

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1080 of 2018**

- Ishwar Prasad Sahu Ramlakhan Sahu Aged About 47 Years R/o Rampur, Police Station- Patna, District Korea, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Police Station Patna, District Korea, Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh
2. Satish Kumar Sahu, Dharampal Sahu, Aged About 31 Years R/o Village Adarsh Chowk, Patna, Police Station Patna, District Korea, Chhattisgarh. (Accused), District : Koriya (Baikunthpur), Chhattisgarh
3. Dharampal Sahu, Gaibiram Sahu, Aged About 66 Years R/o Village Adarsh Chowk, Patna, Police Station Patna, District Korea, Chhattisgarh. (Accused), District : Koriya (Baikunthpur), Chhattisgarh
4. Sumitra Sahu, W/o Dharampal Sahu, Aged About 60 Years R/o Village Adarsh Chowk, Patna, Police Station Patna, District Korea, Chhattisgarh. (Accused), District : Koriya (Baikunthpur), Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ganesh Burman and Shri Ajay Lakra, Advocates
For Respondent/State	:	Ms. Tripti Rao, Panel Lawyer
As Amicus Curiae	:	Dr. N.K. Shukla, Senior Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Shri Justice Gautam Chourdiya****Order On Board****19/11/2018**

There is an application for grant of leave to appeal under proviso to Section 372 CrPC filed by the father of the deceased.

2. On the last date of hearing, an issue arose as to whether the father would be covered under the definition of victim as defined under Section 2 (wa) of CrPC. We requested Dr. N.K.Shukla, senior counsel to address the Court on this aspect.

3. Dr. Shukla would submit that the definition of word 'victim' as given in Section 2 (wa) of CrPC is of wide import and should not be given a restricted meaning, regard being had, to the object of legislation as has been considered in various Full Bench and Division Bench judgment of this Court and other Courts and a recent authoritative pronouncement of the Supreme Court in the case of **Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka & ors.** He would further advance his arguments by submitting that when such wide interpretation is given, word 'heir' occurring in Section 2 (wa) of CrPC has to be construed to mean and include legal heirs irrespective of the class or order in which they will succeed. He would submit that in the present case, the victim was a Hindu and his father would definitely be one of the heir under the provisions of Hindu Succession Act which would include him in the wide definition of victim under Section 2 (wa) of CrPC. In support of his submission, Dr. Shukla placed reliance on the decision of the Supreme Court in the case of **Satya Pal Singh v. State of Madhya Pradesh and ors., 2015 CriLJ 4929** and judgments of various High Courts as reported in **D. Sudhakar v. Panapu Sreenivasulu and ors., 2013 CriLJ 2764, Ramphal v. State and ors., 2015 CriLJ 3220, Manoj Kumar Singh v. State of U.P. and ors., 2017 CriLJ 1240, Mast Ram Tiwari v. State of U.P. and ors., 2018 CriLJ 1283.**

Learned counsel appearing for the parties before us have also made their submission and they submit that the interpretation would essentially depend upon the object of legislation and the word which are used in the context of the scheme of legislation.

4. We have considered the submission of learned counsel for the parties. The relevant provisions as contained in Section 2 (wa) of CrPC reads as under -

“Section 2 (wa) - “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”

5. The provision unmistakably includes in the definition of the victim not only the person who actually suffered harassment and injury but also the legal heirs and guardians of the victim. The inclusion of these two categories in addition to actual victim clearly indicates the legislative intention of giving a very wide meaning and import to the word 'victim'. The aforesaid provision came up for interpretation before the Supreme Court in the case of **Satya Pal Singh** (supra) wherein Their Lordships

in the Supreme Court considered the scope and import of the provision and observed as below -

“9. xxxxxxxxxxxx

There is no doubt that the appellant, being the father of the deceased, has locus standi to prefer an appeal before the High Court under proviso to Section 372 of Cr.P.C. as he falls within the definition of victim as defined under Section 2 (wa) of Cr.P.C. to question the correctness of the judgment and order of acquittal passed by the Trial Court in favour of respondent Nos.2 to 6 in Sessions Case No.293/2010.”

6. In various other decisions of different High Courts, similar view has been taken. One of the decision is rendered by Andhra Pradesh High Court in the case of **D. Sudhakar** (supra). Relevant paragraph is quoted as below -

“10. In view of the provisions of Sections 8 and 9 of the Hindu Succession Act, the appellant being a Class-II heir would not inherit anything from his deceased brother, as he is survived by his wife. Thus, the appellant is not entitled to the property of the victim under the applicable law of inheritance. Though the appellant falls in one of the category of heirs as per the Hindu Succession Act, but the Legislature deliberately used the word “legal heir”, which strictly means a person who is entitled to the property of the victim under the applicable law of inheritance i.e. Hindu Succession Act. Hence, we are of the considered opinion that when it is the intention of the Legislature to give right of appeal to the legal heir, the appellant will not fall within the definition of “legal heir” and he is not entitled to prefer an appeal to this Court under Section 372 CrPC against acquittal of the accused.”

7. In other three decisions, similar view has been taken which we are also inclined to refer to as below -

In the case of **Mast Ram Tiwari** (supra), it has been held -

“23. xxxxxxxxxxxx

The expression 'guardian' or 'legal heir' used in the

definition clause under Section 2 (wa), in our opinion, deserves to be construed in the broad and general sense, so as to include all those on whom the estate of the deceased dwells. In other words, every heir, who, in law, is entitled to succeed to the estate of a deceased (victim) in one or the other eventuality, shall fall within the ambit of Section 2 (wa) of CrPC, even if the estate of such deceased victim is devolved upon the legal heirs as per the order of preference prescribed under the personal law of such victim. The Full Bench of Punjab & Haryana High Court in Tata Steel Ltd. (supra) considered the word 'victim' in depth and in paragraph 70, recorded its conclusion with which we do not find any reason to differ. The conclusions recorded in paragraph 70, in our opinion, would be relevant to reproduce so as to understand the purport of the word 'victim' and with which we entirely agree:

“70. It thus finally emerges that the Legislature, before and after amendment of the Code vide Act No.5 of 2009, has recognized and conferred one right or the other on the following categories of persons -

- (i) a 'victim' as defined in Section 2 (wa) which includes his / her 'legal heirs' can be permitted by the Court under Section 24 (8) to engage an Advocate of his / her choice to assist the prosecution and if he / she is aggrieved at the acquittal of an accused (except acquittal in a case instituted on a complaint), the conviction of the accused for a lesser offence or the imposition of inadequate compensation on such accused, such 'victim' (including his / her legal heirs) have got a right under proviso to Section 372 to prefer an appeal to the Court to which an appeal ordinarily lies against the order of conviction of such Court ;
- (ii) the legal heirs comprising the wife, husband, parent and child of a deceased 'victim' only are entitled to the payment of compensation under Section 357 (1) (c) of the Code;
- (iii) in the case of death of a 'victim', only those of his / her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, are eligible to seek compensation in terms of the scheme formulated under Section 357-A of the Code ;
- (iv) While the persons falling within the

categories at Sr. Nos.(ii) and (iii) above shall necessarily include and form part of the persons falling in category No. (i), however, vice versa may not always be true.

(B) Whether 'complainant' in a private complaint -case, who is also the 'victim' and the 'victim' other than the 'complainant' complainant in such cases are entitled to present appeal against the order of acquittal under proviso to Section 372 or have to seek 'special leave' to appeal from the High Court under Section 378 (4), CrPC ?”

In the case of **Ram Phal** (supra), it has been held as below-

“53. To summarize, the conclusions from the above discussion are -

(i) “victim” in Section 2 (wa), by virtue of being defined as “a person who has suffered any loss or injury” must include a person who has suffered “harm caused to the mind”, given that Section 2 (y) of the Code of Criminal Procedure incorporates the definition of “injury” in Section 44 of the IPC into the Code.

(ii) The “means X and includes Y” clause in Section 2 (wa) cannot be interpreted so as to result in the included meaning Y excluding the actual meaning X of the term being defined; thus “legal heirs” who are included within the definition of the term 'victim' cannot exclude those who actually fall within the definition of 'victim' by virtue of emotional harm suffered, such as the father or siblings of a deceased victim or other categories of persons (based on proximity) noted previously.

(iii) The laws of inheritance, which decide one's “legal heirs”, are not intended to be solely determinative of the entitlement to exercise the rights of the victim, in the criminal trial / appeal, on his / her death, application of Heydon's mischief rule, given that the object of the 2008 Amendment Act was to ensure the involvement of the victim, who has a presumably personal interest in the fair and efficient prosecution of the trial / appeal. Resultantly, it is impermissible for an appellate court to shut out an appeal by a “legal heir” based only on her / his not being an immediate heir, or being lower down in hierarchy vis-a-vis entitlement to the crime victim's estate.”

In another decision in the case of **Manoj Kumar Singh** (supra) -

“64. We are therefore of the view that the expression “Legal Heir” has to be understood in its ordinary or natural sense. That is if any person is able to establish his status as “heir” recognized by law, he can be termed as “Legal Heir” and the preferences / restrictions / categories provided under any statute / personal law governing succession / inheritance will have no consequence. This interpretation of expression “Legal Heir” would not be a result of liberal construction but would be a consequence of ordinary or natural meaning of the expression “Legal Heir”.

8. In view of above considerations and the legal position as explained by Their Lordships in the Supreme Court and the High Courts, we are inclined to take a view that the father in the present case would definitely be included under the definition of victim as defined under Section 2 (wa) of CrPC.

9. Having held so, we consider unnecessary to go further into the question whether he would also be included as guardian notwithstanding that the actual victim was major. This issue would be dealt with as and when occasion arises.

10. In view of above consideration, we are inclined to apply the principles laid down in the recent judicial pronouncement of the Supreme Court in the case of **Mallikarjun Kodagali** (supra) that the victim is not required to seek leave. Accordingly, this CrMP is disposed off and the appeal filed by the victim shall be registered as acquittal appeal and be listed along with CrMP No.1694/2018 after three weeks.

This Court places high regards for the valuable assistance provided by Dr. Shukla.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Sd/-
(**Gautam Chourdiya**)
Judge