

Suresh & Anr vs State Of Haryana on 28 November, 2014

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Bench: Adarsh Kumar Goel, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 420 OF 2012

SURESH & ANR. APPELLANTS

VERSUS

STATE OF HARYANA RESPONDENT

J U D G M E N T

ADARSH KUMAR GOEL J.

1. This appeal has been preferred against conviction and sentence of the appellants under Sections 302 read with Sections 34, 364-A, 201 and 120-B of the Indian Penal Code.

2. Case of the prosecution is that on 18th December, 2000, the deceased Devender Chopra and his son deceased Abhishek Chopra had left their factory for their house in D.L.F., Gurgaon but did not reach their house. At about 9.41 P.M., PW-12 Pooja Chopra, daughter of Devender Chopra gave a call to her father to find out as to why he was late. She learnt that her father and brother had been kidnapped and ransom of rupees fifty lacs was demanded for their release. She contacted her father's business partner informing him that Devender Chopra and Abhishek Chopra were kidnapped and the kidnappers had demanded a ransom amount of rupees fifty lacs on telephone. The kidnappers also talked to the wife of the deceased Devender Chopra at 11 P.M. demanding ransom money. Raman Anand also talked to Devender Chopra. There were frequent calls from the kidnappers from the morning of 19th December, 2000 which were recorded on audio cassettes EX. P1 to P9. Since, the family could not fulfil the demand and offer to pay rupees ten lacs was not accepted by the kidnappers but negotiations continued. The police was not informed on account of the fear that the victims may be killed as was threatened. When the kidnappers did not release

Devender Chopra and Abhishek Chopra, and finding no way out, the matter was reported to the police on 24th December, 2000 at 5 A.M. Statement of PW-2, Raman Anand EX. PC was recorded by Inspector Randhir Singh (PW-17) who deputed police officials at nearby STD booths. PW-14, SI Rajender Singh found the accused at STD booth Jawala Petrol Pump on Jaipur Highway at 8.15 A.M. He overheard accused Manmohan telling accused Suresh that ransom demand be not reduced below rupees twenty five lacs. He was in plain clothes and gave signal to PW-17 and the accused were apprehended. A slip EX. P-35 carrying residential phone number of Devender Chopra was recovered from Manmohan. Ashok accused made disclosure statement EX. PS that Devender Chopra and Abhishek Chopra had been killed and their bodies thrown in gutters in Sectors-39 and 46. Mobile of Devender Chopra was kept concealed in the house of the accused. Accused Manmohan made similar disclosure statement EX. PT and that he had kept concealed car of the deceased in his house at Palwal and a knife in his rented house at Sohna. Accused Suresh made similar disclosure statement EX. PJ and that he had concealed mobile of the deceased at the shop of his brother at Sohna. Accused Mahesh made similar disclosure statement EX. PV and that suitcase of the deceased was concealed in his old house. Accordingly, recoveries were effected. Post mortem of dead bodies was conducted and other steps for investigation were completed.

3. After investigation, the accused were sent up for trial. The prosecution examined Dr. B.K. Rajora (PW-1), complainant Raman Anand (PW-

2), Mrs. Vivek Bharti, Additional Chief Judicial Magistrate, Bhiwani (PW-

3), Head Constable Naresh Kumar (PW-6), Sub Inspector Balwan Singh (PW-7), Mahabir Singh (PW-8), Assistant Sub Inspector Budh Ram (PW-9), Surender Singh Rahman (PW-10), Head Constable Mohan Lal (PW-11), Pooja Chopra (PW-

12), Sub Inspector Sanjeev Kumar (PW-13), Sub Inspector Rajender Singh (PW-

14), Brij Bhushan Mehta (PW-15), Sub Inspector Shakuntla (PW-16) and Inspector Randhir Singh (PW-17) and produced documents and material exhibits. The accused denied the prosecution allegations.

4. After considering the evidence on record the trial Court convicted and sentenced the appellants for kidnapping and murder and concealing evidence in conspiracy and by common intention. All the accused stand sentenced to undergo imprisonment for life and other lesser sentences which have been affirmed by the High Court.

5. We have heard learned counsel for the parties.

6. Learned counsel for the appellants submitted that there was no legal evidence to sustain the conviction and that the evidence of disclosure statements and recoveries was not reliable.

7. Learned counsel for the State opposed the above statement and pointed out that the dead bodies were recovered at the instance of the appellants, apart from the recovery of car and personal

belongings of the deceased. SI Rajender Singh (PW-14) and Inspector Randhir Singh (PW-17) had overheard the conversation of the accused making demand of ransom on telephone at the STD Booth. The accused refused to give their voice sample as recorded in the Order dated 1st January, 2001 passed by the Additional Chief Judicial Magistrate, Gurgaon on application (Exhibit PF). Pooja Chopra (PW-12) deposed that the deceased Devender Chopra had a talk with her mother on 18th December, 2000 that the deceased had been kidnapped for ransom which was followed up by further conversation with the kidnappers. Raman Anand (PW-2) also had talks with the kidnappers from the mobile phone of his friend Neeraj. According to the post mortem reports, the death of Devender Chopra was on account of strangulation and cutting of throat by sharp weapon. Death of Abhishek Chopra was on account of stab injuries in chest and abdomen and the head injury caused by blunt force impact.

8. Apart from the above, this is a case where Section 106 of the Evidence Act is clearly attracted which requires the accused to explain the facts in their exclusive knowledge. No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused. Recovery of dead bodies from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully established. It casts a duty on the accused as to how they alone had the information leading to recoveries which was admissible under Section 27 of the Evidence Act. Failure of the accused to give an explanation or giving of false explanation is an additional circumstance against the accused as held in number of judgments, including State of Rajasthan vs. Jaggu Ram [1].

9. In view of the above, we do not find any ground to interfere with the conviction and sentence of the appellants. The appellants are on bail. They may be taken into custody for undergoing the remaining sentence.

10. We had asked learned counsel for the parties to make their submissions as to applicability of Section 357A of the Code of Criminal Procedure providing for compensation by the State to the victims of the crime and also requested Shri L. Nageshwara Rao, Additional Solicitor General of India to assist the Court on this aspect.

11. Accordingly, Shri Rao has made his submissions and also furnished a written note of his submissions mentioning the legislative history and purpose of the said provision and the guidelines for determining the quantum of compensation and the power of Court to grant the interim compensation. We place on record our appreciation for the valuable contribution of Shri Rao.

12. It would now be appropriate to deal with the issue. The provision has been incorporated in the Cr.P.C. vide Act V of 2009 and the amendment duly came into force in view of the Notification dated 31st December, 2009. The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. It recognises compensation as one of the methods of protection of victims. The

provision has received the attention of this Court in several decisions including Ankush Shivaji Gaikwad vs. State of Maharashtra[2], In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News[3], Mohommad Haroon vs. Union of India[4] and Laxmi vs. Union of India[5]. In Abdul Rashid vs. State of Odisha & Ors.[6], to which one of us (Goel, J.) was party, it was observed:-

"6. Question for consideration is whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim. Further question is whether the Court has legal duty to award compensation irrespective of conviction or acquittal. When the State fails to identify the accused or fails to collect and present acceptable evidence to punish the guilty, the duty to give compensation remains. Victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim. There are systemic or other failures responsible for crime remaining unpunished which need to be addressed by improvement in quality and integrity of those who deal with investigation and prosecution, apart from improvement of infrastructure but punishment of guilty is not the only step in providing justice to victim. Victim expects a mechanism for rehabilitative measures, including monetary compensation. Such compensation has been directed to be paid in public law remedy with reference to Article

21. In numerous cases, to do justice to the victims, the Hon'ble Supreme Court has directed payment of monetary compensation as well as rehabilitative settlement where State or other authorities failed to protect the life and liberty of victims. For example, Kewal Pati Vs. State of U.P. (1995) 3 SCC 600 (death of prisoner by co-prisoner), Supreme Court Legal Aid Committee Vs. State of Bihar, (1991) 3 SCC 482 (failure to provide timely medical aid by jail authorities, Chairman, Rly. Board Vs. Chandrima Das, (2000) 2 SCC 465 (rape of Bangladeshi national by Railway staff), Nilabati Behera Vs. State of Orissa, (1993) 2 SCC 746 (Custodial death), Khatri (I) Vs. State of Bihar (1981) 1 SCC 623 (prisoners' blinding by jail staff), Union Carbide Corporation Vs. Union of India, (1989) 1 SCC 674 (gas leak victims).

7. Expanding scope of Article 21 is not limited to providing compensation when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family where crime is committed by an individual without any role of the State or its functionary. Apart from the concept of compensating the victim by way of public law remedy in writ jurisdiction, need was felt for incorporation of a specific provision for compensation by courts irrespective of the result of criminal prosecution. Accordingly, Section 357A has been introduced in the Cr.P.C. and a Scheme has been framed by the State of Odisha called 'The Odisha Victim Compensation Scheme, 2012'. Compensation under the said Section is payable to victim of a crime in all cases irrespective of conviction or acquittal. The amount of compensation may be worked out at an appropriate forum in accordance with the said Scheme, but pending such steps being taken, interim compensation ought to be given at the earliest in any proceedings.

8. In *Ankush Vhivaji Gaikwad Vs. State of Maharashtra*, (2013) 6 SCC 770, the matter was reviewed by the Hon'ble Supreme Court with reference to development in law and it was observed :

"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 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."

34. 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.

35. 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: (SCC pp.20-21, para-16) "16.....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)

36. 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)

37. 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.

38. 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

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.

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.

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."

39. 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)."

40. 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."

41. Back home the Code of Criminal Procedure 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".

42. The Law Commission of India in its 41st Report submitted in 1969 discussed Section 545 of the Code of Criminal Procedure of 1898 extensively and stated as follows:

"46.12.. Section 545- Under Clause (b) of Sub-section (1) of Section 545, the Court may direct "in the 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)

43. On the basis of the recommendations made by the Law Commission in the above report, the Government of India introduced the Code of Criminal Procedure 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 Section 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)

44. 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. Sentencing- 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)

45. The Code of Criminal Procedure of 1973 which incorporated the changes proposed in the said Bill of 1970 states in its Objects and Reasons that Section 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 Section 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.

46. The amendments to the Code of Criminal Procedure 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.

47. The 154th Law Commission Report on the Code of Criminal Procedure 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 51A 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.

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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....."

48. 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?

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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 Code of Criminal Procedure 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.

67. 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 Code of Criminal Procedure. 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."

9. In Rohtash @ Pappu Vs. State of Haryana (Crl.A. No. 250 of 1999 decided on 1.4.2008, a Division Bench of the Punjab & Haryana High Court observed:

"18. May be, inspite of best efforts, the State fails in apprehending and punishing the guilty but that does not prevent the State from taking such steps as may reassure and protect the victims of crime. Should justice to the victims depend only on the punishment of the guilty? Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed? It can be a long and seemingly endless wait. The need to address cry of victims of crime, for whom the Constitution in its Preamble holds out a guarantee for 'justice' is paramount. How can the tears of the victim be wiped off when the system itself is helpless to punish the guilty for want of collection of evidence or for want of creating an environment in which witnesses can fearlessly present the truth before the Court? Justice to the victim has to be ensured irrespective of whether or not the criminal is punished.

19. The victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated.

20. Right of access to justice under Article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family and in appropriate cases, rehabilitation measures including monetary compensation. It is a paradox that victim of a road accident gets compensation under no fault theory, but the victim of crime does not get any compensation, except in some cases where the accused is held guilty, which does not happen in a large percentage of cases.

21. Though a provision has been made for compensation to victims under Section 357 Cr.P.C., there are several inherent limitations. The said provision can be invoked only upon conviction, that too at the discretion of the judge and subject to financial capacity to pay by the accused. The long time taken in disposal of the criminal case is another handicap for bringing justice to the victims who need immediate relief, and cannot wait for conviction, which could take decades. The grant of compensation under the said provision depends upon financial capacity of the accused to compensate, for which, the evidence is rarely collected. Further, victims are often unable to make a representation before the Court for want of legal aid or otherwise. This is perhaps why even on conviction this provision is rarely pressed into service by the Courts. Rate of conviction being quite low, inter-alia, for competence of investigation, apathy of witnesses or strict standard of proof required to ensure that innocent is not punished, the said provision is hardly adequate to address to need of victims.

In Hari Krishan and State of Haryana v. Sikhbir Singh AIR 1998 SC 2127, referring to provisions for compensation, the Hon'ble Supreme Court observed:-

"10. 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."

22. It is imperative to educate the investigating agency as well as the trial Judges about the need to provide access to justice to victims of crime, to collect evidence about financial status of the accused. It is also imperative to create mechanisms for rehabilitation measures by way of medical and financial aid to the victims. The remedy in civil law of torts against the injury caused by the accused is grossly inadequate and illusory.

23. This unsatisfactory situation is in contrast to global developments and suggestions of Indian experts as well. Some of the significant developments in this regard may be noticed as under:-

1) UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, highlighting the following areas:-

(i) Access to Justice and fair treatment;

(ii) Restitution;

(iii) Compensation;

(iv) Assistance.

2) Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure, 1985.

3) Statement of the Victims' Rights in the Process of Criminal Justice, issued by the European Forum for Victims' Services in 1996.

4) European Union Framework Decision on the Standing of Victims in Criminal Proceedings.

5) Council of Europe Recommendations on assistance to Crime victims adopted on 14.6.2006.

6) 152nd and 154th report of the Law Commission of India, 1994 and 1996 respectively, recommending introduction of Section 357-A in criminal procedure code, prescribing, inter-alia, compensation to the victims of crime.

7) Recommendations of the Malimath Committee, 2003.

24. The subject matter has been dealt with by experts from over 40 countries in series of meetings and a document has been developed in cooperation with United Nations Office at Vienna, Centre for International Crime Prevention and the compilation under the heading "Handbook on Justice for Victims" which deals with various aspects of impact of victimization, victims assistance programmes and role and responsibility of frontline professionals and others to victims. The South African Law Commission, in its "Issue Paper 7" (1997) under the heading "Sentencing Restorative Justice: Compensation for victims of crime and victim empowerment" has deliberated on various relevant aspects of this issue.

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27. In Malimath Committee Report (March 2003), it was observed:-

"6.7.1 Historically speaking, Criminal Justice System seems to exist to protect the power, the privilege and the values of the elite sections in society. The way crimes are defined and the system is administered demonstrate that there is an element of truth in the above perception even in modern times. However, over the years the dominant function of criminal justice is projected to be protecting all citizens from harm to either their person or property, the assumption being that it is the primary duty of a State under rule of law. The State does this by depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions. The State (and society), it was argued, is itself the victim when a citizen commits a crime and thereby questions its norms and authority. In the process of this transformation of torts to crimes, the focus of attention of the system shifted from the real victim who suffered the injury (as a result of the failure of the state) to the offender and how he is dealt with by the State. Criminal Justice came to comprehend all about crime, the criminal, the way he is dealt with, the process of proving his guilt and the ultimate punishment given to him. The civil law was supposed to take care of the monetary and other losses suffered by the victim. Victims were marginalized and the state stood forth as the victim to prosecute and punish the accused.

6.7.2 What happens to the right of victim to get justice to the harm suffered? Well, he can be satisfied if the state successfully gets the criminal punished to death, a prison sentence or fine. How does he get justice if the State does not succeed in so doing? Can he ask the State to compensate him for the injury? In principle, that should be the logical consequence in such a situation; but the State which makes the law absolves itself.

6.8.1 The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. When the sentence of fine is imposed as the sole

punishment or an additional punishment, the whole or part of it may be directed to be paid to the person having suffered loss or injury as per the discretion of the Court (Section 357 Cr.PC). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.

xx xx xx xx xx 6.8.7 Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions in Nilabati Behera V. State of Orissa (1993 2 SCC 746) and in Chairman, Railway Board V. Chandrima Das are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the state for failure to protect the rights of the victim.

6.8.8 These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle invoked is the obligation of the state to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably."

10. In Re: State of Assam & 2 Others (PIL (Suo Motu) No. 26/2013) vide judgement dated 24.4.2013, a Division Bench of Gauhati High Court observed :

"We have heard learned counsel for the parties on the issue whether in absence of any prohibition under the scheme, interim compensation ought to be paid at the earliest to the victim irrespective of stage of enquiry or trial, either on application of the victim or suo motu by the Court.

In Savitri v. Govind Singh Rawat, (1985) 4 SCC 337, question of interim maintenance under Section 125 Cr.P.C. was considered and it was observed :

"3. It is true that there is no express provision in the Code which authorises a Magistrate to make an interim order directing payment of maintenance pending disposal of an application for maintenance. The Code does not also expressly prohibit the making of such an order. The question is whether such a power can be implied to be vested in a Magistrate having regard to the nature of the proceedings under Section 125 and other cognate provisions found in Chapter IX of the Code which is entitled "Order For Maintenance of Wives, Children and Parents". Section 125 of the

Code confers power on a Magistrate of the first class to direct a person having sufficient means but who neglects or refuses to maintain (i) his wife, unable to maintain herself, or (ii) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (iii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself or (iv) his father or mother, unable to maintain himself or herself, upon proof of such neglect or refusal, to pay a monthly allowance for the maintenance of his wife or such child, father or mother, as the case may be, at such monthly rate not exceeding five hundred rupees in the whole as such Magistrate thinks fit. Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance. Section 126 of the Code prescribes the procedure for the disposal of an application made under Section 125. Section 127 of the Code provides for alteration of the rate of maintenance in the light of the changed circumstances or an order or decree of a competent civil court. Section 128 of the Code deals with the enforcement of the order of maintenance. It is not necessary to refer to the other details contained in the above-said provisions.

6. In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under Section 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under Section 125, the applicant should be alive till the - 17

-date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "*ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest*" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist). [Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797.] Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of interim orders in a large number of cases where the liability to

pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal as it can be set right quickly after hearing both the parties. The Magistrate may, however, insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. Such an order may also be made in an appropriate case ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. If a civil court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to therein pending final disposal of the application. In taking this view we have also taken note of the provisions of Section 7(2)(a) of the Family Courts Act, 1984 (Act 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under Section 125 of the Code to the Family Courts constituted under the said Act."

Above view has been reiterated, inter alia, in *Shail Kumari Devi v. Krishan Bhagwan Pathak*, (2008)9 SCC 632.

We are of the view that above observations support the submission that interim compensation ought to be paid at the earliest so that immediate need of victim can be met. For determining the amount of interim compensation, the Court may have regard to the facts and circumstances of individual cases including the nature of offence, loss suffered and the requirement of the victim. On an interim order being passed by the Court, the funds available with the District/State Legal Services Authorities may be disbursed to the victims in the manner directed by the Court, to be adjusted later in appropriate proceedings. If the funds already allotted get exhausted, the State may place further funds at the disposal of the Legal Services Authorities."

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

object of the legislation.

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 the present case, the impugned judgment shows that the de facto complainant, PW-2 Raman Anand, filed Criminal Revision No.1477 of 2004 for compensation to the family members of deceased Devender Chopra and his son Abhishek Chopra. The same has been dismissed by the High Court without any reason. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim family should not be awarded compensation under Section 357-A by the State. Thus, we are of the view that the State of Haryana is liable to pay compensation to the family of the deceased. We determine the interim compensation payable for the two deaths to be rupees ten lacs, without prejudice to any other rights or remedies of the victim family in any other proceedings.

16. Accordingly, while dismissing the appeal, we direct that the widow of Devender Chopra, who is mother of deceased Abhishek Chopra representing the family of the victim be paid interim compensation of rupees ten lacs. It will be payable by the Haryana State Legal Services Authority within one month from receipt of a copy of this order. If the funds are not available for the purpose with the said authority, the State of Haryana will make such funds available within one month from the date of receipt of a copy of this judgment and the Legal Services Authority will disburse the compensation within one month thereafter.

The appeal stands disposed of accordingly.

.....J. [V. GOPALA GOWDA]J. NEW DELHI [ADARSH KUMAR GOEL] November 28, 2014

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- [1] (2008) 12 SCC 51
 - [2] (2013) 6 SCC 770
 - [3] (2014) 4 SCC 786
 - [4] (2014) 5 SCC 252
 - [5] (2014) 4 SCC 427
 - [6] (2014) 1 ILR-CUT-202
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