Roy Fernandes vs State Of Goa & Ors on 1 February, 2012

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Author: T.S. Thakur

Bench: T.S. Thakur, Asok Kumar Ganguly

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1108 OF 2002

Roy Fernandes ...Appellant

Versus

State of Goa and Ors. ...Respondents

J U D G M E N T

T.S. THAKUR, J.

1. This appeal by special leave arises out of an order dated 22nd July 2002 passed by the High Court of Bombay at Goa whereby the appeal filed by the appellant has been dismissed and the conviction and sentence awarded to him by the trial Court for offences punishable under Sections 143, 148, 323, 325 and 302 read with Section 149 IPC upheld.

2. Felix Felicio Monteiro aged about 60 years at the time of the incident was the President of a Chapel at Bastora in Goa. The Chapel it appears is situated next to the house of one Rosalina Monteiro. The chapel and the house owned by Rosalina are accessible from the main road by a path about 20-25 meters in length. A dispute regarding the said path and resultant litigation was it appears at the bottom of the incident that culminated in the sad and untimely demise of Felix Felicio Monteiro.

3. On 11th May, 1997 the deceased Shri Monteiro, his wife PW1 Sebastiana Monteiro, PW4 Julie Monteiro, her husband PW6 Salish Monteiro besides a few others went to the Chapel equipped with the necessary tools and implements in order to put up a fence around the property. The prosecution story is that while pits for fixing cement poles required for the fencing were being dug in front of the house of Rosalina Monteiro, her daughter named Antonetta raised an objection and used harsh words against those engaged in digging the pits work. A few minutes later a Maruti Van arrived on the spot carrying "5 persons including the appellant herein", who went to Salish PW6, - and gave him a fist blow on the face and he started bleeding. He then gave a blow on the face of the deceased Felix Felicio Monteiro and threw him on the ground. While the deceased was being helped by his companions to stand up and move towards the road, Anthony D'Souza one of the accused persons took out a knife and gave a stab on the left thigh of the deceased which unfortunately cut one of his arteries that led to profuse bleeding. The result was that the injured breathed his last even before he could be helped by John, his neighbour to rush him to the hospital. At the hospital, he was declared brought dead. The hospital all the same informed the Mapusa Police Station. P.I. Subhash Goltekar-PW22 from the police station recorded the statement of PW1-Sebastiana Monteiro in which she named the appellant. The police completed the investigation which included recovery of the weapon of offence pursuant to the disclosure made by accused No.2, Anthony D'Souza and lodged a chargesheet against the accused persons for offences punishable under Sections 143, 147, 148, 201, 302 and 323 read with Section 149 IPC. The Additional Sessions Judge to whom the case was

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eventually committed charged the accused persons including the appellant herein with the commission of offences punishable under Sections 143, 148, 302 read with Section 149 IPC and Sections 323 and 326 read with Section 149 IPC and Section 201 read with Section 149 IPC. At the trial the prosecution examined as many as 22 witnesses to prove its case against the accused persons. The accused persons did not lead any evidence in defence.

4. The Trial Court eventually found all the five accused guilty of offences punishable under Sections 143, 148, 323, 325 and 302 read with Section 149 IPC and sentenced each one of them to undergo one month's RI under Section 323 and two months' RI for the offence punishable under Section 143,

three months' RI under Section 148 and one year RI and a fine of Rs.1000/- each under Section 325 besides imprisonment for life and a fine of Rs.2,000/- for offence punishable under Section 302 of the IPC.

5. Aggrieved by the judgment and order of the Trial Court the accused persons preferred Criminal Appeal Nos. 69/2000 and 77/2000 before the High Court of Bombay at

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Goa. By the impugned judgment in this appeal the High Court upheld the conviction and sentence awarded to the appellant, Roy Fernandes and Anthony D'Souza while setting aside the conviction and sentence awarded to the remaining three accused persons giving them the benefit of doubt. It is noteworthy that against the judgment of the High Court Anthony D'Souza who had actually stabbed the deceased, preferred a special leave petition which was dismissed by this Court by order dated 15th April, 2011. To that extent the matter stands concluded. The present appeal is, in that view, limited to the question whether the conviction and sentence awarded to the appellant Roy Fernandes for the offences with which he stood charged, is in the facts and circumstances of the case, legally sustainable.

6. We have heard learned counsel of the parties at considerable length. It is common ground that the incident in question had taken place on account of a sudden dispute arising out of the proposed fencing of the Chapel property which act was apparently seen by Rosalina Monteiro as an obstruction to the use of the passage/pathway by her for - the beneficial use of the property. There is evidence on record to suggest that the pending litigation between the villagers on the one hand and Rosalina on the other hand embittered the relationship between the parties including that with the deceased. Putting up of fence around the Chapel property thus provided a flash point leading to the unfortunate incident in which a valuable life was lost for no worthwhile reason. From the deposition of PW1 Sebastiana Monteiro, it is further clear that after the exchange of hot words between the deceased and his companions on the one hand and Antonetta, daughter of Rosalina on the other, the latter had made a call to the appellant who had no connection with the property in question or the dispute except that he was engaged to get married to Antonetta. As to what transpired over the telephone between the appellant and Rosalina is not known. Ms. Subhashini, learned counsel for the State of Goa fairly conceded that PW1 Sebastiana Monteiro was not a witness to the telephonic conversation between the two. Looking to the sequence of events that unfolded on the fateful day what appears to have happened is that on receiving a telephonic

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call from Rosalina, the appellant rushed to the spot alongwith four others to intervene and possibly prevent the putting up of the fence by the deceased and his companions, on account of the pending dispute between the two groups. It is, therefore, reasonable to hold that when the appellant received a telephonic call from Rosalina possibly asking for help to prevent the putting up of the fence, the appellant and his companions rushed to the spot to do so. In the absence of any evidence leave alone credible evidence it is not possible for us to hold that the accused persons had come to the place of

occurrence with the common object of killing the deceased Felix Felicio Monteiro.

7. That, however, is not the end of the matter. The next and perhaps an equally important question would be whether the appellant and his companions at all constituted an unlawful assembly and if they did whether murder of the deceased Felix Felicio Monteiro by Anthony D'Souza who was one of the members of the unlawful assembly would in the facts and circumstances of the case attract the - provisions of Section 149 so as to make the appellant herein also responsible for the act.

8. Mr. Luthra made a feeble attempt to argue that the acquittal of the other three accused persons should be sufficient to negative the theory of there being an unlawful assembly of which the appellant was a member. He did not, however, pursue that argument for long and, in our opinion, rightly so because the legal position is fairly well- settled by the decision of this Court in Khem Karan & Ors. Vs. The State of U.P. & Anr. [1974 (4) SCC 603] where this Court observed:

> "6. xxxxxxxxx the fact that a large number of accused have been acquitted and the remaining who have been convicted are less than five cannot vitiate the conviction under Section 149 read with the substantive offence if - as in this case the court has taken care to find - there are other persons who might not have been identified or convicted but were party to the crime and together constituted the statutory number."

9. To the same effect is the decision of this Court in Dharam Pal and Ors. Vs. State of U.P. [1975 (2) SCC 596] where this Court observed:

"10. xxxxxxxxx If, for example, only five known persons are alleged to have participated in an attack but the Courts find that two of them were falsely implicated, it would be quite natural and logical to infer

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or presume that the participants were less than five in number. On the other hand, if the Court holds that the assailants were actually five in number, but there could be a doubt as to the identity of two of the alleged assailants, and, therefore, acquits two of them, the others will not get the benefit of doubt about the identity of the two accused so long as there is a firm finding based on good evidence and sound reasoning that the participants were five or more in number."

10. Acquittal of three of the five accused persons comprising the unlawful assembly does not in the light of the settled legal position make any material difference. So long as there were four other persons with the appellant who had the common object of committing an offence the assembly would be unlawful in nature acquittal of some of those who were members of the unlawful assembly by reason of the benefit of doubt given to them notwithstanding.

11. That leaves us with the question whether the commission of murder by a member of an unlawful assembly that does not have murder as its common object would attract the provisions of Section

149 IPC. Section 149 IPC reads:

> "149. Every member of unlawful assembly guilty of offence committed in prosecution of common object. - If an offence is committed by any member of
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> an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

12. A plain reading of the above would show that the provision is in two parts. The first part deals with cases in which an offence is committed by any member of the assembly "in prosecution of the common object" of that assembly. The second part deals with cases where the commission of a given offence is not by itself the common object of the unlawful assembly but members of such assembly `knew that the same is likely to be committed in prosecution of the common object of the assembly'. As noticed above, the commission of the offence of murder of Felix Felicio Monteiro was itself not the common object of the unlawful assembly in the case at hand. And yet the assembly was unlawful because from the evidence adduced at the trial it is proved that the common object of the persons comprising the assembly certainly was to either commit a mischief or criminal trespass or any other offence within the contemplation of clause (3) of Section 141 of the

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IPC, which may to the extent the same is relevant for the present be extracted at this stage:

> "Section 141 : Unlawful Assembly:
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> An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is--
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> First.-- xxxxxxxxxxxxxxxxxxxxxxxx Second.- xxxxxxxxxxxxxxxxxxxxxxxx "Third-To commit any mischief or criminal trespass, or other offence;"

13. From the evidence on record, we are inclined to hold that even when commission of murder was not the common object of the accused persons, they certainly had come to the spot with a view to overawe and prevent the deceased by use of criminal force from putting up the fence in question. That they actually slapped and boxed the witnesses, one of whom lost his two teeth and another sustained a fracture only proves that point.

14. What then remains to be considered is whether the appellant as a member of the unlawful assembly knew that the murder of the deceased was also a likely event in prosecution of the object of preventing him from putting up

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the fence. The answer to that question will depend upon the circumstances in which the incident had taken place and the conduct of the members of the unlawful assembly including the weapons they carried or used on the spot. It was so stated by this Court in Lalji and Ors. Vs. State of U.P. [1989 (1) SCC 437] in the following words:

> "8.xxxxxxxxxxxxxxxxxxxxxx Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case."

15. The Court elaborated the above proposition in Dharam Pal and Ors. Vs. State of U.P. [1975 (2) SCC 596] as :

> "11. Even if the number of assailants could have been less than five in the instant case (which, we think, on the facts stated above, was really not possible), we think that the fact that the attacking party was clearly shown to have waited for the buggi to reach near the field of Daryao in the early hours of June 7, 1967, shows pre-planning. Some of the assailants had sharp- edged weapons. They were obviously lying in wait for the buggi to arrive. They surrounded and attacked the occupants shouting that the occupants will be killed. We do not think that more convincing evidence of a pre-concert was necessary. Therefore, if we had thought it necessary, we would not have hesitated to apply Section 34 IPC also to this case. The principle of vicarious liability does not depend upon the necessity to convict a required number of persons. It depends upon
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> proof of facts, beyond reasonable doubt, which makes such a principle applicable. (See: Yeshwant v. State of Maharashtra; and Sukh Ram v. State of U.P.). The most general and basic rule, on a question such as the one we are considering, is that there is no uniform, inflexible, or invariable rule applicable for arriving at what is really an inference from the totality of facts and circumstances which varies from case to case. We have to examine the effect of findings given in each case on this totality. It is rarely exactly identical with that in another case. Other rules are really subsidiary to this basic verity and depend for their correct application on the peculiar facts and circumstances in the context of which they are enunciated."

16. Coming then to the facts of the present case, the first and foremost of the notable circumstances is that the appellant was totally unarmed for even according to the prosecution witnesses he had pushed, slapped and boxed those on the spot using his bare hands. The second and equally notable circumstance is that neither the cycle chain nor the belt allegedly carried by two other members of the unlawful assembly was put to use by them. Mr. Luthra argued that the prosecution had failed to

prove that the assembly was armed with a chain and a belt for the seizure witnesses had not supported the recovery of the said articles from the accused. Even if we were to accept the prosecution case that the two of the members of the unlawful assembly were armed as alleged, the non-use of - the same is a relevant circumstance. It is common ground that no injuries were caused by use of those weapons on the person of the deceased or any one of them was carrying a knife. The prosecution case, therefore, boils down to the appellant and his four companions arriving at the spot, one of them giving a knife blow to the deceased in his thigh which cut his femoral artery and caused death. The question is whether the sudden action of one of the members of the unlawful assembly constitutes an act in prosecution of the common object of the unlawful assembly namely preventing of erection of the fence in question and whether the members of the unlawful assembly knew that such an offence was likely to be committed by any member of the assembly. Our answer is in the negative.

17. This Court has in a long line of decisions examined the scope of Section 149 of the Indian Penal Code. We remain content by referring to some only of those decisions to support our conclusion that the appellant could not in the facts and circumstances of the case at hand be convicted under Section 302 read with Section 149 of the IPC.

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18. In Chikkarange Gowda & Ors. Vs. State of Mysore [AIR 1956 SC 731] this Court was dealing with a case where the common object of the unlawful assembly simply was to chastise the deceased. The deceased was, however, killed by a fatal injury caused by certain member of the unlawful assembly. The court below convicted the other member of the unlawful assembly under Section 302 read with Section 149 IPC. Reversing the conviction, this Court held:

> "9. It is quite clear to us that on the finding of the High Court with regard to the common object of the unlawful assembly, the conviction of the appellants for an offence under Section 302 read with Section 149 Indian Penal Code cannot be sustained. The first essential element of Section 149 is the commission of an offence by any member of an unlawful assembly; the second essential part is that the offence must be committed in prosecution of the common object of the unlawful assembly, or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object.
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> In the case before us, the learned Judges of the High Court held that the common object of the unlawful assembly was merely to administer a chastisement to Putte Gowda. The learned Judges of the High Court did not hold that though the common object was to chastise Putte Gowda, the members of the unlawful assembly knew that Putte Gowda was likely to be killed in prosecution of that common object. That being the position, the conviction under Section 302 read with Section 149 Indian Penal Code was not justified in law."

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19. In Gajanand & Ors. Vs. State of Uttar Pradesh [AIR 1954 SC 695], this Court approved the following passage from the decision of the Patna High Court in Ram Charan Rai Vs. Emperor [AIR 1946 Pat 242]:

> "Under Section 149 the liability of the other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms or behavior, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise".

20. This Court then reiterated the legal position as under:

> "The question is whether such knowledge can be attributed to the appellants who were themselves not armed with sharp edged weapons. The evidence on this point is completely lacking. The appellants had only lathis which may possibly account for Injuries 2 and 3 on Sukkhu's left arm and left hand but they cannot be held liable for murder by invoking the aid of Section 149 IPC. According to the evidence only two persons were armed with deadly weapons. Both of them were acquitted and Sosa, who is alleged to have had a spear, is absconding. We are not prepared therefore to ascribe any knowledge of the existence of deadly weapons to the appellants, much less that they would be used in order to cause death."

21. In Mizaji and Anr. Vs. State of U.P. [AIR 1959 SC 572] this Court was dealing with a case where five persons

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armed with lethal weapons had gone with the common object of getting forcible possession of the land which was in the cultivating possession of the deceased. Facing resistance from the person in possession, one of the members of the assembly at the exhortation of the other fired and killed the deceased. This Court held that the conduct of the members of the unlawful assembly was such as showed that they were determined to take forcible possession at any cost. Section 149 of IPC was, therefore, attracted and the conviction of the members of the assembly for murder legally justified. This Court analysed Section 149 in the following words:

> "6. This section has been the subject matter of interpretation in the various High Court of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all

the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under section 149 if it can be held that the

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offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that when in a village a body of heavily armed men set out to take a woman by force, someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of section 149. Similarly, if a body of persons go armed to take forcible possession of the land, it would be equally right to say that they have the knowledge that murder is likely to be committed if the circumstances as to the weapons carried and other conduct of the members of the unlawful assembly clearly point to such knowledge on the part of them all."

22. In Shambhu Nath Singh and Ors. Vs. State of Bihar [AIR 1960 SC 725], this Court held that members of an unlawful assembly may have a community of object upto a certain point beyond which they may differ in their objects and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command but also according to the extent to which he shares the community of object. As a consequence, the effect of Section 149 of the Indian Penal Code may be different on different members of the same unlawful assembly. Decisions of this Court Gangadhar - Behera and Others Vs. State of Orissa [2002 (8) SCC 381] and Bishna Alias Bhiswadeb Mahato and Others Vs. State of West Bengal [2005 (12) SCC 657] similarly explain and reiterate the legal position on the subject.

23. In the case at hand, there is, in our opinion, no evidence to show that the appellant knew that in prosecution of the common object of preventing the putting up of the fence around the chapel the members of the assembly or any one of them was likely to commit the murder of the deceased. There is indeed no evidence to even show that the appellant knew that Anthony D'Souza was carrying a knife with him, which he could use. The evidence on the contrary is that after stabbing the deceased Anthony D'Souza had put the knife back in the cover from where he had drawn it. The conduct of the members of the assembly especially the appellant also does not suggest that they intended to go beyond preventing the laying of the fence, leave alone committing a heinous offence of murder of a person who had fallen to the ground

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with a simple blow and who was being escorted away from the spot by his companions. We have, therefore, no hesitation in holding that the Courts below fell in error in convicting the appellant for

murder with the aid of Section 149 of the IPC.

24. Having said that, we have no manner of doubt that the conviction of the appellant for offences punishable under Sections 143, 148, 323 and 325 read with Section 149 of the IPC is perfectly justified. The evidence on record clearly makes out a case against the appellant under those provisions and the Courts below have rightly found him guilty on those counts. In fairness to Mr. Luthra, we must mention that even he did not assail the conviction of the appellant under those provisions. What was argued by the learned counsel is that this Court could reduce the sentence to the period already undergone by the appellant having regard to the fact that the incident in question had taken place nearly 15 years back and the appellant had not only suffered the trauma of a prolonged trial and uncertainty but his life had also suffered a setback, in as much Antonetta had divorced him. Mr. Luthra submitted that the appellant

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was a first offender and being a middle aged man, could be spared the ignominy and hardship of a jail term at this stage of his life when he was ready to abide by any directions of this Court regarding compensation to the victims of the incident. Support for his submissions was drawn by Mr. Luthra from the decisions of this Court in Hansa Vs. State of Punjab [1977 (3) SCC 575] and Hari Singh Vs. Sukhbir Singh & Others [1988 (4) SCC 551]. In Hansa's case (supra), the accused had been convicted for an offence under Section 325 and sentenced to undergo one year rigorous imprisonment. The High Court had, however, given the accused the benefit of probation of offenders Act, and let him off on his giving a bond for good conduct for a year. This Court held that the power vested in the Court had been correctly exercised. Even in Hari Singh's case (supra), the court granted a similar benefit to a convict under Section 325 who had been sentenced to undergo two years rigorous imprisonment. The Court in addition invoked its power under Section 357 of the Cr.P.C. to award compensation to the victim, and determined the amount payable having regard to the nature of the injury - inflicted and the paying capacity of the appellant. This Court said:

> "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. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). 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.

> 11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default."

25. Section 357 of the Code of Criminal Procedure embodies the concept of compensating the victim of a - crime and empowers the courts to award a suitable amount. This power, it goes without saying, shall be exercised by the Courts having regard to the nature of the injury or loss suffered by the victim as also the paying capacity of the accused. That the provision is wide enough to cover a case like the present where the appellant has been found guilty of offences punishable under Sections 323 & 325 of the IPC has not been disputed before us. Indeed Mr. Luthra relied upon the provision and beseeched this Court to invoke the power to do complete justice short of sending the appellant back to the prison. Mrs. Subhashini also in principle did not have any quarrel with the proposition that the power was available and can be exercised, though according to her, the present being a gross case of unprovoked violence against law abiding citizens the exercise of the power to compensate the victims ought not to save accused from suffering a deterrent punishment warranted under law.

26. Prof. Andrew Ashworth of Oxford University Centre for Criminological Research has in the handbook of Criminology

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authored by him referred to what are called "Restorative and Reparative Theories" of punishment. The following passage from the book is, in this regard, apposite:

> "Restorative and Reparative Theories These are not theories of punishment, rather, their argument is that sentences should move away from punishment of the offender towards restitution and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theories are therefore victim-centred, although in some versions they encompass the notion of reparation to the community for the effective crime. They envisage less resort to custody, with onerous community based sanctions requiring offenders to work in order to compensation victims and also contemplating support and counselling for offenders to regenerate them into the community. Such theories therefore tend to act on a behavioural premises similar to rehabilitation, but their political premises is that compensation for victims should be recognised as more important than notions of just punishment on behalf of the State"

27. The provision for payment of compensation has been in existence for a considerable period of time on the statute book in this country. Even so, criminal courts have not, it appears, taken significant note of the said provision or exercised the power vested in them thereunder. The Law Commission in its 42nd Report at para 3.17 refers to this regrettable omission in the following words:

> "We have a fairly comprehensive provision for payment of compensation to the injured party under Section 545 of the Criminal Procedure Code. It is regrettable that our courts do not exercise their statutory powers under this Section as freely and liberally as could be desired. The Section has, no doubt, its limitations. Its application depends, in the first instance, on whether the Court considers a substantial fine proper punishment for the offence. In the most serious cases, the Court may think that a heavy fine in addition to imprisonment for a long terms is not justifiable, especially when the public prosecutor ignores the plight of the victim of the offence and does not press for compensation on his behalf."

28. In Manish Jalan Vs. State of Karnataka (2008) 8 SCC 225, even this Court felt that the provision regarding award of compensation to the victims of crimes had not been made use by the Courts as often as it ought to be. This Court observed:

> "Though a comprehensive provision enabling the Court to direct payment of compensation has been in existence all through but the experience has shown that the provision has really attracted the attention of the Courts. Time and again the Courts have been reminded that the provision is aimed at serving the social purpose and should be exercised liberally yet the results are not heartening."

29. In the above case the appellant had been convicted under Sections 279 and 304A of the IPC. The substantive sentence of imprisonment was in that case reduced by this

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Court to the period already undergone with payment of fine and a compensation of an amount of rupees one lakh to the mother of the victim. Reference may also be made to the decision of this Court in Rachpal Singh and Anr. Vs. State of Punjab AIR 2002 SC 2710, where this Court emphasised the need to assess and award compensation by the accused to the gravity of the offence, needs of the victim's family as also the paying capacity of the accused.

30. Coming to the case at hand we need to keep in mind that the incident in question had taken place as early as in the year 1997. The appellant has faced a prolonged trial and suffered the trauma of uncertainty arising out of his conviction by the Trial Court and the High Court in appeal. Besides the appellant have had no criminal antecedents or involvement in any case, before or after the incident in question. He has already undergone nearly three months of imprisonment out of the sentence awarded to him. He has, in the above backdrop, offered to compensate the victims of the incident in question suitably. Mr. Luthra submitted on instructions that the appellant is running a -

hotel in Goa and is earning an amount of Rs.10-12 lakhs per year from the same implying thereby that he is in a position to deposit the amount of compensation ordered by this Court. In the totality of the above circumstances, we are inclined to interfere in so far as the quantum of sentence awarded under Section 325 of the IPC is concerned.

31. In the result, we allow this appeal in part, set aside the conviction and sentence awarded to the appellant under Section 302 read with Section 149 of the IPC and acquit the appellant of that charge. The conviction of the appellant for offences punishable under Sections 323 and 325 of the IPC is affirmed and the appellant is sentenced to the period of imprisonment already undergone by him. We further direct that the appellant shall deposit a sum of Rs.3,00,000/- towards compensation to be paid to the widow of the deceased Shri Felix Felicio Monteiro, failing her to his surviving legal heirs. A sum of Rs.1,00,000/- shall be similarly deposited towards compensation payable to Shri Salish Monteiro, besides a sum of Rs.50,000/- to be paid to Ms. Conceicao Monteiro failing to their legal representatives. The deposit shall be made within two months from today failing which the sentence of one year awarded to the appellant shall stand revived and the appellant taken in custody to serve the remainder of the period. The appeal is disposed of with the above modification and directions.

.....J. (ASOK KUMAR GANGULY) .....J. (T.S. THAKUR) New Delhi February 1, 2012