

SUPREME COURT OF INDIA

Manohar Singh

Vs.

State of Rajasthan

Crl.A.No.99 of 2015

(T.S.Thakur and Adarsh Kumar Goel JJ.)

16.01.2015

JUDGMENT

ADARSH KUMAR GOEL, J.

1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 23rd November, 2011 passed by the High Court of Rajasthan at Jaipur in Criminal Revision No.6 of 2009 by the complainant against the acquittal of the respondents of offences other than Section 323 of the Indian Penal Code ("IPC") and grant of probation to them setting aside the sentence of imprisonment imposed by the trial Court. As many as 13 accused were tried on the allegations that they assaulted and caused injuries to PW-5- Manohar Singh, appellant, Devi Singh PW-4, Maan Singh PW-11 and Karan Singh PW-1 on 29th October, 1980 at around 2 P.M. with a view to disturb the possession of the complainant party on the agricultural land in question.

3. The trial Court convicted the accused including respondent Nos.2 to 11 and one Mool Singh son of Jaswant Singh who died during pendency of the proceedings. Respondent Nos.2 to 11 were convicted and sentenced as follows :

Sl.No.	Name of the accused	Convicted and Sentence Imposed
1.	Ladu Singh	Under Section 323 IPC to undergo RI for three months; Under Section 326 IPC to undergo RI for four years and to pay fine of Rs.2,000/- and in default to undergo further imprisonment of three

- | | |months; Under Section 324 IPC to undergo RI for |
 | | |one year and to pay fine of Rs.500/- and in |
 | | |default to undergo further imprisonment of one |
 | | |month.
- |2. |Mange Singh, |Under Section 325 IPC to undergo RI for two |
 | |Hanuman Singh |years and to pay fine of Rs.1,000/- and in |
 | |son of Udai |default to undergo further imprisonment of two |
 | |Singh, Sumer |months; Under Section 323 IPC to undergo RI for |
 | |Singh and Tej |three months.
- |3. |Chotu Singh |Under Section 324 IPC to undergo RI for one year |
 | | |and to pay fine of Rs.500/- and in default to |
 | | |undergo further imprisonment of one month; Under|
 | | |Section 323, IPC to undergo RI for three months |
- |4. |Mool Singh, |Under Section 323, IPC, to undergo RI for three |
 | |Anand Singh, |months.
- | |Sohan Singh, |
 | |Hanuman Singh |
 | |S/o Jaswant |
 | |Singh and |
 | |Bhanwar Singh |

4. On appeal, the Court of Sessions set aside the conviction for offences other than the one under Section 323 IPC but maintained the conviction under Section 323 IPC. The sentence of imprisonment was also set aside and the accused were granted probation subject to fine of Rs.5,000/- which was to be paid to the victim.

5. The injured PWs, namely, Karan Singh, Devi Singh and Maan Singh entered into the compromise and compounded the offence qua them but the appellant filed a revision in the High Court which was dismissed.

6. We have heard learned counsel for the parties.

7. Learned counsel for the appellant submitted that the Court of Sessions erred in setting aside the conviction for offences other than Section 323 and also erred in granting benefit of probation. The fine imposed was not adequate and having regard to number of injuries and their nature, adequate compensation ought to have been granted. The appellant received as many as 10 injuries including an incised wound in the parietal region by sharp edged weapon, a muscle deep injury on the

front of left leg and a bone deep injury just above the front of left leg. Even if technically, the injury could be held to be simple instead of grievous, the sentence should have been adequate and in any case, due compensation ought to have been granted. Thus, the High Court erred in dismissing the revision petition.

8. Learned counsel for the accused pointed out that the respondent Devi Singh has died during pendency of the proceedings in this Court. Interference by this Court was not called for at this stage when 35 years have passed after the occurrence. In any case, it may not be appropriate to give any sentence of imprisonment to any of the accused and at best compensation may be directed to be paid by the accused or the State to the appellant.

9. After giving due consideration to the rival submissions, we are of the view that while it may not be appropriate to impose the sentence of imprisonment at this stage, having regard to the nature and extent of injuries, the appellant-complainant deserves to be duly compensated.

10. We find that the Court of Sessions and the High Court have not fully focused on the need to compensate the victim which can now be taken to be integral to just sentencing. Order of sentence in a criminal case needs due application of mind. The Court has to give attention not only to the nature of crime, prescribed sentence, mitigating and aggravating circumstances to strike just balance in needs of society and fairness to the accused, but also to keep in mind the need to give justice to the victim of crime. In spite of legislative changes and decisions of this Court, this aspect at times escapes attention. Rehabilitating victim is as important as punishing the accused. Victim's plight cannot be ignored even when a crime goes unpunished for want of adequate evidence.

11. In the present case, following injuries were found on the appellant by Dr. A.P. Modi, PW-2:-

- "1. Bruise 6 cm x 4 cm down of right forearms.
2. Bruise 8 cm x 2 cm front of right arms.
3. Bruise 8 cm x 2 cm front of right arms.
4. Bruise 10 cm x 2 cm right supra scupular region.
5. Swelling of right shoulder with tenderness.

6. Bruise 15 cm x 2 cm on the middle of the back.
7. Abrasion 1 cm x 1 cm left forearms.
8. Incised wound 2.5 x 0.5 x muscle deep front of left leg.
9. Lacerated wound 3 x 1 cm x bone deep above injury no.8.
10. Incised wound 8 cm x 0.5 x bone deep on right parital region."

Just compensation to the victim has to be fixed having regard to the medical and other expenses, pain and suffering, loss of earning and other relevant factors. While punishment to the accused is one aspect, determination of just compensation to the victim is the other. At times, evidence is not available in this regard. Some guess work in such a situation is inevitable. Compensation is payable under Section 357 and 357- A. While under section 357, financial capacity of the accused has to be kept in mind, Section 357-A under which compensation comes out of State funds, has to be invoked to make up the requirement of just compensation.

12. We may refer to some recent decisions on the subject. In *State of Gujarat and anr. vs. Hon'ble High Court of Gujarat*[1], it was observed:

"46. One area which is totally overlooked in the above practice is the plight of the victims. It is a recent trend in the sentencing policy to listen to the wailings of the victims. Rehabilitation of the prisoner need not be by closing the eyes towards the suffering victims of the offence. A glimpse at the field of victimology reveals two types of victims. The first type consists of direct victims, i.e., those who are alive and suffering on account of the harm inflicted by the prisoner while committing the crime. The second type comprises of indirect victims who are dependants of the direct victims of crimes who undergo sufferings due to deprivation of their breadwinner.

94. In recent years, the right to reparation for victims of violation of human rights is gaining ground. The 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)"

13. In *Ankush Shivaji Gaikwad vs. State of Maharashtra*[2], it was observed:

"30. In Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551 : 1998 SCC (Cri) 984] this Court lamented the failure of the courts in awarding compensation to the victims in terms of Section 357(1) CrPC. The Court recommended to all courts to exercise the power available under Section 357 CrPC liberally so as to meet the ends of justice. The Court said: (SCC pp. 557-58, para 10) "10. ... 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)

31. 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.

32. In Sarwan Singh v. State of Punjab [(1978) 4 SCC 111 : 1978 SCC (Cri) 549], Balraj v. State of U.P [(1994) 4 SCC 29 : 1994 SCC (Cri) 823], Baldev Singh v. State of Punjab [(1995) 6 SCC 593 : 1995 SCC (Cri) 1132], Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. [(2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209] [pic]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 case this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said: (SCC p. 545, para 38) "38. The purpose of imposition of fine and/or grant of

compensation to a great extent must be considered having the relevant factors therefor 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 the 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."

33. 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 lawmakers 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."

46. The amendments to Cr.PC 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 357-A 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 cases end 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.

48. The question then is whether the plenitude of the power vested in the courts under Sections 357 and 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?

49. The language of Section 357 CrPC at a glance may not suggest that any obligation is cast upon a court to apply its mind to the question of compensation. Sub-section (1) of Section 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.

50. 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 [pic]oft-quoted passage from *Julius v. Lord Bishop of Oxford* [(1880) 5 AC 214 : (1874-80) All ER Rep 43 (HL)] wherein the Court summed up the legal position thus: (AC pp. 222-23) "... 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 conditions under 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."

54. 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 the 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 the courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.

58. This Court has through a line of cases beginning with *Hari Singh* case 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 A.P. v. Polamala Raju* [(2000) 7 SCC 75 : 2000 SCC (Cri) 1284] wherein 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: (SCC pp. 78-79, paras 9 & 11) "9. 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. ...

* * *

11. 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."

61. Section 357 Cr.PC 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 v. Raj Kumari Batra* [(2010) 9 SCC 486 : (2010) 3 SCC (Civ) 842] this Court held that the disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed: (SCC p. 495, paras 28-30) "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 and proper 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 the 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)

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 CrPC would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it 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."

14. In *Suresh and Anr. vs. State of Haryana*, Criminal Appeal No.420/2012 decided on 28th November, 2014, it was observed:-

"14. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can

be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful."

15. In *K.A. Abbas H.S.A. vs. Sabu Joseph and anr.*[3], it was observed:-

"26. From the above line of cases, it becomes very clear, that, a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead directing the accused to pay an amount of compensation to the victim or affected party can ensure delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence on default of payment of this [pic]compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation and imposing another fine would be impractical as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above, otherwise the very purpose of granting an order of compensation would stand defeated."

16. In the present case, in the absence of any evidence about the medical expenses, loss of earning etc. and the financial capacity of the accused, we are of the view that the appellant needs to be paid a sum of Rs.50,000/- as compensation under Section 357(3) within two months by the surviving respondents. In default the surviving-respondents will undergo rigorous imprisonment for three months. Since

compensation is being directed to be paid, we set aside the sentence of fine of Rs.5,000/-.

Accordingly, the appeal is allowed in above terms.

- [1] (1998) 7 SCC 392
- [2] (2013) 6 SCC 770
- [3] (2010) 6 SCC 230