposed the arguments advanced by learned counsel appearing for the applicant. Learned State counsel submitted that the impugned judgment is impeccable and the imposition of compensation payable to the complainant do not warrant any interference by this Court.
8. As for as the compensation is concerned, the compensation is provided under Section 357 CrPC, which reads as under:-

“357. Order to pay compensation-(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed,

or if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

9. On minutely observing Section 357 CrPC, two conditions arise for providing compensation.

(i) Under Section 357(1)(b) CrPC, when a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court, and

(ii) Under Section 357(3) CrPC, when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

10. In Section 357 Cr.P.C, there is no provision that a Court can impose a sum as compensation payable to the victim in addition to imposition of a sum as fine. In **State of Punjab vs. Gurmej Singh (2002) 6 SCC 663**, it has been observed thus:

“9. The next contention raised by the learned counsel for the appellant is that the surviving victim, namely, the daughter of Jagjit Singh may be awarded some compensation under Section 357(3) of the Code of Criminal Procedure. In support of his submission he has also referred to a decision of this Court in *Rachhpal Singh v. State of Punjab*, (2002) 6 SCC 462. In the said case this Court allowed compensation under sub-section (3) of Section 357 CrPC to the victims but it would not be applicable in the present case since a sentence of fine has also been imposed. A reading of sub-section (3) of Section 357 would show that the question of award of compensation would arise where the court imposes a sentence of which fine does not form a part. The decision in *Rachhpal Singh* does not take any contrary

view nor hold that compensation may be awarded over and above the sentence of fine. A perusal of sub-section (3) of Section 357 CrPC would make the position clear.

10. The provision reads as under:

*“357. Order to pay compensation.-(1)-(2) * * **

(3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

11. Therefore, in view of the provision contained in Section 357(3) CrPC and the above judgment of the Supreme Court, the imposition of compensation payable to the victim/complainant in addition to the imposition of sentence of fine is illegal and unsustainable.
12. Consequently, the revision is allowed in part insofar as it relates to the compensation part only. The conviction imposed upon the applicant by the Appellate Court is affirmed. The orders of jail sentence and the sentence of fine are also affirmed. The order of imposition of compensation of Rs. 2000/- passed by the Appellate Court in addition to the order of imposition of sentence of fine is accordingly set aside. The amount of compensation of

Rs. 2000/- imposed by the Appellate Court, if paid by the applicant, shall be refunded to him within a period of one month from today by way of a cheque. However, a sum of Rs. 2000/- shall be paid to the victim/complainant as compensation out of the amount of fine of Rs. 5000/- imposed upon the applicant by the Appellate Court within a period of one month from today by way of a cheque. In case, the complainant does not survive, this amount shall be paid to his legal heir within the stipulated period.

Sd/-
(Anil Kumar Shukla)
JUDGE