

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

+ **CRL.A. 656/2000**

% ***Judgment Reserved on: May 03, 2017***
Judgment Pronounced on: June 28, 2017

SUSHIL KUMAR @ GUDDU Petitioner
Through: Mr. Hrishikesh Barauah, Adv.
with Mr. Arjun Dewan, Ms. Anupama Kumar
& Mr. Shikhar Mittal, Advs.

versus

STATE Respondent
Through: Mr. Rajat Katyal, APP for State
with Insp. Harkesh Gava, PS Mandawli,
Delhi.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The appellant has filed the present appeal challenging the impugned judgment dated 29.09.2000 and order on sentence dated 11.10.2000 passed by the learned Trial Court in Sessions Case 128/96 by which the appellant was convicted under section 302 of the Indian Penal Code (briefly 'the IPC'). He was sentenced to imprisonment for life with a fine of Rs.5000. In default of the fine he was to undergo rigorous imprisonment for one year. The sentence of the appellant was suspended vide order dated 30.07.2002 by this Court.
2. Briefly put, the case of the prosecution is that on the intervening night of 6/7.10.1989 an information was received by the Duty Officer

in the PS that a quarrel had taken place in Gian Park, Chander Nagar and injured Vivek (deceased) had been admitted in GTB Hospital by his mother Smt. Chandrakanta. This information was recorded by DD No.24A however another DD No.20A was recorded on the basis of which SI Chander Shekhar (PW-2) proceeded towards the place of incident. The deceased was declared 'Brought Dead' as recorded in the MLC No. 2981/89. Statement of eyewitness Vineet (PW-6) who is the brother of the deceased was recorded in GTB Hospital. Vineet informed that on the previous night he along with his deceased brother, Pradeep (PW-9) and Suresh (PW-18) had gone to see Ram Lila in Gian Park where his brother Vivek sought permission from Sushil @ Guddu (appellant), Manoj @ Balli and Salim to allow one of his friends to participate in the dance which was played on the Stage. The appellant and his friends objected to this request and a verbal altercation took place between the two groups.

3. The next day Vineet (PW-6) along with his deceased brother Vivek, Pradeep (PW-9) and Suresh (PW-18) went to apologise for the previous day's incident outside the appellant's house where a physical fight broke out between the two groups. Father of the appellant i.e. Sukhlal came out with a hockey stick and exhorted the appellant "*Maaro salo ko*" and on hearing this, appellant took out a knife and stabbed the deceased several times due to which he became unconscious and fell down after which the appellant along with other companions fled away. This incident was also seen by a passerby Fateh Singh (PW-4). PW-6 along with his companions removed the deceased to GTB Hospital in a three-wheeler where the mother of the deceased had also reached pursuant to being informed about the

incident. The mother of the deceased i.e. Smt. Chandrakanta got the deceased admitted in GTB Hospital. He was admitted on 06.10.1989 at 11:30 PM in GTB Hospital, Shahadara with alleged history of stabbing. He was declared “brought dead” in the casualty. His MLC is Ex PW13/A. On the basis of statement of Vineet Gupta F.I.R No.324/89 (Ex PW17/A) was registered under sections 302/323/34 of the IPC.

4. Inspector Mahender Singh (PW-25) prepared the *tehrir* and got the case registered through Constable Rajinder (PW-5). Crime team was called to the spot and a photographer was also called who took photographs of the crime scene and people found on the spot were also questioned. Blood stained clothes of Vineet (PW-6) and deceased were taken into possession and a site plan was prepared. Statements of the witnesses were recorded. Vineet (PW-6) and Pradeep (PW-9) were medically examined and post-mortem on the dead body of Vivek was conducted. The accused person were arrested and hockey sticks were recovered on the pointing out of the accused person. The exhibits were sent for C.F.S.L examination.
5. PW-24 Dr. L.K Barua, CMO, DDU Hospital who conducted the post-mortem of the deceased, opined that the death was due to shock and haemorrhage resulting from cutting of right side carotid blood vessel and the right lung. He also opined that injuries 3, 4, 7, 8, 9 and 10 were caused by a sharp weapon and injury no.3 which was a deep but on the left side of the neck just above the base of the neck passing through the trachea was sufficient to cause death in the ordinary course of nature.

6. To bring home the guilt of the appellant the prosecution examined 28 witnesses in all while the defence examined two witnesses in its support. The appellant pleaded not guilty to all charges and denied all incriminating evidence put to him in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Code'). The appellant further stated that the witnesses had deposed falsely and his disclosure statement was not recorded. He further claimed that nothing had been recovered either from him or any other co-accused and he and co-accused were in fact in Lucknow at the time of incident.
7. The learned Trial Court while relying upon the testimony of the two eye-witnesses i.e. PW-4 and PW-6 convicted the appellant under section 302 of the IPC vide judgment dated 29.09.2000. However the co-accused Sukhlal, Salim and Manoj were acquitted because of lack of evidence regarding their role in stabbing the deceased.
8. Mr. Baruah, learned counsel for the appellant argued that the judgment of the learned Trial Court is based on conjecture and surmises and being contrary to law and facts is liable to be set-aside.
9. Learned counsel for the appellant further urged that the testimony of PW-6 cannot be relied upon as the same is full of contradictions and improvements and his presence at the spot of incident is itself doubtful. The conduct of PW-6 who is the brother of the deceased is also highly unnatural as he did not try to save his brother while he was being attacked with knives by the appellant. He ran away from the crime scene and chose to return only when his brother became unconscious and fell to the ground.

10. Learned counsel for the appellant had further submitted that the fact that no blood was found at the spot of incidence further casts a doubt as to the scene of crime as pointed out by the eyewitnesses.
11. Learned counsel for the appellant also urged that the learned Trial Court erred in relying upon the testimony of the alleged eyewitnesses i.e. PW-4 and PW-6 as their statements were full of contradictions and improvements. The testimony of these two material witnesses i.e. (PW-4 and PW-6) were contradictory as to the number of persons present during the incident, the role of the various accused persons and appellant, the persons who removed the deceased to GTB Hospital, spot of occurrence, injuries which were received by the deceased and persons involved in the incident.
12. The learned counsel for the appellant had further argued that the appellant had taken the plea of *alibi* as in fact the appellant was in Lucknow at the time of the incident and the same is proved by testimony of PW-23 who arrested the appellant from Lucknow on 16.10.1989 and of DW-1 who is the mother of the appellant.
13. The learned counsel for the appellant has placed reliance on ***Anil Phukan v. State of Assam (1993) 3 SCC 282*** (paragraph 4); ***Joseph v. State of Kerala (2003) 1 SCC 465*** (paragraph 12); ***Ram Laxman v. State of Rajasthan (2016) 12 SCC 389*** (paragraph 7); ***Miran Bux v. Loloo alias Ahmad & others (1993) SCC (Cri) 1041*** (paragraph 3) and ***State v. Mohd. Akhtar & other 2006 (88) DRJ 627 (DB)*** (paragraph 14).
14. Per contra, Mr. Katyal, learned APP for State had submitted that the learned Trial Court has rightly convicted the appellant under Section

302 of the IPC as the evidence produced before it was cogent and reliable.

15. The learned APP had further submitted that the learned Trial Court has correctly placed strong reliance on the testimony of the eyewitnesses PW-4 and PW-6 who have corroborated each other on material particulars. The testimony of these two eyewitnesses also finds corroboration in the medical and forensic evidence on record.
16. The learned APP had further urged that even though there were minor contradictions in the testimony of the eyewitnesses, their testimony cannot be discarded on this ground alone as some minor contradictions and improvements are bound to occur in the truthful depositions of the eye witnesses.
17. The learned APP for the state has placed reliance on ***Munshi Prasad & others v. State of Bihar (2002) 1 SCC 351*** (paragraph 10); ***Vijay Pal v. State (2015) 4 SCC 749*** (paragraph 25) and ***Himanshu alias Chintu v. State (2011) 2 SCC 36*** (paragraph 30)
18. We have the learned counsel for the parties and gone through the record.
19. The counsel for the appellant had laboured hard during the course of arguments to discredit the testimony of the two eye-witnesses i.e. PW-4 and PW-6. We therefore deem it appropriate to discuss the testimonies of these two witnesses i.e. PW-4 and PW-6.
20. PW-6, who is the brother of the deceased, had deposed in his examination-in-chief that on the intervening night of 5/6.10.1989 he along with his brother and friends had gone to see a Ram Lila held in Gian Park. He testified that his brother Vivek proposed to the appellant and his friends Manoj and Salim to dance on the stage

which was objected to by the appellant and his friends. They told him that since the deceased and his friends were residents of Gopal Park, they should not visit the said Ram Lila. This led to a verbal altercation between the two groups. He deposed that on the next day they went to the house of the appellant to apologize for the same. On seeing them the appellant along with Manoj and Salim started abusing and beating them and in the meanwhile the appellant's father also came out and started assaulting them using a hockey stick and they started to run away. He deposed that the appellant then took out a knife and stabbed the deceased several times and on seeing this he turned around to save his brother and in the meanwhile Manoj and Salim had caught hold of his brother while the appellant was stabbing his brother with a knife. The appellant then fled away from the spot and he along with his friend Pradeep (PW-9) took the deceased to GTB Hospital in a three wheeler where his mother had already reached pursuant to receiving information about the incident and she got the deceased admitted in the hospital. His Blood stained clothes along with those of PW-9 and PW-18 were seized by the police and all three of them were medically examined at the said hospital itself. He was also a witness to the recovery of the hockey sticks used in the crime which were recovered at the instance of the accused Sukhlal, Salim, Manoj and Sushil (appellant).

21. PW-4 Fateh Singh, who was residing in the locality of the incident, deposed that he was going back to his home after watching the Ram Lila when the incident took place. He testified that he saw 4-5 people were beating two persons and there was a huge crowd as a lot of people had come to see the Ram Lila being held in the locality. The

appellant along with Manoj, Salim and Sukhlal were beating the deceased and his brother Vineet (PW-6). The appellant had a knife in his hand while Sukhlal was holding a hockey stick. Sukhlal first let loose his pet dog on the deceased and his friends after which the deceased and his friends started running away and the deceased fell on the ground. Manoj then grabbed the deceased's hands and Salim caught hold of the deceased's legs and then the appellant gave a knife blow on the neck of the deceased. The deceased was removed to the hospital by his brother Vineet along with one Sandeep and thereafter he came back to his home. Next day, a police official called him to the Police Station Krishna Nagar and stated the names of the accused to the police as someone had already told their names to him before going to the police station.

22. PW-5 Ct. Rajinder Kumar stated that he accompanied Inspector Mahender Singh to GTB Hospital along with Ct. Raghuvir Prasad and SI Suraj Bhan. There the statement of Vineet Kumar was recorded by Inspector Mahender Singh and it was endorsed by Inspector Mahender Singh. He (PW-5) took the same to PS Krishna Nagar for registration of case. He reached the spot with copy of F.I.R which he gave to Inspector Mahender Singh. In his cross-examination it was suggested by the defence that he took Vineet Gupta in Hospital on 07.10.1989 at 6:15 AM. He testified that he accompanied SHO Mahinder Singh in the Hospital at 12/12:30 in the night intervening 6/7.10.1989. On reaching there, they came to know that Vivek had died and Vineet was present there and Vineet Gupta had also been injured. He further testified that Vineet Gupta's medical examination was not done in the night.

23. The Hon'ble Supreme Court in ***S. Govindaraju v. State of Karnataka, (2013) 15 SCC 315*** while again re-iterating the principle that contradictions and improvements in the testimony of witnesses has to be carefully scrutinized and is only to be discarded if it materially affects the basis of the prosecution's case held as under:

“23. It is well settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do not affect the core of the case of the prosecution, must not be made a ground for rejection of evidence in its entirety.

(Emphasis supplied)

24. The presence of PW-6 Vineet at the spot of incidence was questioned by the counsel for the appellant. He contended that PW-6's presence is not corroborated by the medical evidence on record or by the testimony of the other eyewitness i.e. PW-4. It is not in dispute that PW-6 was present in the hospital after the incident as his statement was recorded by PW-25 Mahender Singh in the hospital and on the basis of this statement the F.I.R was registered. PW-25 also seized the blood stained clothes of PW-6 and PW-18 which were sent for forensic examination. PW-6 was also medically examined in GTB Hospital itself and in his MLC which Ex. PW14/B it was recorded that he was brought to the Hospital by PW-5 Ct. Rajinder Kumar on 07.10.1989 at 6:15 AM with the alleged history of being involved in a fight and having an abrasion on the small toes of the right foot, bruises on upper arms and bruises on the back. His injuries were

found simple. The CFSL report confirmed that the clothes of PW-6 which were seized by PW-25 had his deceased brother's blood on them. PW-5 has deposed in his cross-examination that he accompanied SHO Mahinder Singh in the Hospital at 12/12.30 in the night intervening 6/7.10.1989 and Vineet was also present there. Therefore the presence of PW-6 at the scene of crime cannot be doubted in light of the medical evidence on record and the testimony of PW-4 Fateh Singh and the official witnesses i.e. PW-25, PW-5 and PW-14 and the testimony of PW-6 himself. PW-14 who was the Record Clerk of the Hospital also proved the MLC of PW-6 and PW-9 and no suggestion was given in his cross-examination that these MLCs were not genuine or are fabricated.

25. It had been pointed out during the course of arguments by the learned counsel for the appellant that both the eyewitnesses i.e. PW-6 and PW-4 had deposed about the incident in such a way that it gives an impression that both of them are narrating two very different incidents. After going through the testimony of both these witnesses we find that both of them had actually corroborated each other's version with only minor contradictions which are bound to occur as there were many assailants and also the fact that the incident took place in a crowded area where a religious function was being organized.
26. Even though PW-9 Pradeep turned hostile and did not support the prosecution's case, he was medically examined in GTB Hospital on 07.10.89 at 5:55 AM after the incident took place. MLC of PW-9 shows that he was actually bit by a dog as he had stated in his statement under section 161 of the Code. This fact of PW-9 being

bitten by the dog is also reflected in MLC and is also corroborated by the testimony of PW-4 who had stated in his examination-in-chief that Sukhlal had let loose his dog on the deceased and his friends after which they ran away. Therefore the fact that a dog was let loose on the deceased and his friends is corroborated by the medical evidence i.e. MLC of PW-9 Ex. PW14/A. The genuineness of the MLC was not disputed in the cross-examination of PW-14 as stated above.

27. It is also an admitted fact that no blood was found at the scene of crime. The counsel for the appellant argued that this casts a serious doubt as to the scene of crime. While appreciating the facts and circumstances of the case we find that a large number of people were using the lane where the incident took place. PW-2 had testified that a large number of people were using the lane to enter and exit from the Ram Lila. It had also come to light that the spot of incidence was left unguarded for a long period of time as PW-5 had deposed that he had reached the scene of crime along with the IO at about 3 AM. The incident according to the eyewitnesses took place at around 10 PM, and the scene of crime was left unguarded for many hours during which the blood could have been either removed by the appellant and his co-accused in order to remove evidence or the same could simply have been eroded away by the movement of the large number of people using the lane in order to enter and exit the Ram Lila function.
28. A plea of *alibi* was raised by the appellant who contended that the appellant was in fact in Lucknow at the time of incidence which is corroborated by the testimony of DW-1 and the fact that the appellant was in fact arrested in Lucknow where he was lodged in jail in some

other case. The Hon'ble Supreme Court in ***Jitender Kumar v. State of Haryana***, (2012) 6 SCC 204 while clarifying on whom the burden of proving the *alibi* would lie held that:

“71. Once PW 10 and PW 11 are believed and their statements are found to be trustworthy, as rightly dealt with by the courts below, then the plea of alibi raised by the accused loses its significance. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives. (Ref. Sk. Sattar v. State of Maharashtra [(2010) 8 SCC 430 : (2010) 3 SCC (Cri) 906] .)”

(Emphasis supplied)

29. The first evidence that is produced to prove the plea of *alibi* is the testimony of DW-1 who is the mother of the appellant. She had stated that at the time of incident the appellant had gone to Lucknow. She could not tell when the appellant had gone to Lucknow and when he returned to Delhi. The other piece of evidence put forward to sustain the plea of *alibi* is the fact that the appellant was in fact arrested from Lucknow where he was lodged in a jail in some other case relating to theft of railway property. Again no evidence regarding the date on which he was put in this jail was produced. Therefore we are unable to agree with the plea of *alibi* as the same has not been proven beyond reasonable suspicion by the appellant.
30. The non-recovery of the weapon of offence also does not come to the rescue of the appellant as the injuries were proved to have been caused by a sharp weapon in the post-mortem report and one such

injury i.e. injury no.3 was sufficient in the ordinary course of nature to cause death. Both the eyewitnesses i.e. PW-4 and PW-6 had testified in their respective deposition that they had seen the appellant stabbing the deceased with a knife. The clothes of the deceased were also cut at various places and it was opined in the FSL report i.e. Ex. PW-26/A, Ex. PW-27/A and Ex. PW-28/A that the same could have been caused by a sharp edged weapon. The Hon'ble Supreme Court in *Amit v. State of U.P.*, (2012) 4 SCC 107 while holding that the non-recovery of the weapon of offence is not fatal to the case of the prosecution if other corroborative evidence is found to exist against the accused decided that:

“17. The report of the forensic science laboratory (Ext. A-23) confirms human blood and human sperm on the underwear of Monika. Thus, even if the object with which Monika was hit has not been identified and recovered, the evidence of PW 3, the recovery of various articles made pursuant to the confession of the appellant, the evidence of PW 5 and the report of the forensic science laboratory, Ext. A-23 prove beyond all reasonable doubt that it is the appellant alone who after having kidnapped Monika committed unnatural offence as well as rape on her and killed her and thereafter caused disappearance of the evidence of the offences. The High Court has, therefore, rightly confirmed the conviction of the appellant under Sections 364, 376, 377, 302 and 201 IPC.”

(Emphasis supplied)

31. Therefore in light of the authoritative pronouncements discussed and evidence examined, we find no infirmity in the judgment of the learned Trial Court sentencing the appellant under section 302 of the IPC.

32. We therefore dismiss the appeal and affirm the conviction and sentence imposed on the appellant-accused.
33. The appellant shall surrender within 2 weeks from the date of pronouncement before the concerned SHO.

Order on Compensation to the Legal Heirs of the Victim

34. Learned ASJ awarded imprisonment for life to the appellant and imposed a fine of Rs.5000/- and in default of fine, he directed the appellant to undergo rigorous imprisonment for one year. Even this meagre fine has not been ordered to be paid to the legal heirs of the deceased by the Trial Court. In the recent times, the victimology and rehabilitation has taken roots in the criminal administration of justice of our country. The law is also codified in this aspect and Section 357 and 357A of the Code deals with the subject. Furthermore the codes of law in this country are well guided by the Hon'ble Supreme Court. Considering the mandate, this court proposes to deal with the aspect of granting compensation to the victims.
35. In this case deceased Vivek suffered fatal injuries. He was aged about 17 years at the time of incident.
36. By a catena of decisions of the Hon'ble Supreme Court in the reported cases of *Kawal Pati vs. State of U.P., 1995 (3) SCC 600*, *Supreme Court Legal Aid Committee vs. State of Bihar, 1991 (3) SCC 482*, *Chairman Railway Board vs. Chandrimadas 2000 (2) SCC 465*, *Nilabati Behera vs. State of Orissa, 1993 (2) SCC 746*, *Khatri vs. State of Bihar, 1981 (1) SCC 623* and *Union Carbide vs. Union of India, 1989 (1) SCC 784*, it is held that "victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim."

37. To understand the powers and jurisdiction of this court, it would be profitable to advert to section 357A of the Code in order to award compensation or to merely recommend to the District Legal Service Authority, Delhi, the amount of compensation payable to the legal heirs of the deceased. Section 357A of the Code reads as under:-

“357A. Victim compensation scheme.—*(1) Every State Government in co-ordination with Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.*

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority, shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

38. This section 357A of the Code came up for interpretation before the Hon'ble Supreme Court in ***Ankush Vhivaji Gaikwad vs. State of Maharashtra, (2013) 6 SCC 770***, and the Apex Court has held that under Section 357-A of the Code the court is empowered to direct the State to pay compensation to the victims in such cases where compensation awarded under Section 357 of the Code is inadequate or the case ends in acquittal or discharge. The relevant Para of the judgment reads as under:-

“42. The amendments to the Criminal Procedure Code 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.”

“62. While the award or refusal or compensation in the 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 Code of Criminal Procedure 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.”

39. Recently, in **Suresh Vs. State of Haryana, MANU/SC/1091/2014**, decided on 28.11.2014, the **Hon’ble Supreme Court** has held that the objet and purpose of Section 357A, which was incorporated by amendment Act No. 5 of 2009 is to enable the court to direct the State to pay compensation to the victims where the compensation under Section 357 of the Code was not adequate or the case ended in acquittal or discharge. The relevant Paras of the judgment read as under: -

“12. It would now be appropriate to deal with the issue. The provision has been incorporated in the Cr. PC vide Act V of 2009 and the amendment duly came into force in view of the Notification dated 31st December, 2009. The

object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. It recognises compensation as one of the methods of protection of victims. The provision has received the attention of this Court in several decisions including Ankush Shivaji Gaikwad vs. State of Maharashtra.....”

“14.....On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation be determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.....”

40. In view of the judgments of the Apex Court in **Ankush (supra)** and **Suresh (supra)**, this court can direct the State Government to pay compensation to the victims and legal heirs. The Government of NCT of Delhi has notified Delhi Victims Compensation Scheme, 2015. Since the incident is of 06.10.1989 and appeal is of the year 2000 and it will take time if the inquiry is conducted by this Court for assessing the quantum of compensation payable to the legal heirs of

the deceased, therefore, we dispense with the inquiry as to capacity of the appellant to pay the compensation to the legal heirs of the deceased.

41. Let the Delhi State Legal Services Authority to conduct a proper enquiry under Section 357A of the Code for the purpose of identifying legal heirs of the deceased Vivek and pay them due compensation as per the rules within two months from the date of receipt of copy of this order. Copy of this order be also sent to Member Secretary, Delhi State Legal Services Authority.

JUNE 28, 2017

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VINOD GOEL, J.

G.S.SISTANI, J.