

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.580 of 2013

Pawan Kumar Rathia S/o Nanhiram Rathia, aged about 35 years, Resident of Village Teram, Thana Gharghoda, Revenue Area & District Raigarh (CG)

----- Appellant
(In Jail)

Versus

State of Chhattisgarh Through Station Incharge P.S. Gharghoda, District-Raigarh (CG)

----- Respondent

For Appellant:	Mr.Arvind Shrivastava and Mr.Anumeh Shrivastava, Advocates
For Respondent/State:	Mr.Sudeep Verma, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board
(29.11.2021)

Sanjay K. Agrawal, J.

1. This criminal appeal under Section 374(2) of the CrPC is directed against the judgment of conviction recorded for offence under Section 376(1) of the IPC and sentence awarded i.e. imprisonment for life and fine of ₹50,000/-, in default of payment of fine to further undergo additional imprisonment for three years by the First Additional Sessions Judge, Raigarh by the impugned judgment dated 12-4-2013 in Sessions Trial No.17/2012.
2. The case of the prosecution is that on 3-10-2011 at 7 p.m. the appellant committed sexual intercourse with minor prosecutrix against her wishes and thereby

committed the offence. It is further case of the prosecution that on 3-10-2011 at 7 p.m. the appellant took custody of minor prosecutrix from her maternal grandmother Sunkunwar Bai (PW-2) and thereafter committed sexual intercourse with her, which was noticed by Siyaram Rathia (PW-5) who has snatched minor prosecutrix from the appellant, at that time, blood was oozing from her private parts. She was admitted to Sanjiwani Hospital, Raigarh. On report being received by Police Station Raigarh, Sub-Inspector Uma Gupta (PW-8) registered dehati nalishi vide Ex.P-1 and thereafter FIR No.172/2011 for offence under Section 376 of the IPC was registered against the appellant herein. The prosecutrix was sent for medical examination vide Ex.P-8A, where Dr.Malti Kumari (PW-6) treated her and found lacerated wound of about 2 cm x 2 cm present over posterior vaginal wall at 6 'o' clock position. Hymen was ruptured and easily inserting 1 finger. Spot map was prepared by investigating officer vide Ex.P-5. Dhoti and underwear of the appellant were seized vide Ex.P-6. The appellant was arrested on 6-10-2011 vide Ex.P-7. Statements of the witnesses were recorded under Section 161 of the CrPC. The appellant was charge-sheeted before the Judicial Magistrate First Class, Gharghoda, who in turn, committed the case to the Court of Session, Raigarh for trial in accordance with law. The accused / appellant abjured the guilt and entered into defence.

3. In order to prove the prosecution case, the prosecution examined as many as 8 witnesses and exhibited 21 documents Exs.P-1 to P-21. Statement of the accused/appellant under Section 313 of the CrPC was recorded in which he denied guilt. However, he examined none in his defence.
4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 12-4-2013, held that on the date of offence i.e. 3-10-2011 the prosecutrix was aged about one year and she was subjected to sexual intercourse and intercourse was done by the present appellant only and convicted the appellant for offence under Section 376(1) of the IPC and sentenced him to undergo imprisonment for life and fine of ₹50,000/-, in default of payment of fine to further undergo imprisonment for three years, against which, this criminal appeal has been preferred.
5. Mr.Arvind Shrivastava, learned counsel for the appellant, would submit that learned trial Court is absolutely unjustified in holding that sexual intercourse has been committed by the appellant as the prosecution has failed to bring home the offence under Section 376(1) of the IPC beyond reasonable doubt and there is absolutely no legally admissible evidence to hold that it is the appellant who has committed sexual intercourse with minor prosecutrix. He would further

submit that merely on the basis of *ipse dixit*, the trial Court has rested his conviction for offence under Section 376(1) of the IPC, which is *per se* illegal and liable to be set aside and the appellant deserves to be acquitted.

6. On the other hand, Mr.Sudeep Verma, learned Deputy Government Advocate for the respondent / State, would however support the impugned judgment and submit that the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted the appellant as aforementioned and as such, the appeal deserves to be dismissed.
7. We have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. The trial Court has recorded a specific finding that on the date of offence i.e. on 3.10.2011 the prosecutrix was minor aged about only one year. That finding has not been seriously disputed by the learned counsel for the appellant. Even otherwise, after going through the records and after hearing learned counsel appearing for the parties, particularly taking into consideration the evidence of Smt.Dujbai (PW-1), mother of the prosecutrix, we are of the considered opinion that the finding of the learned trial Court that on the date of offence the age of the prosecutrix was about one year

is correct finding based on evidence available on record, which is neither perverse nor contrary to record. We hereby affirm the said finding.

9. The question for consideration is, whether the trial Court has rightly recorded the finding that sexual intercourse was committed by the appellant herein with minor prosecutrix on 3-10-2011 at 7 p.m. ?

10. It is not in dispute that the appellant took custody of minor prosecutrix on 3-10-2011 from her maternal grandmother Sunkunwar Bai (PW-2), which was noticed by Smt. Bundkunwar Sidar (PW-4) and thereafter finding the minor girl with difficulty Siyaram Rathia (PW-5) has rescued her and taken custody of minor prosecutrix from the appellant herein at that time, he found that blood was oozing from private parts of minor prosecutrix. She was taken to hospital where Dr. Malti Kumari (PW-6) examined her vide Ex.P-8 and found lacerated wound of about 2 cm x 2 cm present over posterior vaginal wall at 6 'o' clock position. Hymen was ruptured and easily inserting 1 finger. In her statement before the Court, Dr. Malti Kumari (PW-6) has clearly stated that such an injury noticed hereinabove can be caused by inserting penis in private part of the prosecutrix. Her report is Ex.P-8, as such, we are of the considered opinion that the finding recorded by the learned trial Court that sexual intercourse was committed by the appellant herein with minor prosecutrix is correct finding based

on evidence available on record.

11. Admittedly, custody of minor prosecutrix was taken by the accused from her maternal grandmother Sunkunwar Bai (PW-2) and said fact has also been proved by Smt. Bundkunwar Sidar (PW-4) and furthermore, Siyaram Rathia (PW-5) has brought back the minor prosecutrix from custody of the present appellant and at that time, blood was oozing from her private parts. She was taken to hospital where she was examined by Dr. Malti Kumari (PW-6) and her medical report is Ex.P-8. Dr. Malti Kumari (PW-6) has opined that injury which the prosecutrix suffered can be caused on penetration. The accused has been subjected to examination under Section 313 of the CrPC, but no reasonable explanation was offered / extended to demonstrate that as to how the prosecutrix suffered internal injuries i.e. rupture of hymen and other injuries on her private parts, particularly when there is no evidence on record that after taking into custody of minor prosecutrix by the appellant, he has given custody of minor prosecutrix to anyone except him as she was taken back by Siyaram Rathia (PW-5), as such, it was responsibility on the part of the accused to explain as to how the prosecutrix suffered injuries on her private parts when she was in his custody from her maternal grandmother Sunkunwar Bai (PW-2) till she was taken back by Siyaram Rathia (PW-5).

12.The Supreme Court in the matter of **Maheshwar Tigga v. State of Jharkhand**¹ while highlighting the importance of questions put to accused under Section 313 CrPC held that in criminal trial, importance of questions put to accused, are basic to principles of natural justice, as it provides him opportunity not only to furnish his defence, but also to explain incriminating circumstances against him. It was further held by their Lordships that a probable defence raised by accused is sufficient to rebut accusation without requirement of proof beyond reasonable doubt.

13.It is not the case of the appellant herein that he has falsely been implicated. Even otherwise, there was no other reason that minor girl or her parents would falsely implicate the accused for any reason, as such, the trial Court has rightly recorded the finding that it is only the appellant herein who has committed sexual intercourse with minor prosecutrix.

14.The trial Court has also recorded the finding based on MLC report (Ex.P-3) of the appellant that he was competent for sexual intercourse and in his underwear sperm was found vide Ex.P-21, as such, we are of the considered opinion that the trial Court has rightly recorded the finding that the prosecutrix on the date of aforesaid offence was minor and she was subjected to sexual intercourse that too only by the appellant herein. The said finding has been recorded after

1 (2020) 10 SCC 108

properly analyzing oral and documentary evidence available on record and there is no ground to interfere with the judgment of conviction recorded and sentence awarded by the learned trial Court. Accordingly, we hereby affirm the judgment of conviction recorded and sentence awarded i.e. imprisonment for life by the trial Court.

15. Learned trial Court has also imposed fine of ₹50,000/- upon the accused and directed that ₹25,000/- to be paid to the prosecutrix as compensation from the aforesaid amount of ₹50,000/-.

16. At this stage, it would be appropriate to notice Section 357 of the Code which provides that the trial Court at the time of conclusion of trial can grant compensation to the victim. Section 357 of the Code provides as under: -

"357. Order to pay compensation.—(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons

who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any *bona fide* purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(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.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

17. Despite the above-stated clear provision of grant of compensation to the victim at the time of conclusion of trial, the criminal courts were found reluctant to award compensation to the victims; noticing this apathy and inhibition, the Supreme Court in the matter of Hari

Krishna and State of Haryana v. Sukhbir Singh²

recommended to all courts to exercise this power of granting compensation liberally under Section 357 of the Code so as to meet the ends of justice by observing as under:-

“Section 357 of the Cr.P.C. is an important provision but Courts have seldom invoked it. This Section of law empowers the Court to award compensation while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. This power to award compensation is not ancillary to other sentences but is in addition thereto. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We therefore recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.”

18. The above-stated mandate / reminder of their Lordships of the Supreme Court qua the grant of compensation to the victim at the time of conclusion of trial, did not evince any interest in the criminal courts and apathy continued qua victims. In view of that situation, the Supreme Court in the matter of **Ankush Shivaji Gaikwad v. State of Maharashtra**³, held that it is the mandatory duty of Courts to apply its mind to the question of compensation in every criminal case, that too by recording reasons. It has been held as under in paragraph 66 of the report: -

2 (1988) 4 SCC 551

3 (2013) 6 SCC 770

"66. To sum up: 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. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 of the Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as merging 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."

19. Meanwhile, the Law Commission of India in its 154th Law Commission Report on the Code of Criminal Procedure made recommendation to insert Section 357A as Victim compensation scheme and consequently, accepting the said recommendation, Section 357A was inserted in the Code which reads as follows: -

"357A. Victim compensation scheme.—(1) Every State Government in coordination 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) to (6) xxx xxx xxx"

20. This provision has been brought into the statute book i.e. the Code of Criminal Procedure, 1973, by Amending Act 5 of 2009 and the amendment has been brought into force with effect from 31-12-2009. 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 cases ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of the Law Commission. It recognises compensation as one of the methods of protection of victims. {See Suresh and another v. State of Haryana⁴.}

21. At this stage, it would be appropriate to notice Sections 357B and 357C of the Code which read as under:-

"357B. Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code.—The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under [section](#)

4 (2015) 2 SCC 227

326A, 376AB, section 376D, 376DA and 376DB of the Indian Penal Code (45 of 1860).

357C. Treatment of victims.—All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident."

22. In Suresh (supra), their Lordships of the Supreme Court have clearly noticed that despite there being a clear provision in Section 357A of the Code, the award of compensation has not become a rule and interim compensation, though it is very important, is not being granted by the courts. It has been observed pertinently as under:-

"15. We are informed that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/ District Legal Authorities. It has been brought to our notice that even though almost a period of five years has expired since the enactment of Section 357-A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.

16. 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."

23. In the matter of **Bijoy alias Guddu Das v. State of West Bengal**⁵, the Calcutta High Court while dealing with the provisions of the POCSO Act qua the compensation to the victim, in paragraph 39 of the report, held as under: -

"39. The following directives are issued to the investigating agencies, prosecutors and the Special Courts so that the aforesaid provisions of law are followed in letter and spirit and fundamental right of dignity of a child victim and other basic human rights are preserved:-

1. to 8. xxx xxx xxx

9. The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the

accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund. The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 357-A of the Code or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act.

10. xxx xxx xxx"

24. The judgment of the Calcutta High Court in Bijoy alias Guddu Das (supra) was not only approved by the Supreme Court in the matter of Nipun Saxena and another v. Union of India and others⁶, but their Lordships were pleased to make the said judgment a part of its judgment mandating all concerned to issue necessary direction in that behalf. It was held as under: -

"45. The Calcutta High Court in *Bijoy case*⁴ has also given other directions to ensure that the provisions of the law are followed in letter and spirit, and the fundamental rights of a child victim and other basic human rights are protected. We are in agreement with all these directions. Though some of the issues dealt with in these

directions do not strictly arise in this case, keeping in view the fact that we are dealing with the rights of children, we are annexing the directions issued by the Calcutta High Court as Annexure 1 to this judgment. We request all the Chairpersons and Members of all the Juvenile Justice Committee of all the High Courts in the country to go through the judgment of the Calcutta High Court and the directions issued therein and they may issue similar directions, keeping in view the particular needs of each High Court/State."

25. In the State of Chhattisgarh with effect from 3-8-2011, the Chhattisgarh Victim Compensation Scheme, 2011 enacted under Section 357A of the Code was in force and the Schedule attached with the Scheme states as under:-

Schedule

S.No.	Details of Loss or Injury	Maximum Limit of Compensation
1.	Loss of Life	1.00 Lac
2.	Loss of limb or part of body resulting 80% or above handicap or serious injury due to Acid Attack	50,000
3.	Loss of Limb or part of body resulting above 40% and below 80% handicapped	25,000
4.	Rape of Minor	50,000
5.	Rape	25,000
6.	Rehabilitation	20,000
7.	Loss of limb or part of body resulting below 40% handicap	10,000
8.	Injury causing several mental agony to women and child victim in cases like human Trafficking	20,000
9.	Simple loss or injury to child victim	10,000

26. The Supreme Court in the matter of **Nipun Saxena and**

another v. Union of India and others⁷, in paragraph 9, held on 5-9-2018 that till the Scheme is framed, the NALSA's Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 of the POCSO Rules of 2012. Paragraphs 2, 9, 10 and 11 to 15 of the report state as under: -

2. It has been brought to our notice that as far as children are concerned, no Scheme of this nature has been framed with regard to the victims of sexual abuse under the provisions of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act").

9. Keeping this hiatus in mind, we are of the opinion, after hearing learned counsel for the parties as well as learned Additional Solicitor General, that NALSA's Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalised by the Central Government.

10. The Special Judge will, of course, take the provisions of the POCSO Act into consideration as well as any circumstances that are special to the victim while passing an appropriate order.

11. We need not emphasise that the legislation is gender neutral and, therefore, the guidelines will be applicable to all children.

12. The Special Judge will also pass appropriate orders regarding actual physical payment of the compensation or the interim compensation so that it is not misused or misutilised and is actually available for the benefit of the child victim. If the Special Judge deems it appropriate, an order of depositing the amount in an interest-bearing account may be passed.

13. A copy of NALSA's Compensation Scheme as well

as a copy of this order should be sent by the Registry to the Registrar General of every High Court with a direction that the Registrar General will circulate them to all the District Judges concerned for circulation to the Special Judges and the State, District and Taluka Legal Services Committees.

14. A copy of the Scheme and a copy of the order passed by this Court will also be sent by the Registry to all the Judicial Academies for information.

15. We also direct that the publicity should be given to the Scheme as well as the order passed by us on regular basis until the Rules are finalised by the Central Government. The learned Additional Solicitor General assures us that the needful will be done on a regular basis through all forms of media. Needless to say that the Scheme and the Guidelines will be operational from 2-10-2018."

27. It would be appropriate to mention here that the National Legal Services Authority (NALSA) setup a committee and finalised the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes and submitted before the Supreme Court on 24-4-2018 and on 21-5-2018, the said Scheme was accepted by the Supreme Court and called as "the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes". In the said Scheme, minimum limit of compensation provided to rape victim is ₹ 4 lakhs and upper limit of compensation is ₹ 7 lakhs and in exercise of the powers conferred by Section 357A of the Code, the State of Chhattisgarh has framed a scheme known as the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 with

effect from 2-10-2018. Explanation appended to the Scheme provides that in case of Minor Victims under POCSO, it would be applicable. The Schedule attached to the said Scheme provides that in case of rape, minimum limit of compensation would be ₹ 4 lakhs and upper limit of compensation would be ₹ 7 lakhs. Serial No.3 of the said Schedule reads as under: -

SCHEDULE APPLICABLE TO WOMEN VICTIM OF CRIMES

S.No.	Particulars of loss or injury	Minimum Limit of Compensation	Upper Limit of Compensation
3.	Rape	Rs. 4 Lakh	Rs. 7 Lakh

28. Now, the question is, whether the rape victim is entitled for compensation as per the Scheme of 2018 framed by the State Government which came into force with effect from 2nd October, 2018 as per the notification dated 4th February, 2019 by which date the Scheme has been brought into force or under the old scheme which was enforced with effect from 3-8-2011?

29. Reverting to the facts of the present case in the light of the above-stated statutory provisions and in the light of the aforesaid principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments, it is quite vivid that since the victim was minor and the accused has been convicted for offence under Section 376(1) of the IPC and, the prosecutrix (rape victim) and her family members were required to be rehabilitated to protect them. Consequently,

recommendation ought to have been made by the trial Court to the DLSA or the SLSA under Section 357A(2) of the Code, but that has not been done despite the clear cut mandate in that regard. Taking into consideration that the prosecutrix is rape victim, that too minor aged about one year only and she has been sexually assaulted, when the offence took place and she has suffered not only physically but mentally also, and considering the gravity of offence and that she is required to be rehabilitated and further taking into consideration the provisions contained in the NALSA's Compensation Scheme of 2018 and she has been traumatised heavily, particularly taking into consideration her age i.e. approximately one year, the victim is entitled for total compensation of ₹ 7 lakhs under Scheme 2018 and not under Scheme of 2011.

30. Accordingly, it is held that the rape victim will be entitled for compensation of ₹ 7 lakhs from the State Government along with 6% interest from today till the date of payment. The District Magistrate, Raigarh shall deposit the above-stated amount before the concerned trial Court within 30 days from today. The concerned trial Court shall disburse the said amount to the victim in accordance with the directions given by the Supreme Court in the matter of **General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and others**⁸ (paragraph 17) read with

paragraph 12 in Nipun Saxena (supra) {(2019) 13 SCC 715}.

31. In view of the compensation awarded to the extent of ₹7 lakhs along with 6% interest to the victim / prosecutrix, fine of ₹50,000/- directed to be paid by the appellant / accused is hereby set-aside as the State Government is liable to pay compensation under Section 357A of the Code. Accordingly, the order of learned Additional Sessions Judge imposing fine of ₹50,000/- upon the accused / appellant and further directing that he has to further undergo additional imprisonment for three years is hereby set-aside.

32. Consequently, while maintaining conviction under Section 376(1) of the IPC and sentence awarded to the accused / appellant, the order of fine of ₹50,000/- is hereby set-aside. Criminal appeal is disposed off with the directions as contained herein-above. A copy of this order be sent to the District Magistrate, Raigarh for needful action.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge

B/-