

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

482

**CRA-D-230-DBA-2003 (O&M)
Date of Decision : 28.08.2019**

Surjit Kaur

... Appellant

Versus

Harnek Singh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. P.S.Brar, Advocate for the appellant.

Mr. Jasdev Singh Brar, Advocate for respondent No.1.

Mr. Sandeep Vermani, Addl. A.G. Punjab.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against acquittal of respondent No.1 in the complaint filed under Section 302/323/34 of IPC.

2. As per the averments made in the complaint, on 22.03.1994 two sons of the complainant, namely, Harjinder Singh and Baljinder Singh (now deceased) went to Guru Nanak College, Moga in order to get character certificate of Baljinder Singh, where they met some boys, who engaged an altercation with them by abusing them. Due to this, Surjit Singh, Principal of the college came there and with the help of other boys caught hold of the sons of the complainant and confined them in a room. He had also informed the police about the incident. Both the accused took both the sons of the complainant to the Police Station City-I, Moga where they were illegally detained. On 22.03.1994 at 2:00 p.m on learning about illegal detention of her sons, she requested the accused to release her sons, but they refused to

release them without the consent of the Principal. However, the Principal also showed his helplessness. During the detention, both the accused gave kick blows and also rolled pestle with pressure over the left thigh and abdomen of Baljinder Singh and also on the thigh of Harjinder Singh. Accused demanded Rs.50,000/- for releasing them and threatened them if they did not bring the money, they would kill both of them by making a story of a fake encounter. Accused released Harjinder Singh for bringing the money but he did not turn up to the house and even did not get himself medically examined due to fear of the police. He returned to his house on 28.03.1994. On 23.03.1994, when condition of Baljinder Singh became serious, he was taken to Civil Hospital Moga by the Head Constable Lachhman Singh (deceased). Baljinder Singh had narrated his story to the Doctor. On 24.03.1994, Doctor referred him to CMC, Ludhiana, where he died. On 28.03.1994, complainant made complaint to the higher authorities and SSP, Faridkot, but to no avail. On the other hand, police had registered a case relating to the murder of her son Baljinder Singh on the false complaint of Head Constable Lachhman Singh (now deceased) in order to hush up the matter.

3. During the trial, Constable Lachhman Singh died and consequently, the case against him stood abated. Respondent No.1 in his defence submitted that he was not present in the police station at the relevant time. In the prosecution evidence 4 witnesses were examined i.e. Dr. Mohinder Pal, PW-1, Dr. Ramesh Sharma PW-2, Harjinder Singh PW-3 and Dr. S.K.Sharma, PW-4.

4. Amongst the witnesses, the key testimony is of PW2-Dr. Ramesh Sharma, who stated that when he had examined the deceased, the

deceased informed him that he had been given beatings by the police. PW-3 Harjinder Singh was disbelieved by the Court because of the fact that he was released by the police but returned home on 28.03.1994 and did not even go to his home to inform the family about what was happening to his brother. As per the Doctor, the cause of death was the injuries suffered in the abdomen of Baljinder Singh by the blunt weapon. The key witness in this case was DW-2, Kikkar Singh, M.H.C., Police Station Moga. He stated that in his presence Lachhman Singh had been giving beatings to the deceased.

5. In these circumstances, the Court acquitted the respondent.

6. Learned counsel for the appellant has argued that the trial Court has wrongly disbelieved the testimony of PW3-Harjinder Singh. The testimony of the said witness duly proves that he was there with his brother when they went to the College. On the contrary, counsel for respondent No.1 and the State of Punjab have argued that Harjinder Singh's testimony has rightly been discarded. There was contemporaneous documentary evidence to corroborate the assertion that when the two brothers were being taken to the police Station, Harjinder Singh had succeeded in escaping. Moreover, they have further argued that the conduct of Harjinder Singh is completely inexplicable because if he had been sent to get the money (as he claimed) there was no reason for him to go and hide till 28.03.1994. He admitted that he had come to know about the death of his brother on 25.03.1994. Learned counsel have argued that third reason to discredit him was the material improvements which he made in his statement.

7. In our considered opinion the entire evidence which has been led in this case points to the involvement of Lachhman Singh (deceased) but

the case against the respondent No.1 cannot be said to have been proved much less beyond reasonable doubt.

8. In such circumstances, the appeal against acquittal is dismissed.

9. Learned counsel for the appellant then argued that in any case the appellant is entitled to compensation for the death of her young son in police custody. Learned counsel appearing on behalf of respondent No.1 and Learned Additional Advocate General have sought to controvert this plea by arguing that compensation could have been granted by the Court if any person is found guilty but with the dismissal of the present appeal against acquittal of Harnek Singh, compensation cannot be awarded.

10. In this connection, we are not impressed with the arguments advanced by the learned counsel for the respondents. Section 357-A of the Code of Criminal Procedure provides for grant of compensation. The said provision reads as under:-

Section 357-A: Victim compensation scheme

- 1. Every State Government in co-ordination with the 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 incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."*

11. Statutory provisions have been interpreted by the Supreme Court in ***Suresh and another Versus State of Haryana, 2015(2) SCC(Cri) 45***, when it was held as follows:-

"14. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being 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. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.

15. In the present case, the impugned judgment shows that the de facto complainant, PW-2 Raman Anand, filed Criminal Revision No.1477 of 2004 for compensation to the family members of deceased Devender Chopra and his son Abhishek Chopra. The same has been dismissed by the High Court without any reason. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim family should not be awarded compensation under [Section 357-A](#) by the State. Thus, we are of the view that the State of Haryana is liable to pay

compensation to the family of the deceased. We determine the interim compensation payable for the two deaths to be rupees ten lacs, without prejudice to any other rights or remedies of the victim family in any other proceedings."

12. In view of that judgment, we grant compensation of Rs. 5 Lacs to the appellant as an interim compensation subject to her rights to claim any other compensation, in accordance with law. The amount of compensation shall be deposited before the trial Court by the State of Punjab within a period of 3 months from the date of receipt of the certified copy of this order failing which, the appellant shall be entitled to interest on the said amount @ 12% per annum from today.

13. Since the main case is decided pending CRM if any, shall also stand disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

28.08.2019
pooja saini

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>