

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 356 of 2015**

- Sonu Shrivastava S/o Manharan Lal Shrivastava Aged About 22 Years
R/o Shyam Nagar, Village Lingiyadih, P.S. Sarkanda, District
Bilaspur C.G.

---- Appellant
In Jail

Versus

- State Of Chhattisgarh Through - P.S. Scheduled Castes and
Scheduled Tribes Kalayan, Bilaspur C.G.

---- Respondent

For Appellant	:	Shri RK Jain, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

CRA No. 473 of 2015

- Amit Yadav @ Pappu S/o Bharat Lal Yadav Aged About 22 Years
R/o Village Lingiyadih, Shyam Nagar, P.S. Sarkanda District
Bilaspur Chhattisgarh

---- Appellant
In Jail

Versus

- State Of Chhattisgarh Through S.H.O., Police Station, A.J.K.
Bilaspur District Bilaspur Chhattisgarh.

---- Respondent

For Appellant	:	Shri NL Soni and Shri Nalin Soni, Advocates.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

CRA No. 532 of 2015

- Banti Sharma S/o Ramesh Kumar Sharma Aged About 21 Years
R/o Village- Lingiyadih, Shyamnagar, Thana- Sarkanda, Civil And
Revenue District- Bilaspur, Chhattisgarh.

---- Appellant
In Jail

Versus

- State Of Chhattisgarh Through The District Magistrate Bilaspur,
District- Bilaspur, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Sunil Sahu, Advocate.
For Respondent/State	:	Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board by Justice Pritinker Diwaker

23.07.2018:

As all these appeals arise out of the judgment of conviction and order of sentence dated 23.2.2015 passed by the Special Sessions Judge (Atrocities), Bilaspur in Special Sessions Case No.04/2013, convicting each of the appellants under Sections 302/34 & 323/34 of IPC and sentencing them to undergo imprisonment for life, pay a fine of Rs.1000/- and RI for 03 months, pay a fine of Rs.500/- with default stipulations respectively, they are being disposed of by this common judgment.

02. As per the prosecution case, on 11.11.2012 at about 10.15 pm, accused No.1 Amit Yadav was peeping into bathroom of PW-10 Chaitram through a hole which was objected by him. However, accused Amit Yadav instead of leaving the spot, started abusing Chaitram filthily and other accused persons namely Banti Sharma and Sonu Shrivastava also joined him. Deceased Dhansingh, uncle of Chaitram, came out from his house and intervened in the matter but unfortunately the accused persons started beating him by hands, fists and bricks. The other uncle of PW-10 namely Tularam (PW-11) and Nohar (PW-3) also came to his rescue but they too were beaten by the accused persons by hands and clubs. During this fight, accused No.2 Banti Sharma also sustained some injuries vide Ex. D/3. Injured Dhansingh was taken to hospital where he was declared brought dead. On 11.11.2012 itself at 10.50 pm merged intimation Ex.P/12 was

recorded at the instance of PW-10. Soon thereafter at 10.55 pm FIR (Ex.P/13) was lodged by PW-10 against all the three accused persons under Sections 294, 323, 302 of IPC.

03. Inquest on the dead body was conducted on 12.11.2012 vide Ex.P/4 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-14 Dr. Vijay Kumar Verma vide Ex.P/34. The autopsy surgeon noticed lacerated wounds on frontal mid upper side of forehead, contusion over right eyebrow, all over head, abrasion over inner part of right thigh, fracture of right parietal bone as well as left parietal bone. All the injuries were caused by hard and blunt object and were anti-mortem in nature. In his opinion, the cause of death was coma as a result of injuries to head and brain and the nature of death was homicidal.

04. PW-10 Chaitram was medically examined vide Ex.P/9 by PW-7 Dr. SK Chandel who noticed abrasions on forearms of both the hands. PW-7 also examined PW-3 Noharsai vide Ex.P/10 and noticed contusion over left temporal region and abrasion over left arm. PW-4 Sonibai was also examined by PW-7 vide Ex.P/11 and the doctor found a contusion behind the right arm. All the injuries suffered by them were simple in nature and were caused by hard and blunt object. PW-9 Dr. Omprakash Raj medically examined PW-11 Tularam Bankar vide Ex.P/15 and noticed abrasion over right elbow joint and abrasion over left lower chest, which were caused by hard and blunt object.

05. Memorandum of accused Amit Yadav (Ex.P/5) led to recovery of one club vide Ex.P/6 and likewise memorandum of accused Sonu

(Ex.P/7) led to recovery of one club vide Ex.P/8. While framing charges, the trial Judge charged the accused/appellants under Sections 323/34, 302/34 of IPC and Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

06. So as to hold the accused persons guilty, the prosecution examined 14 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. They examined three witnesses in their defence.

07. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the accused persons of the charge under Section 3(2)(v) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, convicted and sentenced them as mentioned in para-1 of this judgment.

08. Counsel for the appellants submit as under:

- that the act of the accused/appellants would not come within the definition of murder and at best, it would be a case of culpable homicide not amounting to murder.
- that case of the appellants would fall under Exception 4 to Section 300 of IPC as the offence has been committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel where the appellants have not taken undue

advantage or acted in a cruel or unusual manner.

- that the appellants are young boys and it appears that out of curiosity they were peeping through the hole and when it was objected by the complainant party, they got annoyed and the fight ensued which unfortunately resulted in death of Dhansingh and as such, from the prosecution case itself it is evident that their intention was not to kill the deceased but they only wanted to cause some injuries to the complainant party. In these circumstances, at best the appellants are liable to be convicted under Section 304 Part-II of IPC and they are also ready to suitably compensate the victim family.

09. On the other hand, supporting the impugned judgment it has been argued by the State counsel that conviction of the accused/appellants is strictly in accordance with law. He submits that the manner in which the deceased was done to death by the appellants, their conviction u/s 302/34 of IPC cannot be faulted with.

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

11. PW-10 Chaitram is the informant and an eyewitness to the incident. He has stated that on the day of Dhanteras festival i.e. the date of incident, when he went to his bathroom he saw the accused persons peeping into the bathroom through a hole. When he objected to it, they started abusing him filthily and after dragging him out of the bathroom, they also beat him. Hearing his cries, his uncle Dhansingh (deceased) came to intervene, however, he too was abused and beaten by the

accused persons by bricks, hands and clubs as a result of which his uncle became unconscious. Soon thereafter, his another uncle Tularam (PW-11), Nohar (PW-3), Ashok, Soni (PW-4) and other family members reached there but they were also beaten by the accused persons. His uncle Dhansingh was taken to hospital where he was declared brought dead. In cross-examination but for minor contradictions this witness remained firm and reiterated as to the manner in which the incident had taken place.

12. PW-11 Tularam is an injured eyewitness to the incident. While supporting the prosecution case he has described as to the manner in which the incident occurred. He states that when Dhansingh intervened in the matter, he was beaten by the accused persons as a result of which he became unconscious and was taken to hospital where he was declared brought dead. He states that when he and other persons intervened in the matter, they too were assaulted by the accused persons.

13. PW-3 Nohar Kumar Ahirwar has partially supported the prosecution case. PW-4 Sonibai and PW-12 Gangotribai are other eyewitnesses to the incident. Their statements are almost identical to that of PW-10 & PW-11. While supporting the prosecution case they too have stated that it is the accused persons who killed the deceased Dhansingh by assaulting him with bricks, fists and clubs.

14. PW-7 Dr. SK Chandel medically examined PW-10 Chaitram vide Ex.P/9 and noticed abrasions on forearms of both the hands. He also examined PW-3 Noharsai vide Ex.P/10 and noticed contusion over left

temporal region and abrasion over left arm. PW-4 Sonibai was also examined by this witness vide Ex.P/11 and he found a contusion behind the right arm. According to him, all the injuries suffered by them were simple in nature and were caused by hard and blunt object. PW-9 Dr. Omprakash Raj medically examined PW-11 Tularam Bankar vide Ex.P/15 and noticed abrasion over right elbow joint and abrasion over left lower chest, which were caused by hard and blunt object and were simple in nature. PW-14 Dr. Vijay Kumar Verma conducted postmortem on the body of deceased Dhansingh on 12.11.2012 vide Ex.P/34. The autopsy surgeon noticed lacerated wounds on frontal mid upper side of forehead, contusion over right eyebrow, all over head, abrasion over inner part of right thigh, fracture of right parietal bone as well as left parietal bone. All the injuries were caused by hard and blunt object and were anti-mortem in nature. In his opinion, the cause of death was coma as a result of injuries to head and brain and the nature of death was homicidal.

15. DW-1 Ashok Singh and DW-2 Ramsevak have been examined to prove that no such incident had taken place whereas DW-3 Dr. Manish Shrivastav has proved the injury suffered by accused No.2 Banti vide Ex.D/3.

16. Close scrutiny of the evidence makes it clear that on 11.11.2012 there was a quarrel between the accused/appellants and the complainant party as accused No.1 Amit Yadav was peeping into bathroom of PW-10 Chaitram through a hole which was objected by him. During this quarrel when deceased Dhansingh, uncle of Chaitram,

came out from his house and intervened in the matter, the accused/appellants started beating him by hands, fists and bricks. When Tularam (PW-11) and Nohar (PW-3) also came to his rescue they too were beaten by the accused persons by hands and clubs. Injured Dhansingh was taken to hospital where he was declared brought dead. Eyewitnesses to the incident namely PW-10 Chaitram, PW-11 Tularam, PW-4 Sonibai and PW-12 Gangotribai have duly supported the prosecution case and described as to the manner in which the incident took place and the deceased was done to death by the accused/appellants. Defence has utterly failed to elicit anything from them to make their evidence shaky or doubtful. Therefore, we have no reason to disbelieve their testimony. This apart, the ocular evidence also finds due corroboration from the evidence of autopsy surgeon PW-14 Dr. Vijay Kumar Verma, PW-7 Dr. SK Chandel, who medically examined PW-10 Chaitram, PW-3 Noharsai, PW-4 Sonibai & PW-11 Tularam and found that they suffered simple injuries, and PW-9 Dr. Omprakash Raj who examined PW-11 Tularam and noticed simple injuries sustained by him. Thus, in view of all this, complicity of the accused/appellants in commission of the offence stands proved beyond all reasonable doubt.

17. Now this Court has to see whether the act of the accused/appellants would make them liable for conviction under Section 302/34 of IPC or any lesser offence.

18. From perusal of the record it is found that there was no previous enmity between the complainant party and the accused/appellants. The

incident occurred when one of the accused namely Amit Yadav was peeping into the bathroom of PW-10 Chaitram through a hole and it was objected by PW-10. During this quarrel the other accused/appellants and injured witnesses including the deceased also reached the spot, and the appellants started assaulting the complainant party with bricks, hands and clubs. It is not the case of the prosecution that the appellants were armed with any weapon, rather according to the prosecution case itself the assault was made with hands, bricks and clubs lying on the spot. Thus, in the given facts and circumstances of the case, it appears that the incident occurred all of a sudden in the heat of passion without there being any premeditation on the part of the accused/appellants to commit murder of the deceased. Being so, their act is covered by Exception 4 to Section 300 of IPC i.e. culpable homicide not amounting to murder.

19. Further, considering the manner in which the incident took place, assault was made by the appellants and the weapon used for such assault, this Court finds it difficult to hold that the appellants were having intention to kill the deceased by causing such bodily injuries. However, keeping in mind the fact that the assault was made on vital part head with such a force leading to fracture of both parietal bones which proved to be the cause of death of the deceased, it cannot be denied that while inflicting injuries on the deceased, the appellants had the knowledge that causing of such bodily injuries, particularly on head, would result in his death. In these circumstances, the act committed by them makes them liable for conviction under Section 304 Part-II of IPC.

20. As regards sentence, considering the factual background giving rise to the incident, the fact that quarrel often takes place on such trivial matters, the gravity of the offence and to discourage recurrence of such incidents, we are of the opinion that sentence of seven years' RI under Section 304 Part-II of IPC would be just and proper. This apart, we are also mindful of the irreparable loss suffered by the family of the deceased at the hands of the appellants and therefore, the appellants are required to pay suitable compensation to the bereaved family.

21. 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 SLSA.

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.

22. The Hon'ble Supreme Court in the matter of ***R. Mohan Vs. A.K.***

Vijaya Kumar, (2012) 8 SCC 721 observed as under:

“16. That takes us to the legal question whether the court can award a sentence in default of payment of compensation.

17. Under Section 357 of the Code the Court can pass order to pay compensation. Sub-Section (1) of [Section 357](#)

of the Code empowers the court to award compensation to the victim of offence out of the sentence of fine imposed on the accused. [Section 357\(3\)](#) is relevant. It reads thus:

“357. Order to pay compensation. – (1) xxx xxx xxx (2) xxx xxx xxx (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.” Thus, if a fine is not a part of the order of sentence, the court may order the accused to pay compensation to the person who has suffered any loss or injury because of the act of the accused for which he is sentenced.

18. [In Hari Singh v. Sukhbir Singh & Ors.](#)[(1988) 4 SCC 551], the accused were convicted and sentenced under [Section 325](#) read with [Section 149](#), [Section 323](#) read with [Section 149](#) and [Section 148](#) of the IPC. They were released on probation of good conduct. Each of them was ordered to pay compensation of Rs.2,500/- to the injured. In default of payment of compensation, they were directed to serve their sentence.

19. This court in *Hari Singh* case inter alia considered whether the compensation awarded to the injured could be legally sustained. This court observed that the power of the court under [Section 357\(3\)](#) to award compensation is not ancillary to other sentences, but it is in addition thereto and is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. This court further observed that it is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. Describing it as a constructive approach to crime, this court recommended to all courts to exercise this power liberally so as to meet the ends of justice in a better way. It was clarified that the order to pay compensation may be enforced by awarding sentence in default.

20. The relevant observations of this court may be advantageously quoted. (*Hari Singh case*, SCC p. 558, para 11)

“11. The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default.”

29. The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of [Section 357\(3\)](#) compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order, directing compensation, is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under [Section 357\(3\)](#) of the Code would be frustrated if he is driven to take recourse to [Section 421](#) of the Code. Order under [Section 357](#) (3) must have potentiality to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If [Section 421](#) of the Code puts compensation ordered to be paid by the court on par with fine so far as mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation as it can be done in case of default in payment of fine under

[Section 64](#) of the IPC. It is obvious that in view of this, in *Vijayan*, this court stated that the above mentioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to [Section 421](#) of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in *Hari Singh* are as important today as they were when they were made. The conclusion, therefore, is that the order to pay compensation may be enforced by awarding sentence in default.”

23. In the matter of ***Ankush Shivaji Gaikwad Vs. State of Maharashtra*** reported in **(2013) 6 SCC 770**, the Hon'ble Supreme Court while considering the issue of grant of compensation u/s 357 of CrPC held that it is the mandatory duty of the criminal Courts to apply its mind to the question of awarding compensation in every case. The observation of the Apex Court was as under:

“The language of Section 357 CrPC at a glance may not suggest that any obligation is cast upon a court to apply its mind to the question of compensation in every case. Section 357(1) states that the Court “may” order for the whole or any part of a fine recovered to be applied towards compensation. Section 357(3) CrPC further empowers the court by stating that it “may” award compensation even in such cases where the sentence imposed does not include a fine. The legal position is however well established that cases may arise where a provision is mandatory despite the use of language that makes it discretionary. Section 357 CrPC confers a power coupled with a mandatory duty on the court to apply its mind to the question of awarding compensation in every criminal case. It is said so because in the background and context in which Section 357 CrPC was introduced, the

power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten if despite the legislature having gone so far as to enact specific provisions relations to victim compensation, courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. If application of mind to the question of compensation in every case is not considered mandatory, Section 357 CrPC would be rendered a dead letter. Further, the court must disclose that it has applied its mind to this question in every criminal case. The disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion.

The Supreme Court has through a line of cases held that the power of courts to award compensation to victims under Section 357 CrPC is not ancillary to other sentences but in addition thereto. It would necessarily follow that the court has a duty to apply its mind to the question of awarding compensation under Section 357 too.

Thus, while the award or refusal of compensation in a 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. The amount of compensation is to be determined by the courts depending upon the facts and circumstances of each case, the nature

of the crime, the justness of the claim and the capacity of the accused to pay. This capacity of the accused to pay which constitutes an important aspect of any order under Section 357 CrPC 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 necessary 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.”

24. 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, deceased Dhansingh had an untimely death at the age of 50, causing an irreparable loss to his family, 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.20,000/- (totaling Rs.60,000/-) to the widow of the deceased within a period of six months from today, failing which they shall have to suffer additional RI for one year.

25. In the result, the appeals are allowed in part. While maintaining conviction and sentence of the appellants under Section 323/34 of IPC, their conviction and sentence under Section 302/34 of IPC are hereby set aside and instead they are held guilty under Section 304 Part-II/34 of IPC and sentenced to undergo RI for seven years. All the substantive jail sentences to run concurrently. In addition thereto, each of them is directed to pay an amount of Rs.20,000/- (totaling

Rs.60,000/-) to widow of the deceased as compensation u/s 357(3) of CrPC, failing which they shall have to undergo additional RI for one year.

A copy of this judgment be forwarded to the concerned trial Court forthwith for its compliance.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(Gautam Chourdiya)
Judge