

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 43 of 2020

KAMAL SK.

VS.

THE STATE OF WEST BENGAL & ANR.

For the Appellant	: Mr. Soumayajit Das Mahapatra, Adv. Mr. Ali Ahasan Alamgir, Adv. Mr. Supriyo Das, Adv. Ms. Madhuri Sinha, Adv.
For the Respondent Nos. 2 & 3	: Mr. Kaushik Gupta, Adv. Ms. Sayanti Santra, Adv.
For the State	: Ms. Anasuya Sinha, Adv.
Hearing concluded on	: 2 nd May, 2023
Judgement on	: 2 nd May, 2023

Siddhartha Roy Chowdhury, J.:

1. Heard Mr. Soumayajit Das Mahapatra, learned Counsel for the appellant, Mr. Kaushik Gupta along with Ms. Sayanti Santra representing the defacto complainant as well as the victim lady, being appointed by the Calcutta High Court Legal Services Committee, and Ms. Anasuya Sinha, learned Counsel representing the State.
2. Briefly stated, on 6th September, 2015 at about 1.00 p.m. Kamal Sk. being accompanied by Ferdosa Bibi and Murefa Bibi invaded the house of Muklema Bibi and started hurling abusive language. Muklema Bibi and her brother Rafikul voiced their protest when Kamal Sk. assaulted Rafikul with a piece of brick on his head and left eye.

Rafikul fell down on the ground. Muklema was also assaulted and made to suffer bleeding injury on her face. Both the injured were taken to Krishnapur Hospital. Rafikul was referred to Lalbagh Hospital. Police was informed by Muklema and Lalgola Police Station Case No. 641 of 2015 was registered. Police took up investigation which culminated into submission of charge sheet. The accused persons stood the trial, pleading their innocence to the charge under Section 323/447/304/34 of the I.P.C. Prosecution examined as many as 10 witnesses to bring home the charges. Learned Trial Court after considering the evidence on record both oral and documentary was pleased to record an order of conviction against Kamal Sk. for committing offence under Section 447/323/304-II of the I.P.C. while an order of acquittal was recorded against rest of the accused persons. The evidence of P.W. 1 who set the criminal administration of justice narrated the incident leading to the death of Rafikul. She was eye witness of the occurrence and she stood the test of cross-examination. Dr. Biswanath Kahali, P.W. 9 held post mortem examination over the dead body of Rafikul Sarkar and found injuries over the head and opined that death was caused due to the head injuries sustained by the victim ante mortem in nature. Testimony of P.W. 2 is getting support from the testimony of P.W. 9, the Autopsy Surgeon as well as other prosecution witnesses and I do not find any cogent reason to interfere with the impugned judgement.

3. Mr. Soumayajit Das Mahapatra with all fairness submits that there is hardly any room to interfere with the order of conviction. Since

the appellant has already spent more or less three years eight months behind the bar in order to serve out the sentence, the accused person may be released considering the period of sentence undergone to be adequate and the compensation amount so awarded by the learned Trial Court may be enhanced. Accused person is also a family man having children, who are in distress condition. On the spur of moment he had committed the offence.

4. Mr. Kaushik Gupta, learned Counsel representing the defacto complainant and the widow of the deceased submits that due to an irresponsible act on the part of the accused person, Rafikul Sarkar died at the age of 35 years. He was the bread earner of the family.
5. The accused person has been found guilty to the charge of Section 323/447/304-II of the Indian Penal Code. He could have been sentenced to suffer imprisonment for 10 years. Learned Trial Court already bestowed mercy. Any further leniency would be misplaced and might hurt the sense of justice, as perceived by the victim family if the accused person is allowed to walk out after serving half of the period of sentence. It is further submitted that the family is in need of financial rehabilitation.
6. Ms. Anasuya Sinha, learned Counsel for the State supports the judgement impugned, without seriously opposing the submission of Mr. Das Mahapatra. Nature of offence committed by the accused person would suggest that he had no intention to take away the life of Rafikul. It is submitted by learned Counsel for the appellant that accused has a family, children to look after.

7. Under such circumstances, considering the age of the accused, nature of offence committed and his criminal antecedent, as well as considering the future of the children, I am of the view that ends of justice would be met if he is sentenced to suffer rigorous imprisonment for five years.
8. The accused person is further directed to pay a sum of Rs.50,000/- towards compensation, out of which a sum of Rs.10000/- would go to Muklema Bibi who suffered injury and Rs. 40,000/- to the widow of the deceased Rafikul Sarkar under Section 357 of the Criminal Procedure Code.
9. It is submitted by Mr. Gupta that the family lost their bread earner. This Court may invoke the provision of Section 357 A of the Code of Criminal Procedure and award further compensation, as the family is badly in need of financial rehabilitation.
10. True it is the right of the victim of a crime or his kith and kin to have compensation is now recognized under the law. Section 357A of the Cr.P.C has been introduced and Scheme has been framed by the State as The West Bengal Victim Compensation Scheme 2017.
11. Hon'ble Apex Court in **SURESH V. STATE OF HARYANA** reported in **(2015) 2 SCC 227** held:-

“13. It would now be appropriate to deal with the issue. The provision has been incorporated in CrPC vide Act 5 of 2009 and the amendment duly came into force in view of the Notification dated 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 case 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 recognizes compensation as one of the methods of protection of victims. The provision has received the attention of this Court in several decisions including Ankush Shivaji Gaikwad v. State of Maharashtra [(2013) 6 SCC 770 : (2014) 1 SCC (Cri) 285] , Gang-Rape Ordered by Village Kangaroo Court in W.B., In re [(2014) 4 SCC 786 : (2014) 2 SCC (Cri) 437] , Mohd. Haroon v. Union of India [(2014) 5 SCC 252 : (2014) 2 SCC (Cri) 510] and Laxmi v. Union of India [(2014) 4 SCC 427 : (2014) 4 SCC (Cri) 802]

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“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.”

12. We should not be unmindful to the fact that provision of Section 357A of the Code of Criminal Procedure is one of the facets of right to life with dignity, as enshrined under article 21 of the Constitution.
13. Learned Trial Court ought to have invoked the provision of Section 357A of the Criminal Procedure Code, to award compensation for financial rehabilitation of the family of the deceased.
14. The submission made by Mr. Gupta merits consideration and I am of the view that in order to protect their right to life with dignity a sum of Rs. 3,50,000/- should be awarded to the widow of the deceased Rafikul Sarkar towards the financial rehabilitation of the family.
15. Accordingly, I direct the Member Secretary of the West Bengal Legal Services Authority to grant a sum of Rs. 3,50,000/- under the West Bengal Victim Compensation Scheme, 2017 within a period of two months from date.
16. Compensation under Section 357 of the Code of Criminal Procedure, to the tune of Rs.50000/- is to be paid within four weeks from date, to the victims, as directed herein above, with an intimation to the learned Trial Court, failing which the benefit of reduction of period of sentence by two years will not be made available to the accused person.
17. With this above observation, the criminal appeal is disposed of. Ms. Sayanti Santra is directed to communicate this order to the Member Secretary, West Bengal State Legal Services Committee for information and compliance.

18. Let a copy of the judgment along with LCR be sent down to the Trial Court forthwith.
19. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)