SUPREME COURT OF INDIA

Ankush Shivaji Gaikwad

Vs.

State of Maharashtra

(T.S.Thakur and Gyan Sudha Misra JJ.)

03.05.2013

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. This appeal arises out of a judgement and order dated 24th August, 2010 passed by the High Court of Judicature at Bombay, Aurangabad Bench, whereby Criminal Appeal No.359 of 2008 filed by the appellant and two others has been dismissed in so far as the appellant is concerned and allowed qua the remaining two, thereby upholding the appellant's conviction for the offence of murder punishable under Section 302 of the I.P.C and the sentence of imprisonment for life with a fine of Rs.2,000/- awarded to him. In default of payment of fine the appellant has been sentenced to undergo a further imprisonment for a period of three months.

3. The factual matrix in which the appellant came to be prosecuted and convicted has been set out in detail by the trial Court as also the High Court in the orders passed by them. We need not, therefore, recapitulate the same all over again except to the extent it is necessary to do so for the disposal of this appeal. Briefly stated, the incident that culminated in the death of deceased-Nilkanth Pawar and the consequent prosecution of the appellant and two others occurred at about 10.00 p.m. on 3rd February, 2006 while the deceased and his wife P.W.1-Mangalbai were guarding their Jaggery crop growing in their field. The prosecution story is that the appellant-Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (accused No.2) and Shivaji Bhivaji Gaikwad (accused No.3) were walking past the field of the deceased when a dog owned by the deceased started barking at them. Angered by the barking of the animal, the appellant is alleged to

have hit the dog with the iron pipe that he was carrying in his hand. The deceased objected to the appellant beating the dog, whereupon the appellant started abusing the former and told him to keep quiet or else he too would be beaten like a dog. The exchange of hot words, it appears, led to a scuffle between the deceased and the accused persons in the course whereof, while accused Nos.2 and 3 beat the deceased with fist and kicks, the appellant hit the deceased with the iron pipe on the head. On account of the injury inflicted upon him, the deceased fell to the ground whereupon all the three accused persons ran away from the spot. The incident was witnessed by the wife of the deceased, P.W.1- Mangalbai and by P.W.5-Ramesh Ganpati Pawar who was also present in the field nearby at the time of the occurrence. The deceased was carried on a motorcycle to the hospital of one Dr. Chinchole at Omerga from where he was shifted to Solapur for further treatment. Two days after the occurrence when the condition of the deceased became precarious, P.W.1-Mangalbai filed a complaint at the Police Station, Omerga on 5th February, 2006 on the basis whereby Crime No.25 of 2006 under Sections 326, 504 and 323 read with Section 34 of the I.P.C was registered by the police. Investigation of the case was taken up by P.W.6-Police Sub Inspector Parihar who recorded the panchnama of the scene of the crime and arrested the accused persons. The deceased eventually succumbed to his injuries on 7th February, 2006 whereupon Section 302 read with Section 34 of the I.P.C. was added to the case.

4. Post-mortem examination of the deceased revealed a contusion behind his right ear, a contusion on the right arm and an abrasion on the right ankle joint. Internal examination, however, showed that the deceased had sustained an internal injury to the temporal and occipital region under the scalp and a fracture on the base of the skull. Blood clots were noted in the brain tissues and the base of the skull, besides internal bleeding. According to the doctor, the death was caused by the injury to the head. After completion of the investigation that included seizure of the alleged weapon used by the appellant, the police filed a chargesheet before the judicial Magistrate, who committed the appellant and co-accused to face trial for the offence of murder punishable under Section 302 read with Section 34 of the I.P.C. before the Sessions Court. Before the Sessions Court the appellant and his co-accused pleaded not guilty and claimed a trial.

5. The prosecution examined as many as six witnesses including P.W.1-Mangalbai, the widow of the deceased and P.W.5-Ramesh, both of whom were presented as eye witnesses to the occurrence. The remaining witnesses included P.W.3-Dr. Kamble and P.W.6-Police Sub-Inspector Parihar. Appraisal of the

evidence adduced by the prosecution led the trial Court to hold the appellant and his co-accused guilty for the offence of murder and sentenced them to imprisonment for life besides a fine of Rs.2,000/- each and a default sentence of three months rigorous imprisonment.

6. The appellant and his co-accused preferred Criminal Appeal No.359 of 2008 before the High Court of Judicature at Bombay, Bench at Aurangabad. The High Court has by the judgment impugned in this appeal dismissed the appeal of the appellant before us but allowed the same in so far as the co- accused are concerned. The correctness of the said judgment and order is under challenge before us.

7. When the matter initially came up before us for hearing on 2nd September, 2011 we issued notice to the respondent-State confined to the question of the nature of offence only. We have accordingly heard learned counsel for the parties on the said question. The trial Court as also the High Court have, as noticed earlier, found the appellant guilty of murder. The question, however, is whether in the facts and circumstances of the case the appellant has been rightly convicted for the capital offence and if not whether the act attributed to him would constitute a lesser offence like culpable homicide not amounting to murder punishable under Section 304 Part I or II of the I.P.C.

8. On behalf of the appellant it was contended that the appellant's case fell within Exception 4 to Section 300 of the I.P.C. which reads as under:

> "Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

9. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the

deceased and his wife were guarding their Jaggery crop in their field at around 10 p.m. when their dog started barking at the appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels – a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section 300 of the I.P.C.

10. Time now to refer to a few decisions of this Court where in similar circumstances this Court has held Exception 4 to Section 300 of the I.P.C. to be applicable and converted the offence against the appellant in those cases from murder to culpable homicide not amounting murder. In Surinder Kumar v. Union Territory, Chandigarh (1989) 2 SCC 217, this Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. This Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300 this Court observed:

> "….. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was

done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."

(emphasis supplied)

11. We may also refer to the decision of this Court in Ghapoo Yadav and Ors. v. State of M.P.(2003) 3 SCC 528, where this Court held that in a heat of passion there must be no time for the passions to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite:

"...The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight: (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300. IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4 It is not sufficient to show that there was

a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

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...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused appellants had come prepared and armed for attacking the deceased....This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable…"

(emphasis supplied)

12. In Sukbhir Singh v. State of Haryana (2002) 3 SCC 327, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 IPC. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed:

"...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner."

(emphasis supplied)

13. Reference may also be made to the decision in Mahesh v. State of MP (1996) 10 SCC 668, where the appellant had assaulted the deceased in a sudden fight and after giving him one blow he had not caused any further injury to the deceased which fact situation was held by this Court to be sufficient to bring the case under Exception 4 to Section 300 of the IPC. This Court held:

> "...Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW-2 or PW-6 who were also present also with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to Section 300 IPC is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part- I) IPC..."
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> (emphasis supplied)

14. To the same effect are the decisions of this Court in Vadla Chandraiah v. State of Andhra Pradesh (2006) 14 SCALE 108, and Shankar Diwal Wadu v. State of Maharashtra (2007) 12 SCC 518.

15. The next question then is whether the case falls under Section 304 Part I or Part II of the IPC. The distinction between the two parts of that provision was drawn by this Court in Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648, in the following words:

> "..... For punishment under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death...."

16. Reference may also be made to the decision of this Court in Singapagu Anjaiah v. State of Andhra Pradesh (2010) 9 SCC 799 where this Court observed:

> "16. In our opinion, as nobody can enter into the mind of the accused, its intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused..."
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> (emphasis supplied)
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> 17. The decision of this Court in Basdev v. The State of PEPSU AIR 1956 SC 488, drew a distinction between motive, intention and knowledge in the following words:
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> "....Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things..."

18. This Court in the above decisions quoted the following passage from Reg. v. Monkhouse (1849) 4 Cox C. C. 55 where Coleridge J. speaking for the Court observed:

> "The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered..."

(emphasis supplied)

19. In Camilo Vaz v. State of Goa (2000) 9 SCC 1, the accused had hit the deceased with a danda during a premeditated gang-fight, resulting in the death of the victim. Both the Trial Court and the Bombay High Court convicted the appellant under Section 302 I.P.C. This Court, however, converted the conviction to one under Section 304, Part II, I.P.C. and observed:

> "....When a person hits another with a danda on a vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation case will fall in Part II of Section 304, IPC as in the present case..."
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> (emphasis supplied)

20. In Jagrup Singh v. State of Haryana (1981) 3 SCC 616 the accused had given a blow on the head of the deceased with the blunt side of a gandhala during a sudden fight causing a fracture to the skull and consequent death. This Court altered the conviction from Section 302 to Section 304, Part II IPC placing reliance upon the decision in Chamru Budhwa v. State of Madhya Pradesh AIR 1954 SC 652 in which case also the exchange of abuses had led both the parties to use lathis in a fight that ensued in which the deceased was hit on the head by one of the lathi blows causing a fracture of the skull and his ultimate death. The accused was convicted for the offence of culpable homicide not amounting to murder under Section 304, Part II of the IPC.

21. Reference may also be made to the decisions of this Court in Sarabjeet Singh and Ors. v. State of Uttar Pradesh (1984) 1 SCC 673, Mer Dhana Sida v. State of Gujarat (1985) 1 SCC 200 andSukhmandar Singh v. State of Punjab AIR 1995 SC 583 in which cases also the cause of death was a fracture to the skull in a sudden fight without premeditation. The Court altered the conviction from Section 302 IPC to Section 304, Part II of IPC.

22. Though the accused had inflicted only one injury upon the deceased, the fact that he had attempted to stab him a second time was taken as an indication of the accused having any intention to kill for the purpose of Section 304 Part I, IPC in Kasam Abdulla Hafiz v. State of Maharashtra (1998) 1 SCC 526, where this Court observed:

> "....Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the

death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the Ist part of Section 304 I.P.C. The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed..."

(emphasis supplied)

23. We may lastly refer to the decision of this Court in Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC 444 where this Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed:

"...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the

person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention..."

(emphasis supplied)

24. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II of the IPC.

25. The only other aspect that needs to be examined is whether any compensation be awarded against the appellant and in favour of the bereaved family under Section 357 of the Code of Criminal Procedure, 1973. This aspect arises very often and has been a subject matter of several pronouncements of this Court. The same may require some elaboration to place in bold relief certain aspects that need to be addressed by Courts but have despite the decisions of this Court remained obscure and neglected by the Courts at different levels in this country.

26. More than four decades back Krishna Iyer J. speaking for the Court in Maru Ram & Ors. v. Union of India and Ors. (1981) 1 SCC 107, in his inimitable style said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounded with cruelty. Victimology must find fulfilment said the Court, not through barbarity but by compulsory recoupment by the wrong doer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn. In Hari Singh v. Sukhbir Singh and Ors. (1988) 4 SCC 551, this Court lamented the failure of the Courts in awarding compensation to the victims in terms of Section 357 (1) of the Cr.P.C. The Court recommended to all Courts to exercise the power available under Section 357 of the Cr.P.C. liberally so as to meet the ends of justice. The Court said:

"…. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused… It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of 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.

(emphasis supplied)

27. The amount of compensation, observed this Court, was 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.

28. In Sarwan Singh and others v. State of Punjab (1978) 4 SCC 111, Balraj v. State of U.P. (1994) 4 SCC 29, Baldev Singh and Anr. v. State of Punjab (1995) 6 SCC 593, Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr. (2007) 6 SCC 528, this Court held that the power of the Courts to award compensation to victims under Section 357 is not ancillary to other sentences but in addition thereto and that imposition of fine and/or grant of compensation to a great extent must depend upon the relevant factors apart from such fine or compensation being just and reasonable. In Dilip S. Dahanukar's case (supra) this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said:

"…. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf

> even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but sub-Section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge."

29. The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid 1960s and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the law makers and courts going back in a great measure to what was in ancient times common place. Harvard Law Review (1984) in an article on "Victim Restitution in Criminal Law Process: A Procedural Analysis" sums up the historical perspective of the concept of restitution in the following words:

> "Far from being a novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offense. The primary purpose of such restitution was not to compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As the state gradually established a monopoly over the institution of punishment, and a division between civil and criminal law emerged, the victim's right to compensation was incorporated into civil law."

30. With modern concepts creating a distinction between civil and criminal law in which civil law provides for remedies to award compensation for private wrongs and the criminal law takes care of punishing the wrong doer, the legal position that emerged till recent times was that criminal law need not concern itself with compensation to the victims since compensation was a civil remedy that fell within the domain of the civil Courts. This conventional position has in recent times undergone a notable sea change, as societies world over have increasingly felt that victims of the crimes were being neglected by the legislatures and the Courts alike.

Legislations have, therefore, been introduced in many countries including Canada, Australia, England, New Zealand, Northern Ireland and in certain States in the USA providing for restitution/reparation by Courts administering criminal justice.

31. England was perhaps the first to adopt a separate statutory scheme for victim compensation by the State under the Criminal Injuries Compensation Scheme, 1964. Under the Criminal Justice Act, 1972 the idea of payment of compensation by the offender was introduced. The following extract from the Oxford Handbook of Criminology (1994 Edn., p.1237-1238), which has been quoted with approval in Delhi Domestic Working Women's Forum v. Union of India and Ors. (1995) 1 SCC 14 is apposite:

> "Compensation payable by the offender was introduced in the Criminal Justice Act 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where 'injury', loss, or damage' had resulted. The Criminal Justice Act 1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penology thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act 1982 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review. The 1991 Criminal Justice Act contains a number of provisions which directly or indirectly encourage an even greater role for compensation..."

(emphasis supplied)

32. In the United States of America, the Victim and Witness Protection Act of 1982 authorizes a federal court to award restitution by means of monetary compensation as a part of a convict's sentence. Section 3553(a)(7) of Title 18 of the Act requires Courts to consider in every case "the need to provide restitution to any victims of the offense". Though it is not mandatory for the Court to award

restitution in every case, the Act demands that the Court provide its reasons for denying the same. Section 3553(c) of Title 18 of the Act states as follows:

> "If the court does not order restitution or orders only partial restitution, the court shall include in the statement the reason thereof."

(emphasis supplied)

33. In order to be better equipped to decide the quantum of money to be paid in a restitution order, the United States federal law requires that details such as the financial history of the offender, the monetary loss caused to the victim by the offence, etc. be obtained during a Presentence Investigation, which is carried out over a period of 5 weeks after an offender is convicted.

34. Domestic/Municipal Legislation apart even the UN General Assembly recognized the right of victims of crimes to receive compensation by passing a resolution titled 'Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985'. The Resolution contained the following provisions on restitution and compensation:

> "Restitution
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> 8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.
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> 9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
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> 10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm."

35. The UN General Assembly passed a resolution titled Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005 which deals with the rights of victims of international crimes and human rights violations. These Principles (while in their Draft form) were quoted with approval by this Court in State of Gujarat and Anr. v. Hon'ble High Court of Gujarat (1998) 7 SCC 392 in the following words:

"94. In recent years the right to reparation for victims of violation of human rights is gaining ground. United Nations Commission of Human Rights has circulated draft Basic Principles and Guidelines on the Right to Reparation for Victims of Violation of Human Rights, (see Annexure)."

36. Amongst others the following provisions on restitution and compensation have been made:

"12. Restitution shall be provided to reestablish the situation that existed prior to the violations of human rights or international humanitarian law. Restitution requires inter alia, restoration of liberty, family life citizenship, return to one's place of residence, and restoration of employment or property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights or international humanitarian law, such as :

(a) Physical or mental harm, including pain, suffering and emotional distress;

(b) Lost opportunities including education;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Harm to reputation or dignity;

(e) Costs required for legal or expert assistance, medicines and medical services."

37. Back home the Criminal Procedure Code of 1898 contained a provision for restitution in the form of Section 545, which stated in sub-clause 1(b) that the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court".

38. The Law Commission of India in its 41st Report submitted in 1969 discussed Section 545 of the Cr.P.C. of 1898 extensively and stated as follows:

"46.12. Under clause (b) of sub-sec. (1) of Section 545, the Court may direct "payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is, in the opinion of the Court, recoverable by such person in a Civil Court." The significance of the requirement that compensation should be recoverable in a Civil Court is that the act which constitutes the offence in question should also be a tort. The

word “substantial” appears to have been used to exclude cases where only nominal damages would be recoverable. We think it is hardly necessary to emphasise this aspect, since in any event it is purely within the discretion of the Criminal Courts to order or not to order payment of compensation, and in practice, they are not particularly liberal in utilizing this provision. We propose to omit the word “substantial” from the clause.”

(emphasis supplied)

39. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Criminal Procedure Code Bill, 1970, which aimed at revising Section 545 and introducing it in the form of Section 357 as it reads today. The Statement of Objects and Reasons underlying the Bill was as follows:

> “Clause 365 [now s.357] which corresponds to section 545 makes provision for payment of compensation to victims of crimes. At present such compensation can be ordered only when the Court imposes a fine the amount is limited to the amount of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine and fine is actually imposed, but such compensation can be ordered only if the accused is convicted. The compensation should be payable for any loss or injury whether physical or pecuniary and the Court shall have due regard to the nature of injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.”

(emphasis supplied)

40. As regards the need for Courts to obtain comprehensive details regarding the background of the offender for the purpose of sentencing, the Law Commission in its 48th Report on 'Some Questions Under the Code of Criminal Procedure Bill, 1970' submitted in 1972 discussed the matter in some detail, stating as follows:

> “45. It is now being increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is a lack of comprehensive information as to the characteristics and background of the offender.

> The aims of sentencing--themselves obscure--become all the more so in the absence of comprehensive information on which the correctional process is to operate. The public as well as the as the courts themselves are in the dark about judicial approach in this regard.
>
> We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to cooperate in the process."
>
> (emphasis supplied)

41. The Cr.P.C. of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Objects and Reasons that s.357 was "intended to provide relief to the proper sections of the community" and that the amended CrPC empowered the Court to order payment of compensation by the accused to the victims of crimes "to a larger extent" than was previously permissible under the Code. The changes brought about by the introduction of s.357 were as follows:

> (i) The word "substantial" was excluded.
>
> (ii) A new sub-section (3) was added which provides for payment of compensation even in cases where the fine does not form part of the sentence imposed.
>
> (iii) Sub-section (4) was introduced which states that an order awarding compensation may be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

42. The amendments to the Cr.P.C. brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where "the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated." Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was introduced due to the recommendations made by the Law

Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively.

43. The 154th Law Commission Report on the CrPC devoted an entire chapter to 'Victimology' in which the growing emphasis on victim's rights in criminal trials was discussed extensively as under:

> "1. Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.
>
> xx xx xx xx xx
>
> 9.1 The principles of victimology has foundations in Indian constitutional jurisprudence. The provision on Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country (Article 38). Article 41 mandates inter alia that the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of undeserved want." So also Article 51-A makes it a fundamental duty of every Indian citizen, inter alia 'to have compassion for living creatures' and to 'develop humanism'. If emphatically interpreted and imaginatively expanded these provisions can form the constitutional underpinnings for victimology.
>
> 9.2 However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.
>
> xx xx xx xx
>
> 11. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be

> limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds…"

44. The question then is whether the plenitude of the power vested in the Courts under Section 357 & 357-A, notwithstanding, the Courts can simply ignore the provisions or neglect the exercise of a power that is primarily meant to be exercised for the benefit of the victims of crimes that are so often committed though less frequently punished by the Courts. In other words, whether Courts have a duty to advert to the question of awarding compensation to the victim and record reasons while granting or refusing relief to them?

45. The language of Section 357 Cr.P.C. at a glance may not suggest that any obligation is cast upon a Court to apply its mind to the question of compensation. Sub-section (1) of s.357 states that the Court "may" order for the whole or any part of a fine recovered to be applied towards compensation in the following cases:

> (i) To any person who has suffered loss or injury by the offence, when in the opinion of the Court, such compensation would be recoverable by such person in a Civil Court.
>
> (ii) To a person who is entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abetment thereof.
>
> (iii) To a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.

46. Sub-section (3) of Section 357 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. We may at the outset, refer to the oft quoted passage from Julius v. Lord Bishop of Oxford (1880) 5 AC 214 where the Court summed up the legal position thus:

> "The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which

there would otherwise be no right or authority to do. They confer a faculty or power and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so..."

47. There is no gainsaying that Section 357 confers a power on the Court in so far as it makes it "legal and possible which there would otherwise be no right or authority to do" viz. to award compensation to victims in criminal cases. The question is whether despite the use of discretionary language such as the word "may", there is "something" in the nature of the power to award compensation in criminal cases, in the object for which the power is conferred or in the title of the persons for whose benefit it is to be exercised which, coupled with the power conferred under the provision, casts a duty on the Court to apply its mind to the question of exercise of this power in every criminal case.

48. In Smt. Bachahan Devi and Anr. v. Nagar Nigam, Gorakhpur and Anr. AIR 2008 SC 1282, this Court while dealing with the use of the word "may" summoned up the legal position thus:

> "...It is well-settled that the use of word `may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word `may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word `may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word `may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word `may' should be interpreted to convey a mandatory force..."
>
> (emphasis supplied)

49. Similarly in Dhampur Sugar Mills Ltd. v. State of U. P. and Ors. (2007) 8 SCC 338, this Court held that the mere use of word 'may' or 'shall' was not conclusive. The question whether a particular provision of a statute is directory or mandatory, held the Court, can be resolved by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant thereto.

50. Applying the tests which emerge from the above cases to Section 357, it appears to us that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. We say so because in the background and context in which it 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 in the criminal justice system if despite Legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. It follows that unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.

51. If application of mind is not considered mandatory, the entire provision would be rendered a dead letter. It was held in NEPC Micon Ltd. and Ors. v. Magma Leasing Ltd. (1999) 4 SCC 253, albeit in the context of s.138 of the Negotiable Instruments Act that even in regard to a penal provision, any interpretation, which withdraws the life and blood of the provision and makes it ineffective and a dead letter should be avoided.

52. Similarly in Swantraj and Ors. v. State of Maharashtra (1975) 3 SCC 322, this Court speaking through Justice Krishna Iyer held:

> “1. Every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, taking the cue from the rule in Heydon's case of suppressing the evil and advancing the remedy...”

53. The Court extracted with approval the following passage from Maxwell on Interpretation of Statutes:

> "There is no doubt that 'the office of the Judge is, to make such construction as will suppress the mischief, and advance the remedy, and to suppress all evasions for the continuance of the mischief.' To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined : quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud."

54. This Court has through a line of cases beginning with Hari Singh's case (supra) held that the power to award compensation under Section 357 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. Reference may also be made to the decision of this Court in State of Andhra Pradesh v. Polamala Raju @ Rajarao (2000) 7 SCC 75 where a three-judge bench of this Court set aside a judgment of the High Court for non-application of mind to the question of sentencing. In that case, this Court reprimanded the High Court for having reduced the sentence of the accused convicted under Section 376, IPC from 10 years imprisonment to 5 years without recording any reasons for the same. This Court said:

> "...We are of the considered opinion that it is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence...
>
> xx xx xx xx
>
> ...To say the least, the order contains no reasons, much less "special or adequate reasons". The sentence has been reduced in a rather mechanical manner without proper application of mind..."

55. In State of Punjab v. Prem Sagar and Ors. (2008) 7 SCC 550 this Court stressed the need for greater application of mind of the Courts in the field of sentencing. Setting aside the order granting probation by the High Court, the Court stated as follows:

> "30....The High Court does not rest its decision on any legal principle. No sufficient or cogent reason has been arrived.
>
> 31. We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind..."

56. Although speaking in the context of capital punishment, the following observation of this Court in Sangeet & Anr. v. State of Haryana (2013) 2 SCC 452 could be said to apply to other sentences as well, particularly the award of compensation to the victim:

> "In the sentencing process, both the crime and the criminal are equally important. We have unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing."

57. Section 357 Cr.P.C. confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case. In Maya Devi (Dead) through LRs and Ors. v. Raj Kumari Batra (Dead) through LRs and Ors. (2010) 9 SCC 486, this Court held that disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed:

> "28. ...There is nothing like a power without any limits or constraints. That is so even when a court or other authority may be vested with wide discretionary power, for even discretion has to be exercised only along well-recognised and sound juristic principles with a view to promoting fairness, inducing transparency and aiding equity.
>
> 29. What then are the safeguards against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised legal principle that orders can be made only after due application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is

best demonstrated by disclosure of mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own..."

(emphasis supplied)

58. Similarly, in State of Rajasthan v. Sohan Lal and Ors. (2004) 5 SCC 573, this Court emphasised the need for reasons thus:

"...The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind..."

59. In Hindustan Times Ltd. v. Union of India (1998) 2 SCC 242 this Court stated that the absence of reasons in an order would burden the appellate court with the responsibility of going through the evidence or law for the first time. The Court observed :

"...In our view, the satisfaction which a reasoned Judgment gives to the losing party or his lawyer is the test of a good Judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher Court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal..."

60. In Director, Horticulture Punjab and Ors. v. Jagjivan Parshad (2008) 5 SCC 539, this Court stated that the spelling out of reasons in an order is a requirement of natural justice:

"...Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it

can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance..."

61. In Maya Devi's case (supra), this Court summarised the existing case law on the need for reasoned orders as follows:

"22. The juristic basis underlying the requirement that courts and indeed all such authorities, as exercise the power to determine the rights and obligations of individuals must give reasons in support of their orders has been examined in a long line of decisions rendered by this Court. In Hindustan Times Ltd. v. Union of India (1998) 2 SCC 242 the need to give reasons has been held to arise out of the need to minimise chances of arbitrariness and induce clarity.

23. In Arun v. Inspector General of Police (1986) 3 SCC 696 the recording of reasons in support of the order passed by the High Court has been held to inspire public confidence in administration of justice, and help the Apex Court to dispose of appeals filed against such orders.

24. In Union of India v. Jai Prakash Singh (2007) 10 SCC 712, reasons were held to be live links between the mind of the decision-maker and the controversy in question as also the decision or conclusion arrived at.

25. In Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity (2010) 3 SCC 732, reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness, in the decision-making process.

26. In Ram Phal v. State of Haryana (2009) 3 SCC 258, giving of satisfactory reasons was held to be a requirement arising out of an ordinary man's sense of justice and a healthy discipline for all those who exercise power over others.

27. In Director, Horticulture, Punjab v. Jagjivan Parshad (2008) 5 SCC 539, the recording of reasons was held to be indicative of application of mind specially when the order is amenable to further avenues of challenge."

62. 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 Cr.P.C. 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 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.

63. Coming then to the case at hand, we regret to say that the trial Court and the High Court appear to have remained oblivious to the provisions of Section 357 Cr.P.C. The judgments under appeal betray ignorance of the Courts below about the statutory provisions and the duty cast upon the Courts. Remand at this distant point of time does not appear to be a good option either. This may not be a happy situation but having regard to the facts and the circumstances of the case and the time lag since the offence was committed, we conclude this chapter in the hope that the courts remain careful in future.

64. In the result, we allow this appeal but only to the extent that instead of Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. The appeal is disposed of in the above terms in modification of the order passed by the Courts below. A copy of this order be forwarded to the Registrars General of the High Courts in the country for circulation among the Judges handling criminal trials and hearing appeals.