

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

% *Judgment Reserved on: May 11, 2017*
Judgment Pronounced on: September 08, 2017

+ **CRL.A. 446/2014**

KALU @ RAJINDER Petitioner
Through: Mr. Ashutosh Kaushik, Advocate.

versus

STATE Respondent
Through: Ms. Radhika Kolluru, APP for State
along with SI Sanjeev Kumar, PS
Mayur Vihar, in person.

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

VINOD GOEL, J.

1. The present Criminal Appeal challenges the impugned judgment dated 03.01.2014 and order on sentence dated 10.01.2014 in Sessions Case no.06/13 whereby the learned Trial Court convicted the appellant herein under section 302 of the Indian Penal Code (in short 'IPC') and sentenced him to undergo Rigorous Imprisonment for life and also imposed a fine of Rs.1,000/- in default of which he was to further undergo Simple Imprisonment for six months.
2. Before proceeding with the case of the prosecution we would like to mention that the appeal of the co-accused Ajit @ Bhure (Criminal Appeal 958/2010), who is the brother of the appellant

herein and Ravi Kumar (Criminal Appeal 1051/2010), who is the neighbour of the appellant herein were dismissed by a Division Bench of this Court on 16.10.2014. Appellant had absconded and was declared a Proclaimed Offender on 26.06.2009. Appellant was arrested later on and put to trial after filing of supplementary chargesheet and was convicted by the Trial Court by the impugned judgment.

3. The case of the prosecution is that on 11.01.2009 a quarrel took place between accused Ajit @ Bhure, who is the brother of the appellant and the deceased Rishi Pal. In this incident the deceased suffered two simple incised wounds on the index and middle finger of his right hand. Next day on 12.01.2009 at around 6:30 PM the deceased Rishi along with Mukesh @ Mukki (PW-1) went to Ajit @ Bhure's house because Ajit's parents had called Rishi Pal to their house. While Rishi Pal was talking to Ajit's father Madan Pal, there Ajit, appellant, his neighbour Ravi and one more boy (whose identity could not be established) came to the spot. Ajit @ Bhure had a knife in his hand and exhorted the other accused to catch hold of Rishi Pal and kill him. Then Ravi, Kalu and the unidentified boy caught hold of Rishi Pal and Ajit @ Bhure inflicted several knife blows on the deceased. All the accused then took the deceased to the side of the road and ran away after leaving the deceased in a pool of blood there.
4. PW-26 Ct. Kamleshwar who received the information at 6:45 PM regarding the incident reached the scene of crime within

three minutes and found the deceased in an unconscious condition. The deceased was removed to Lal Bahadur Shastri Hospital (in short 'LBS hospital') at 7:15 PM where Rishipal was declared dead as is recorded in the MLC dated 12.01.2009 by Dr.Manish Kumar. PW-26 met the father of the deceased PW-9 Ram Dulare in LBS Hospital and PW-9 stated that he did not know how his son got injured. At the scene of crime, SI Naleen Verma (PW-30) met PW-1 Mukesh who narrated the entire incidence and stated that the appellant herein along with the other co-accused had caught hold of the deceased while Ajit @ Bhure was giving knife blows to the deceased. On the basis of this statement, FIR 06/2009 was registered at PS Mayur Vihar.

5. PW-24 Ct. Renu after receiving a call regarding this incident in control room at PHQ about the quarrel on 12.01.2009 communicated the information to PS Mayur Vihar where it was recorded by PW-23 Ct. Shakuntala. PW-17 ASI Kishan Pal was the duty officer at the Police Station and proved the DD Ex.PW-17/A. PW-21 Ct. Jagbir deposed that on the instructions of the IO, he took photographs of the scene of crime from different angles which are Ex. PW 14/A-1 to Ex.PW 14/A-4 and the negatives are Ex.PW-14/A-5 to Ex.PW14/A-8. The site plan was prepared by PW-19 Ct. Sonu Kaushik at the instance of SI Naleen Verma and is exhibited as Ex.PW19/A. The FIR was recorded by PW-20 HC Fateh Mohd. and is exhibited as Ex.PW 20/A. PW-22 HC Virender who is the MHC(M) deposed that on

12.01.2009 Inspector Subodh Kumar deposited four *pullandas* duly sealed with the seal of SK in this case and on 13.03.2009 exhibits of this case were sent to FSL, Rohini through Ct. Raj Kumar vide RC no.3/21 and the same were received back from the FSL, Rohini on 30.05.2009 through Ct. Rambabu. PW-30 SI Naleen Verma lifted Blood and blood stained earth and took them into possession which are Ex.PW-7/A and Ex.PW-7/B.

6. PW-11 Dr. Vinay Kumar Singh who conducted the post-mortem of the dead body of the deceased and authored the post-mortem report, found 17 injuries on the deceased's body as under: -

- “1. Abrasion, 2x2 cm present over left side of forehead 2cm above lateral end of left eye brow, red in colour.
2. Abrasion, 1x1 cm present over middle of bridge of nose, red in colour.
3. Incised wound, 3.5x1cm, bone deep obliquely placed, margin sharp and regular, lower end acute, present over upper part of right side of chest 12 cm below tip of shoulder and 10 cm from midline.
4. Stab wound, 2x1cm and 1.5 cm deep, obliquely placed margin sharp and regular, lower end acute, present over upper part of right side of chest 12 cm below tip of shoulder and 10 cm from midline.
5. Incised wound, 6x1.5cm, muscle deep tailing present lower end acute obliquely placed margin sharp and regular present over right side of chest 23 cm below shoulder tip and 9.5cm from midline.
6. Stab wound, 2x1 cm obliquely placed over right side of chest 27 cm below tip of shoulder and 5 cm from midline margin sharp and regular lower and acute, chest cavity deep on further dissection after

penetrating skin, subcutaneous tissue, inter costal chest muscle, pleura and lung was intact.

7. Stab wound of 2.5x1cm, obliquely placed over epigastrium region 2 cm below xipisternum 3 cm from midline, abdomen cavity deep margin sharp and regular. On dissection it has penetrated skin, subcutaneous tissue muscles peritoneum, dodunum 1x0.5 near pyloric junction of stomach, mesentery, 0.5x0.5 cm, upper part of stomach, 0.5 x 0.5 cm.

8. Stab wound 2.5 x 1 cm obliquely placed over left side chest wall, placed 35 cm below tip of left shoulder and 13 cm from midline margin sharp and regular, chest cavity deep on dissection after penetrated skin subcutaneous tissue muscles in 8th intercostals space between 8th and 9th rib and 9th rib was incised and pleura and lower lob of left lung 1 x 0.5 cm.

9. Stab wound, 3 x 0.5 cm, obliquely placed over right lower side of abdomen, muscle deep margin sharp and regular. 2cm above iliac crest and 6 cm from midline, lower and acute.

10. Incised wound (Stab wound) 2.5 x 1 cm present over flexor aspect of right forearm on letral aspect margin sharp and regular, upper and acute, 4 cm deep and placed 37 cm away from tip of index finger.

11. Incised wound 2 x 1.5 present over pulp of thumb beveling present at right side bone deep.

12. Stitched incised wound, with three stitches 1.5 cm long present over middle part of right index finger 3 cm away from tip of finger.

13. Stitched incised wound with 2 stitches, 1 cm long present over right middle finger 6 cm away from tip of finger.

14. Abrasion, 1 x 1 cm red colour present over front of right knee joint, over middle part.

15. Abrasion, 0.5 x 0.5 cm brown colour present over front of left knee joint lower part.

16. Stab wound, 2.5 x 0.5 cm over left lateral side of left forearm, obliquely placed, margin sharp and regular lower end acute, muscle deep, 26 cm away from tip of left middle finger.

17. Stab wound, 1 x 1 cm over medial side left forearm, vertically placed, margin sharp and regular, lower end acute, 30 cm away from tip of left middle finger.”

7. The post-mortem report of the deceased Rishi Pal shows that two inched incised wounds on the middle finger and the index finger of the right hand noted at serial no. 12 and 13 were present and related to the quarrel that had taken place on 11.01.2009 between the deceased Rishi Pal and Ajit @ Bhure. The post mortem report also showed abrasion injuries at serial no. 1, 2, 14 and 15 which were a result of Rishi Pal being dragged over a hard surface. The incised wounds noted are serial no. 3, 5, 10 and 11 have been caused by a sharp edged weapon and so are the stab wounds noted at serial no.4, 6, 7, 8, 9, 16 and 17.
8. The cause of death of deceased Rishi Pal was due to haemorrhagic shock consequent upon multiple stab injuries and that injuries no.6, 7, 8 and 9 were individually and collectively sufficient to cause death in the ordinary course of nature.
9. The appellant herein was arrested after PW-1 Mukesh had informed PW-2 Ct. Rajesh Kumar and PW-4 HC Suresh Kumar on 22.11.2010 that the appellant could be found near the DND flyover. On the basis of this information the appellant was arrested on 22.10.2010 vide arrest memo Ex.PW2/A

10. The prosecution examined thirty one witnesses to bring home the guilt of the accused. Out of these thirty one witnesses the material witnesses for this case are PW-1 Mukesh, PW-3 Sheesh Pal (brother of the deceased) and PW-12 Ram Dulare (father of the deceased) who all also claimed to be the eye witness to the murder of the deceased Rishi Pal.
11. Mr.Ashutosh Kaushik, learned counsel for the appellant contended that the learned Trial Court had erred in placing reliance on the testimony of the sole eye-witness PW-1 Mukesh @ Mukki as the same was full of material contradictions and inconsistencies.
12. The learned counsel for the appellant had contended that PW-1 Mukesh had in his examination-in-chief recorded on 07.08.2009 (during trial of Ajit @ Bhure and Ravi Kumar) testified that it was Ajit @ Bhure who had a knife and encouraged the appellant and other co-accused to catch hold of Rishi (deceased) while in his further examination-in-chief recorded on 12.05.2011 (trial of appellant) PW-1 Mukesh had deposed that the appellant did not actually catch hold of the deceased but exhorted to Ajit @ Bhure “*maro isko, maro isko*”. The learned counsel urged that this is a material contradiction in the testimony of the sole eye-witness PW-1 Mukesh which raises a serious doubt as to the role of the appellant in the commission of the crime.
13. The learned counsel for the appellant had further urged that the appellant cannot be held guilty of murder under section 300 of

the IPC with the aid of section 34 of the IPC as the appellant had no common intention to kill the deceased and this can be inferred from the fact that he was not present in the alleged quarrel that had taken place a day prior to the incident between Ajit @ Bhure and the deceased and therefore he had no grudge to settle with the deceased.

14. Per contra, Ms. Radhika Kolluru, learned APP had urged that the judgment of the Trial Court is based on cogent evidence and correct appreciation of facts and law and therefore requires no interference.
15. Learned APP had urged that minor inconsistencies are bound to occur in the truthful deposition of facts by witnesses especially when there was an interval of two years in the recording of testimonies of PW-1 in both the trial. The learned counsel had urged that the minor contradictions in the testimony of PW-1 Mukesh do not go to the root of the case and the common intention of the appellant along with the co-accused to kill the deceased is clearly established from the testimony of PW-1 Mukesh.
16. We have heard the learned counsel and gone through the records of the case.
17. The only eye-witness to the occurrence of the crime is PW-1 Mukesh. The address of the appellant's house was H.No.341, Block No.31, Trilok Puri, Delhi and the deceased and PW-5 Shishpal (brother of the deceased) and PW-9 Ram Dulare (father of the deceased) were living at House No.494 in the

same block. PW-5 and PW-9 claimed that they had gone together to the house of the appellant after receiving information about the quarrel on the fateful day. There is some distance between house no. 341 and house no.454 and it would have taken some time to cover this distance and reach the scene of crime. PW-26 Ct. Kamleshwar had deposed that he had reached within three minutes of receiving the information about the incident and on reaching the scene of crime he saw the deceased Rishi Pal lying unconscious in the corner of the street. PW-26 then took Rishi Pal to LBS Hospital where Rishi Pal was declared as brought dead. PW-26 Ct. Kamleshwar stated that he met PW-9 Ram Dulare at LBS Hospital for the first time. He asked him about the incident and PW-9 expressed his ignorance about the same. The testimony of PW-16 Ct. Kamleshwar, PW-5 Shishpal and PW-9 Ram Dulare establish that PW-5 and PW-9 were not actually present at the scene of crime after the incident took place and the father PW-9 and brother PW-5 might have reached the spot after the incident.

18. In his re-examination after the arrest of the appellant, PW-1 Mukesh @ Mukki had deposed that on 12.01.2009 he along with the deceased Rishipal had gone to the house appellant on the request of the appellant's father. He was talking to the father of the appellant and then Ajit @ Bhure, Ravi and the appellant came out. Ravi had caught hold of the deceased, Ajit @ Bhure inflicted several knife blows to the deceased Rishi Pal while the appellant exhorted to Ajit "*maar isko*" (Kill him). He further

deposed that Ravi and the appellant then chased him with a knife but he managed to escape. He proved his statement which is Ex.PW1/A.

19. The testimony of the eye witness PW-1 Mukesh clearly establishes the presence of the appellant at the scene of crime. The appellant seeks acquittal on the ground that since he did no overt act to commit the crime and due to the material inconsistencies in the testimony of the sole eye witness PW-1 Mukesh, his role is uncertain and cannot be brought under the scope of Section 34 read with Section 300 of the IPC.
20. Coming to the issue of the contradictions in the testimony of PW-1 Mukesh, in his first examination-in-chief recorded on 07.08.2009 he had deposed that the appellant along with the co-accused had caught hold of the deceased while Ajit was inflicting knife blows. In his re-examination-in-chief which was recorded after a gap of almost 2 years on 12.05.2011, he had testified the same facts except for the statement that the appellant had exhorted to Ravi "*Maar isko*". From both these statements, the appellant contends that the presence of the appellant is not in doubt but only his intention to murder the deceased is uncertain.
21. The Hon'ble Supreme Court in **State of U.P. v. Naresh, (2011) 4 SCC 324** while dealing with the effect of inconsistencies in the testimony of witnesses due to lapse of time held as under:-

"30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses

due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. **However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.**

(emphasis supplied)

22. The Hon'ble Supreme Court in **Suresh Sakharam Nangare v. State of Maharashtra, (2012) 9 SCC 249** while explaining the scope of Section 34 of the IPC held as under

“21. Since the conviction of the appellant is based only with the aid of Section 34 IPC, it is useful to refer the same:

34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

A reading of the above provision makes it clear that to apply Section 34, apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and

(ii) participation of the accused in the commission of an offence. It further makes clear that if common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked. In other words, it requires a prearranged plan and presupposes prior concert, therefore, there must be prior meeting of minds.

(Emphasis supplied)

23. The Hon'ble Supreme Court in **Hanuman Prasad v. State of Rajasthan, (2009) 1 SCC 507** while considering whether for the purpose of Section 34 of the IPC a pre-arranged plan is a must held as under:-

“10. The important expression to attract Section 376(2)(g) is “common intention”. The essence of the liability in terms of Section 376(2) is the existence of common intention. In animating the accused to do the criminal act in furtherance of such intention, the principles of Section 34 IPC have clear application. **In order to bring in the concept of common intention it is to be established that there was simultaneously consensus of the minds of the persons participating in the act to bring about a particular result. Common intention is not the same or similar intention. It presupposes a prior meeting and prearranged plan. In other words, there must be a prior meeting of minds. It is not necessary that preconcert in the sense of a distinct previous plan is necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a**

number of persons which has to be gauged on the facts and circumstances of each case.

(Emphasis supplied)

24. The Hon'ble Supreme Court in **Gopi Nath v. State of U.P., (2001) 6 SCC 620** while summing up the law relating to Section 34 of the IPC held as under:-

“8. We have carefully considered the submissions of the learned counsel on either side. As for the challenge made to the conviction under Section 302 read with Section 34 IPC, it is necessary to advert to the salient principles to be kept in consideration and often reiterated by this Court, in the matter of invoking the aid of Section 34 IPC, before dealing with the factual aspect of the claim made on behalf of the appellant. **Section 34 IPC has been held to lay down the rule of joint responsibility for criminal acts performed by plurality of persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all of them. Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action — be it that it was not overt or was only a covert act or merely an omission constituting an illegal omission. The section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention which might be of a pre-concerted or pre-arranged plan or one manifested or developed at the spur of the**

moment in the course of the commission of the offence. The common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case.”

(Emphasis supplied)

25. In light of **Suresh Sakham Nangare’s case (supra)** it is clear that no overt act needs to be proved in order to fix liability under section 34 of the IPC. Common intention to commit the crime is all that needs to be proved to hold a person guilty under section 34 of the IPC. In view of **Hanuman Prasad’s case (supra)** it is clear that no pre-conceived or elaborate plan to commit a crime is necessary as a common intention may also develop just before the actual crime is committed and common intention of the accused is to be ascertained from the facts and circumstances of each case.
26. In the present case, Ajit @ Bhure came out with a knife along with the appellant while the deceased and his brother PW-1 were talking to the appellant’s father and then the role of the appellant thereafter is under doubt as PW-1 in his examination-in-chief recorded on 07.08.2009 had testified that the appellant had caught hold of the deceased while he was being inflicted with knife blows by Ajit @ Bhure while in his re-examination recorded on 12.05.2011 he testified that the appellant exhorted

to the co-accused Ajit @ Bhure “*maro isko, maro isko*”. There was a gap of almost two years in between these two depositions. It is important to note here that according to PW-1 both these acts of catching hold of the deceased according to the testimony recorded on 07.08.2009 or of exhorting to the co-accused according to the testimony recorded on 12.05.2011 took place after Ajit @ Bhure had come out of his house with a knife. Taking into consideration the examination-in-chief and re-examination recorded on both dates i.e. 07.08.2009 and 12.05.2011 respectively, the common intention of the appellant is established if he either exhorted or caught hold of the appellant as he did either of these acts after Ajit @ Bhure came out with a knife. A person who exhorts to another who has a knife in his hand “*maro isko*” would necessarily have the knowledge that any injury inflicted with a knife is likely to cause death and the intention to kill the person. Similarly if the testimony of PW-2 recorded on 07.08.2009 is to be believed then the act of holding the deceased while the co-accused Ajit @ Bhure inflicted knife blows to the deceased would show the common intention of the appellant to murder the deceased as the appellant already knew that Ajit @ Bhure was carrying a knife and holding the deceased while he was being inflicted with no less than 10 stab wounds would show that the appellant also had the intention of killing the deceased and also acted in furtherance of the common intention. In view of the Hon’ble Supreme Court’s decision in **Naresh’s case (supra)**, it is clear

that minor inconsistencies as to the nature of injuries, specific role of every accused, etc are bound to occur due to lapse of time. As the first examination-in-chief of PW-1 Mukesh was recorded eight months after the incident which took place on 12.01.2009, the incident would still be fresh in his mind and he would have been able to recall the same with more clarity and therefore we would place reliance on the examination-in-chief of PW-1 Mukesh recorded on 07.09.2009, which is part of his deposition.

27. The testimony of PW-1 Mukesh finds further corroboration from the post-mortem report of the deceased as abrasions noted at serial no.1, 2, 14 and 15 on the body of the deceased are a result of the body of the deceased being dragged over a hard surface and PW-1 Mukesh in both his depositions had unequivocally stated that after stabbing the deceased Rishi Pal several times, all four accused dragged his body to the side of the street and dumped it there. The testimony of PW-1 Mukesh finds further corroboration from the deceased Rishi Pal's post-mortem report where injuries noted at serial no. 12 and 13 were two stitched incised wounds on the middle and the index finger of the right hand and related to the incident of scuffle and quarrel between the deceased Rishi Pal and Ajit @ Bhure on the day previous to the incident. The fact that the testimony of PW-1 Mukesh is corroborated by the post-mortem report of the deceased makes it certain in our mind that PW-1 Mukesh had

indeed accompanied the deceased to the house of the appellant and had witnessed the assault.

28. From the testimony of PW-1 Mukesh which is corroborated by the medical evidence on record it is clear that on the fateful day PW-1 had accompanied the deceased to the appellant's house where the appellant along with the other co-accused i.e Ajit @ Bhure, Ravi Kumar and one other unidentified person came out of the appellant's house and Ajit @ Bhure was carrying a knife with him. The appellant along with the other co-accused held the deceased while co-accused Ajit @ Bhure stabbed the deceased with a knife no less than 10 times. All accused thereafter dumped the body of the deceased on the side of the road and fled away from the scene of crime.
29. In light of the facts and circumstances of the case and law laid down by the Hon'ble Supreme Court, this appeal is dismissed and the sentence imposed upon Kalu @ Rajinder is upheld.
30. TCR be returned.

ORDER ON COMPENSATION TO THE LEGAL HEIRS OF THE VICTIM

31. Learned ASJ awarded rigorous imprisonment for life to the appellant and imposed a fine of Rs. 1,000/- and in default of fine, he directed the appellant to undergo simple imprisonment for six months. 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.

32. In this case, the deceased Rishi Pal died due to multiple stab wounds.
33. By a catena of decisions of the Hon'ble Supreme Court in the reported cases of **Kawal Pati v. State of U.P.**, (1995) 3 SCC 600, **Supreme Court Legal Aid Committee v. State of Bihar**, (1991) 3SCC482, **Chairman Railway Board v. Chandrimadas** (2000) 2 SCC 465, **Nilabati Behera v. State of Orissa**, (1993) 2 SCC 746, **Khatri v. State of Bihar**, (1981) 1 SCC 623 and **Union Carbide v. Union of India**, (1989) 1 SCC 674, 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.”
34. 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.”

35. This section 357A of the Code came up for interpretation before the **Hon'ble Supreme Court in Ankush Vhivaji Gaikwad v. 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.

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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.”

36. Recently, in **Suresh v. State of Haryana (2015) 2 SCC 227**, decided on 28.11.2014, the Hon'ble Supreme Court has held that the object 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 v. State of Maharashtra.....

13.

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.....”**

37. 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 12.01.2009 and appeal is of the year 2010, 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.
38. 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 Rishi Pal 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.

(VINOD GOEL)
JUDGE

(G.S SISTANI)
JUDGE

SEPTEMBER 08, 2017

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