

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 200 of 2015

1. Neeraj Sharma, aged about 19 years, S/o Shri Satyadev Sharma
R/o New Minus Quarter, Block No. 20, Chhota Bazar, Chirmiri,
Distt. - Korea C.G. Presently Resided At - Gauri Nagar,
Rajnandgaon, Civil And Rev. Distt. Rajnandgaon C.G.
2. Ashwani Kumar Yadav S/o Shri Santosh Kumar Yadav Aged
About 20 Years R/o Chikhli, Police Chowki - Jewra Sirsa, P.S.
Pulgaon, Civil And Rev. Distt. Durg C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through Police Station Daundilohara,
Distt. Balod C.G.

---- Respondent

For Appellant No.1	:	Shri Achyut Tiwari, Advocate
For Appellant No.2	:	Shri DN Prajapati, Advocate
For Respondent/State	:	Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Justice Pritinker Diwaker

26.06.2018:

This appeal arises out of the judgment of conviction and order of sentence dated 3.1.2015 passed by the 1st Additional Sessions Judge, Balod, Distt. Balod in Sessions Case No. 02/2013, convicting each of the appellants under Section 307/120B, 364A & 392/397 of IPC and sentenced them to undergo RI for 10 years, fine of Rs.100/-; life imprisonment, fine of Rs.200/- and RI for 07 years respectively with default stipulations.

02. As per the prosecution case, complainant Arijit Sharma (PW-6) was residing as a paying guest in the house of Smt. Seema Singh (PW-7). Accused/appellant No.1 Neeraj Sharma and the complainant were known to each other. On 2.1.2013 at about 6.30 pm accused/appellant Neeraj Sharma called the complainant on his cell phone to visit Nehru Nagar and Yugantar College, Rajnandgaon. It is said the motorcycle was being ridden by accused/appellant No.2 Ashwani Kumar Yadav, complainant was sitting behind him and appellant Neeraj Sharma was sitting in the last. The complainant was taken to Doundilohara where at about 1 am while he was easing himself, the accused/appellants made an attempt to kill him by tying clutch wire around his neck and pulling the same from its both ends. Resultantly, the complainant fell on the ground, however, the appellants thinking that the complainant has died, poured petrol on his body and set him afire. Before setting him on fire, his mobile phone and cash of Rs.5000/- were looted. The complainant somehow survived and escaped from there to a nearby place where 3-4 persons were standing, to whom he narrated the incident and they called ambulance. The complainant was first taken to Doundilohara hospital where after primary treatment he was referred to Rajnandgaon and then to Sector-9 Hospital, Bhilai. From Doundilohara hospital intimation Ex.P/8 was given by the doctor to the police and after arrival of police, Dehati Nalishi Ex.P/12 was recorded on 3.1.2013. MLC of the victim is Ex.P/9 wherein the doctor (PW-4 Jaikumar Chunarkar) noticed burn injuries over anterior and posterior aspect of complete both lower limb, skin and epidermis separated out from its attachment and became blackish, burn injury over abdomen just above perineum region and multiple

small blister formation; burn injury also present over lower waist region, over right side upper part of chest, patient has linear ligature mark reddish in colour with abrasion above thyroid, cartilage all over anterior aspect of the neck from right mandible angle to left mandible angle. The doctor found that it was 1st degree burn and the percentage of the same was 45 to 48. On 3.1.2013 itself based on the Dehati Nalishi, FIR (Ex.P/15) was registered against appellant Neeraj Sharma and other unknown persons under Sections 394 & 307 of IPC. Considering the injuries sustained by the complainant, on 4.1.2013 his dying declaration (Ex.P/13) was recorded by the Executive Magistrate PW-8 BK Verma. After investigation, charge sheet was filed against the appellants and one Ravi Kumar Dwivedi (acquitted accused) and they were charged under Sections 120B, 364A, 307 and 392/397 and in alternative 394 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 11 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. Accused/appellant Neeraj Sharma examined himself as DW-1.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Ravi Kumar Dwivedi of all the charges, convicted and sentenced the appellants as mentioned in para-1 of this judgment.

05. Counsel for the appellants submit as under:

- that there is no eyewitness account to the incident and the accused/appellants have been falsely implicated in this case on basis of weak piece of circumstantial evidence.
- that no test identification parade has been conducted in respect of accused/appellant Ashwani Kumar and merely on the basis of dock identification he could not have been convicted.
- that at the time of incident complainant (PW-6 Arjit Sharma) was in a drunken condition and thus, possibility of his sustaining burn injuries accidentally or burning himself cannot be ruled out.
- that the clutch wire allegedly used for strangulating the complainant has not been seized.
- that there is discrepancy in regard to seizure of cell phone.
- that the ingredients of Section 364A of IPC are not made out against the appellants considering the fact that one of the accused Ravi Kumar has been acquitted who allegedly made a call from his cell phone to father of the victim demanding ransom. Thus, when the ransom part goes, conviction of the appellants under Section 364A is not tenable and at best they can be held liable for conviction u/s 364 of IPC.
- that the appellants are in jail for the last more than five years and therefore, after converting their conviction for lesser offence, their sentence may be reduced to the period already undergone by them.

06. On the other hand, supporting the impugned judgment it has been argued by the State counsel as under:

- that there is no reason to disbelieve the statements of

complainant PW-6 and his father PW-5 Parinit Sharma who have categorically stated about the involvement of the accused/appellants in the crime in question.

- Even if accused Ravi Kumar has been acquitted by the trial Court, it will not make any difference in the case of the appellants because considering the overall act of the appellants and the evidence adduced by the prosecution, their conviction under Section 364A is just and proper.
- that complainant Arjit Sharma (PW-6) was a student and on account of burn injuries suffered by him, he developed gangrene and ultimately his right leg below knee was amputated. Thus, considering the brutal act of the appellants, they do not deserve any leniency and their conviction as well as sentence being in accordance with law are required to be affirmed.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Santosh Shukla was informed by Guard at the plant that some person entered the plant premises in burnt condition and after seeing him, he (this witness) enquired from the victim who informed him that he was brought to the jungle by his friends and burnt by them after looting his money. Thereafter, this witness informed Police Station – Doundilohara about the same and called ambulance and that the complainant was taken for primary treatment to Doundilohara hospital.

09. PW-2 Ishwar Singh Dewangan, Patwari, prepared the spot map Ex.P/2. PW-4 Dr. Jaikumar Chunarkar first medically examined the

complainant at Doundilohara hospital vide Ex.P/9 and noticed burn injuries over anterior and posterior aspect of complete both lower limb, skin and epidermis separated out from its attachment and became blackish, burn injury over abdomen just above perineum region and multiple small blister formation; burn injury also present over lower waist region, over right side upper part of chest, patient has linear ligature mark reddish in colour with abrasion above thyroid, cartilage all over anterior aspect of the neck from right mandible angle to left mandible angle. The doctor found that it was 1st degree burn and the percentage of the same was 45 to 48.

10. PW-5 Pranit Sharma, father of the complainant, has stated that on 3.1.2013 he was informed by Aman Singh, son of Seema Singh, that his son Arjit Sharma is not well and has been hospitalized at Sector-9 Hospital, Bhilai. When he reached Sector-9 Hospital, he saw his son in burnt condition and he was writhing in pain. On being asked, his son informed him as to the manner in which he was burnt by the appellants and how he came to be admitted in Sector-9 Hospital. He further states that while he was in the hospital, at about 12 noon he received a call on his cell phone from Mobile No.7869590607 and the caller demanded Rs.8 lacs in lieu of release of his son Arjit Sharma and when he replied that his son is in hospital with him and he would lodge a report against him (caller), then the caller disconnected the call. In cross-examination but for minor contradictions he remained firm.

11. PW-6 Arjit Sharma, victim/complainant, has stated that he was residing as a paying guest at Bhilai. On 2nd January, 2013

accused/appellant Neeraj Sharma called him on his phone and asked him to come to Nehru Nagar, Bhilai. After informing his landlady and Aman Singh he went to meet Neeraj Sharma at Nehru Nagar. After some time, appellant Neeraj Sharma came there on bike with one person, who was introduced to him as Ashwani Yadav. On the way, all of them consumed liquor and then they decided to go to Yugantar College, Rajnandgaon to meet one Rahul, brother of appellant Neeraj Sharma. He states that the motorcycle was being ridden by appellant Ashwani Kumar, he was sitting in between the appellants. However, instead of going towards Rajnandgaon when the bike was turned towards Balod side, he asked the accused persons as to why they are going to other side, on which they told that from that side also Yugantar College is approachable. On the way, the vehicle was stopped and all of them went to ease themselves. While he (complainant) was talking to appellant Neeraj Sharma, at that time appellant Ashwani Kumar came from behind and tied his neck with clutch wire and then both the appellants started pulling the said wire from opposite ends as a result of which he fell down on the ground in semi-conscious condition. However, he was in a position to hear their conversation. He heard Neeraj Sharma asking Ashwani Kumar to bring petrol from the dicky of the vehicle to burn him. He states that appellant Neeraj Sharma took out Rs.5000/- from his purse as also one cell phone. They poured petrol on him and set him on fire. However, somehow he escaped from there and reached the nearby plant, informed about the incident to the Guards present there and also provided them the number of his landlord Aman Singh and in turn they informed Aman Singh about the entire incident. Thereafter, ambulance was called, he was taken to

Doundilohara hospital from where he was referred to Rajnandgaon and then to Sector-9 Hospital, Bhilai. At his instance Dehati Nalishi Ex.P/12 was recorded.

In cross-examination this witness remained firm and nothing could be elicited from him by the defence to make his evidence untrustworthy or doubtful.

12. PW-7 Smt. Seema Singh is the landlady in whose house the complainant was residing as a paying guest. She admits that on the date of incident his son Aman Singh received a call on his cell phone at 2.45 am from the Guard of some factory informing him that one boy has suffered burn injuries and that his son immediately thereafter informed her about the same and then they went to Rajnandgaon hospital and saw the complainant in burnt condition. She states that as the complainant was severely burnt, he was taken to Sector-9 Hospital, Bhilai. She states that it was informed by the Guard over phone that Arjit Sharma has been burnt by someone by pouring petrol on him and the same fact was disclosed to them by the doctors at Rajnandgaon.

13. PW-8 BK Verma, Executive Magistrate, recorded dying declaration (Ex.P/13) of the complainant in question and answer form wherein the complainant has described the entire incident and categorically stated as to the manner in which he was abducted and burnt by the accused persons. He states that he recorded the dying declaration after the doctor certified that the patient is in a fit state of mind to make such statement and at the time of recording statement, no other person was present there.

14. PW-9 Dr. Udai treated the complainant at Sector-9 Hospital,

Bhilai, noticed 40-45% burn, ligature mark around his neck which appeared to be the result of tying of clutch wire around the neck. He performed two surgeries on the complainant and right leg of the complainant below knee was amputated. PW-10 RS Sahu, investigating officer, has duly supported the prosecution case. PW-11 Gannu Singh witness to memorandum and seizure has turned hostile.

15. DW-1 Neeraj Sharma (accused No.1) has stated that on 16.12.2012 the victim (PW-6), Aman Singh and his friends had a quarrel and scuffle with them and both the parties hurled abuses at each other and thereafter, they returned to their house. However, on 25.12.2012 somebody burnt the car of landlord of the complainant and therefore, on suspicion the police used to call them to police station frequently for interrogation and ultimately, they have been falsely implicated in the present crime.

16. Close scrutiny of the evidence makes it clear that on 2.1.2013 at about 6.30 pm accused/appellant Neeraj Sharma called the complainant PW-6 Arjit Sharma on his cell phone to visit Nehru Nagar and Yugantar College, Rajnandgaon and when the complainant reached the indicated place, appellant Neeraj Sharma came there with appellant Ashwani Kumar Yadav on motorcycle and they took the complainant on the motorcycle to Doundilohara where at about 1 am while he was easing himself, the accused/appellants made an attempt to kill him by tying clutch wire around his neck. When the complainant fell on the ground, the appellants thinking that he has died, poured petrol on his body and set him afire, however, before setting him ablaze, his mobile phone and cash of Rs.5000/- were looted by them.

PW-6 Arjit Sharma has fully supported the prosecution case and remained firm in his lengthy cross-examination.

17. The testimony of PW-6 finds corroboration from the evidence of PW-1 Santosh Shukla, guard of the plant where the complainant took shelter in burnt condition, who has stated that at around 2-3 in the night the complainant had entered the plant premises in burnt condition and on being asked informed that he was burnt by his friends in the jungle and his money was also looted by them. This apart, PW-7 Smt. Seema Singh, in whose house the complainant was residing as paying guest, too has supported the prosecution case and stated that her son received a telephonic call from the guard of some factory that the complainant has suffered severe burn injuries and then she along with other paying guests residing in her house went to Rajnandgaon hospital and found him there in burnt condition. She states that the guard had informed over phone that the complainant has been burnt by someone by pouring petrol on him and this fact was also disclosed to her by the doctors at Rajnandgaon hospital. PW-5 Pranit Sharma, father of the complainant, also states that on coming to know about the incident through Aman Singh, son of Seema Singh (PW-7) he reached Sector-9 hospital and found his son lying there in burnt condition. On being asked his son/complainant informed him as to the manner in which he was burnt and looted by the accused/appellants. He also states that when he was in Sector-9 Hospital at about 12 noon he received a call on his cell phone and the caller demanded Rs.8 lacs in lieu of release of his son and when he replied that his son is with him in the hospital and he would lodge a report against him (caller), the call was disconnected. It is also relevant to mention here that the fact of

ransom call also finds place in the dying declaration (Ex.P/13) of the complainant which has been duly proved by PW-8 BK Verma, Executive Magistrate, who recorded the same. PW-8 BK Verma states that he recorded the dying declaration after the doctor certified that the patient is in a fit state of mind to make such statement and at the time of recording statement, no other person was present there. This dying declaration can be treated as a statement under Section 162 of CrPC.

18. Furthermore, medical evidence also lends due support to the prosecution case. PW-4 Dr. Jaikumar Chunarkar who first medically examined the complainant at Doundilohara hospital noticed burn injuries over anterior and posterior aspect of complete both lower limb and that there was linear ligature mark on the neck. PW-9 Dr. Udai who treated the complainant at Sector-9 Hospital, Bhilai, noticed 40-45% burn and ligature mark around his neck which appeared to be the result of tying of clutch wire around the neck.

19. We find no substance in the argument of counsel for the appellants that in absence of TIP, appellant Ashwani Kumar could not have been convicted. In the Court PW-6 has duly identified Ashwani Kumar as the perpetrator of the crime in question. It is trite to say that the substantive evidence is the evidence of identification in court by the witness. The logic behind TIP lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. However, in the present case, as has come in the evidence of PW-6, appellant Ashwani Kumar was introduced by appellant Neeraj Sharma to the complainant and he remained in their company for a

considerable time and further nowhere it has come that appellant Ashwani Kumar had covered his face or there was no source of light to see him. In these circumstances, merely on the ground of non-conduction of TIP in respect of appellant Ashwani Kumar, his involvement in the crime in question cannot be doubted.

20. We further find no substance in the argument of the appellants that offence under Section 364A is not made out against them. From the evidence of PW-5 Pranit Sharma, father of the complainant, it is quite clear that a ransom call was received by him where the caller demanded Rs.8 lacs in lieu of release of the complainant. This fact of ransom call also finds place in the dying declaration of the victim/complainant which has been duly proved by the prosecution as observed above. Though one of the accused (accused No.3) has been acquitted of all the charges by the trial Court, but in the face of un rebutted evidence of PW-6 which finds due corroboration from other oral, documentary and medical evidence, merely on the ground of acquittal of one of the accused who allegedly made ransom call, it cannot be held that no ransom was demanded for release of the complainant and that the appellants had no connection with such ransom call.

21. Thus, in view of the above, involvement of the accused/appellants in the crime in question stands proved beyond all reasonable doubt and therefore, we affirm the findings of guilt recorded by the trial Court.

22. In the given facts and circumstances of the case, this Court deems it proper to grant compensation u/s 357 of CrPC to the victim

(PW-6). The High Court of Allahabad while dealing with the issue of grant of compensation u/s 357 of CrPC observed as under:

“49.The above discussion may be summarized as under:

1) Every victim of crime is entitled to compensation, which will be granted on the application of the victim or on the recommendation of the court.

2) The 'court' occurring in [Section 357-A\(2\)](#) Cr.P.C. includes the trial court, appellate court or revisional court.

3) [Section 357-A](#) Cr.P.C. is retrospective in nature and therefore, date of offence has no relevance, so far as applicability of provision is concerned, subject to other conditions being fulfilled.

4) So far as right of victim to get compensation is concerned, compensation can be recommended by trial court, appellate court as well as revisional court under [Section 357-A](#) Cr.P.C.

5) Interim compensation can also be ordered during pendency of the trial, appeal or revision under [Section 357-A](#) Cr.P.C.

6) Compensation will be payable as per the terms of Scheme framed under [Section 357-A](#) Cr.P.C.

7) It is the duty of every court to consider the question of awarding the compensation, and for awarding or refusing court is supposed to record reasons. Application of mind to such a question is duty of the court. Gravity of the offence and need of the victim would be some of the guiding factors. Rehabilitation of victim in order to alleviate his/her suffering would be the principle area to be concentrated upon by the DLSA or SLISA.

50.From the above discussion, it is manifest that under [Section 357](#) Cr.P.C. whereby trial court or appellate court were capable to give compensation out of amount of fine or otherwise to the victim at the conclusion of the trial or appeal as the case may be, there has been a departure in this scheme of compensation with the intervention of the legislature which has brought in place [Section 357-A](#) Cr.P.C. to take care of the victims whether trial has commenced or not, accused are identified or not or whether trial has resulted in acquittal. Power under [Section 357-A](#) can also be exercised when it is found that compensation awarded by the trial court is inadequate. Thus, this provision provides for additional mechanism to take care of the victim irrespective of identity of the offender or pendency of judicial proceeding. This has

been done to ensure the dignity of individual (victim) contemplated in Preamble as well as [Article 38](#) and [41](#) of the Constitution of India. This newly added provision has to be interpreted in the light of these provisions.

51. Discussion made above, shows that under [Section 357-A](#) Cr.P.C., trial court, appellate court or revisional court can order compensation either on its own motion or on the application of victim. This can be done even during the pendency of trial, appeal or revision and courts are not supposed to wait till conclusion of proceeding as victim is not supposed to wait for medical aid, rehabilitation, restoration till decision of trial/appeal which may take more than 20 years. Interim compensation can also be granted in accordance with the Scheme, 2014 which provides for granting of interim compensation which will be in consonance with [Section 357-A](#) Cr.P.C. as well as decisions of Hon'ble Apex Court.

23. Keeping in view the aforesaid principles of law in relation to grant of compensation u/s 357 of CrPC, the fact that on account of assault made by the appellants, the complainant's right leg below knee was amputated, and after affording a reasonable opportunity to the counsel for the appellants to address us on this point and satisfying ourselves as to the financial status of the appellants, we direct each of the appellants to pay compensation of Rs.50,000/- to the complainant. This apart, the State Government is also directed to pay a sum of Rs.1 lac to the complainant.

24. In the result, the appeal fails and is, accordingly, dismissed.

Copy of this order be sent to the Secretary, State Legal Services Authority; Secretary (Home) and Secretary (Law) for doing the needful.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Gautam Chourdiya)
Judge