

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.935 of 2014

Arising Out of PS. Case No.-17 Year-2009 Thana- BHAGALPUR GRP CASE District-
Bhagalpur

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Sunil Kumar Jha @ Sunil Jha Son of Late Ratneshwar Jha Resident of Village
- Madhukar Chak, P.S.- Bihariganj, District - Madhepura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Anil Singh, Amicus Curiae Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, Addl. P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 04-04-2024

The present appeal has been preferred against the judgment of conviction and order of sentence dated 06.11.2014 passed by 3rd Additional District & Sessions Judge, Bhagalpur in Sessions Trial No. 857 of 2009, arising out of Bhagalpur Rail P.S. Case No. 17 of 2009, whereby the sole Appellant has been found guilty of offence punishable under Section 302 I.P.C. and sentenced to Rigorous Imprisonment for life and fine of Rs.10,000/- and in default to pay the fine, additional



imprisonment of 3 years. The fine amount has been directed to be paid to Harsh Kumar, the son of the deceased.

2. The prosecution case, as unfolded by the written report of the Informant Radha Kant Jha dated 22.04.2009 to the S.H.O. Rail Police Station, Bhagalpur at 15 O' Clock, is that deceased Sanju Devi was married with the sole accused Sunil Jha, Son of Late Ratneshwar Jha, Resident of Village-Madhukar Chak, Police Station- Bihariganj, District-Madhepura in 1998 as per Hindu Rites and Customs. The next day of the marriage, the accused left the matrimonial home without giving any information to anybody. After three years, he was brought to home with social efforts of the family and his *Gauna* was performed. Thereafter wife started living with him at the matrimonial home but relationship of his wife with her husband started deteriorating and she was subjected to torturing. She was not even maintained by her husband and the husband-accused left for Delhi and he started doing some work in Delhi itself. Thereafter Laxmi Kant Jha, the father of the deceased took his daughter Sanju Devi to accused Sunil Jha at Delhi but accused Sunil Jha again sent his wife Sanju Devi to his village by someone else and Sunil Jha stopped coming to his village. In the meantime, Sanju Devi gave birth to a son but accused Sunil



Jha was not maintaining his wife and the child and Sanju Devi used to do sewing work to maintain herself and her child. It transpired that Sunil Jha had illicit relationship with one lady and that is why he was neglecting his wife. About one month back, Sunil Jha came to his village - Madhukar Chak from Delhi and unexpectedly he started loving his wife and he took her into confidence and asked her to accompany him to Delhi where they would live together and the child would be given education. Under such pretense, Sunil Jha left his home on 17.04.2009 in the morning for Delhi. The previous day i.e. on 21.04.2009, the informant got information on telephone that the dead body of his niece, Sanju Devi, is lying at Bhagalpur Railway Station and her 6 years old son Harsh Kumar was sitting by her side, but Sunil Jha had fled away after leaving the dead wife and minor child. On the information, the informant came from Barakar to Bhagalpur Railway Station and identified the dead body of his niece Sanju Devi and he also found his Nati (grand son) Harsh Kumar there. The father of Sanju Devi is unwell and he is living in his village and brother of Sanju Devi (Gangesh Jha) resides in Delhi who is coming with available train. It has been claimed by the informant that his son-in-law Sunil Jha has killed his niece Sanju Devi by taking her to



Bhagalpur under a planning and deception and with intention to conceal the evidence, he fled away after leaving the dead body at Railway Station. He has come to know that accused has been arrested by the police.

3. On the basis of the written report, formal F.I.R. was lodged for the offence punishable under Sections 302 and 201 I.P.C. on 22.04.2009 at 15 O' clock against the sole accused Sunil Jha. After investigation, charge sheet bearing no. 24 of 2009 dated 31.05.2009 was submitted against the accused, Sunil Jha, who is the Appellant herein. Cognizance of the offence punishable under section 302 and 201 of the Indian Penal Code was taken by Ld. Railway Judicial Magistrate, Bhagalpur on 26.06.2009 against the accused Sunil Jha. The case was committed to the Court of Sessions vide order dated 06.08.2009 passed by Ld. Railway Judicial Magistrate, Bhagalpur. The charge was framed by the Court of Sessions on 02.12.2009 against the sole accused under Sections 302 and 201 of the Indian Penal Code. The charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Hence, the trial commenced.

4. During trial, the following eight witnesses were examined on behalf of the prosecution:



- (i) P.W. 1 :- Radhakant Jha who is informant and uncle of the deceased, Sanju Devi.
- (ii) P.W. 2 :- Hirakant Jha who is also uncle of the deceased.
- (iii) P.W.3 :- Gangesh Jha who is brother of the deceased.
- (iv) P.W. 4 :- Harsh Kumar who is 7 years old son of deceased.
- (v) P.W. 5 :- Akhileshwar Jha
- (vi) P.W. 6 :- Nishant Kumar Jha who is nephew of Accused Sunil Jha.
- (vii) P.W. 7 :- Muneshwar Paswan who is Investigating Officer of the case.
- (viii) P.W. 8 :- Dr. Sandeep Lal who conducted Postmortem examination on the deceased.

5. The prosecution also brought on record the following documentary evidence:

- (i) Ext. 1 :- Written information report
- (ii) Ext. 2 :- Endorsement on the report
- (iii) Ext. 3 :- Inquest report
- (iv) Ext. 4 :- Charge sheet
- (v) Ext. 5 :- Postmortem report

6. Coming to the prosecution evidence, we find that **PW-1 Radha Kant Jha** is informant. In his **examination-in-chief** he has deposed that Sanju Devi, the deceased, was his



niece. Her marriage was solemnized with accused Sunil Kumar Jha in 1998. Next day of the marriage itself, Sunil Kumar Jha left the matrimonial home. After three years, he was brought from Delhi and his *Gauna* with Sanju Devi was performed. The relationship of Sanju Devi with her husband-accused was not good. He again went back to Delhi alone. Later on, he came to know that in Delhi, Sunil Jha, has developed illicit relationship with a lady. Thereafter, his elder brother (father of Sanju Devi), took Sanju Devi to Delhi and left her with her husband. Again after one month, Sunil Jha sent Sanju Devi to his village with the help of some another man. At the village Madhukar Chak Sanju Devi gave birth to a son. She was maintaining herself at her matrimonial home by earning by sewing machine. Sewing machine was given to Sanju Devi by her parental side. On the pretext of taking Sanju Devi to Delhi, Sunil Jha left him home along with Sanju Devi on 17.4.2009. On 22.4.2009 he got information by telephone that one dead body was lying at Bhagalpur Railway Station. He went to Bhagalpur Railway Station from Barakar on 22.4.2009 and found that it was the dead body of his niece Sanju Devi and his grand-son was sitting beside her dead body. He has claimed that it is his son-in-law Sunil Jha who has murdered his wife Sanju Devi under pretense



of taking her to Delhi. This witness has identified his signature on the written report which has been marked as **Ext. 1**. However, on account of defence counsel not turning up to cross-examine this witness, he was discharged without cross-examination.

7. PW-2 is Hira Kant Jha. He is also an uncle of the deceased Sanju Devi. In his **examination-in-chief**, he has stated the same thing as deposed by PW-1 in his examination-in-chief. He has also supported the claim of PW-1 that after getting information regarding dead-body at Bhagalpur Railway Station, PW-1 visited Railway Station, Bhagalpur, and identified the dead body of Sanju Devi. However, he himself has not visited the place where the dead body of Sanju Devi was lying. He was also discharged without cross-examination on account of defence counsel not turning up to cross-examine the witness.

8. PW-3 is Gangesh Jha. In his **examination-in-chief**, he has deposed that deceased Sanju Devi is his sister. She has been murdered. Her marriage was solemnized with accused Sunil Jha about 11-12 years back. For some days after the marriage, relationship of Sunil Jha with Sanju Devi was good. Thereafter, Sunil Jha left the matrimonial home and went to Delhi leaving behind his wife at home. He has further deposed



that one month prior to murder of Sanju Devi, Sunil Jha had come to his home from Delhi and for taking his sister to Delhi, Sunil Jha took her to Bhagalpur Railway Station. His *Bhagina* (nephew) namely, Harsh Kumar, was also with him. He has further claimed that at Bhagalpur Railway Station, Sunil Jha murdered his wife and fled away leaving behind his son. He has identified Sunil Jha in the dock. He was also discharged without cross-examination on account of of defence counsel not turning up to cross-examine the witness.

9. PW-4 is Harsh Kumar son of deceased Sanju Devi and accused Sunil Jha. He is 7 years old on the date of deposition. Ld. Trial Court has certified that the witness understands questions. However, he has not mentioned the questions put by him to the child witness and the answers given by him to test his competency as witness under Section 118 of Evidence Act. In his **examination-in-chief**, he has deposed that his mother was killed by his Papa (father) at Bhagalpur railway station. He had given a tablet in tea and she was strangled by putting pressure by hand on her neck and putting leg on her chest. When the mother died, he informed to his Mama (maternal uncle) on mobile. He claimed that he knows the mobile number which is 9891999094. This number belongs to



his Mama (maternal uncle). GRP police had asked him to dial to his Mama (maternal uncle). He identifies his father standing in the dock.

10. In his **cross-examination**, he has deposed that occurrence had taken place on 21st-22nd day of July. The occurrence is about 1 year old. He knows the occurrence. He had witnessed the occurrence from the distance of ten hands. He has deposed that he had come to the Court along with his *Nana* (maternal grand father). He has further claimed that he has not deposed as tutored by his *Nana*. He has deposed as he has witnessed. It is further deposed that prior to the deposition before the Court, he has never given any statement earlier. He has denied the suggestion that he has deposed as per tutoring by his *Nana* (maternal grant father) and advocate. He has further deposed in his cross-examination that there was no quarrel between his father and mother. There was a good relationship between the two. He has further deposed that he cannot tell the date of the occurrence. The date of the occurrence has been informed by his advocate.

11. PW-5 is Akhileshwar Jha. In his **examination-in-chief**, he has deposed that at 12.00 noon on 21.04.2009 he was informed on telephone by one Madan Jha, resident of



Madhukar Chak that Sunil Jha has fled away after leaving his wife at Bhagalpur railway station and Sanju Devi is dead. He has further stated that he had not visited the place of occurrence. He has identified the accused standing in the dock.

12. In his **cross-examination**, he has admitted that he had not visited the place of occurrence, though the place of occurrence was just one kilometer away from his home.

13. PW-6 is Nishant Kumar Jha. He is nephew of accused Sunil Jha in relation. In his **examination-in-chief**, he has deposed that at 6.00 am on 21.04.2009 he had met accused Sunil Kumar Jha in his (Nishant Kumar's) room at Bhagalpur. He did not tell anything to him except that he has to go to Delhi. On the same day at 11.00 am, his uncle Suman Jha informed him on telephone that the dead body of aunt Sanju Devi is lying at Bhagalpur railway station. Thereafter he went to Bhagalpur railway station and saw the dead body of Sanju Devi lying at the platform and informed about this to Suman Jha on telephone. He also informed Tatarpur Police Station. The police of the Tatarpur Police Station came to his (Nishant Kumar's) room at Lalkothi Bhagalpur and arrested Sunil Jha. He has identified the accused standing in the dock.

14. In his **cross-examination**, he has admitted that in



his room at Lalkothi Bhagalpur there is no telephone connection and information by Suman Jha was given to him on his Mobile bearing number 9279037084. However, he has further deposed that mobile number is not presently with him because after about 2 months of the occurrence, that mobile got lost. However, he admits that he has never given any missing report regarding the mobile to the police, nor had he ever talked to the police on that mobile. He has further deposed that at the time of information by Suman on telephone, he was not in his room but in the lodge and Sunil Jha was in his (Nishant Kumar's) room. After getting the information from Suman Jha, he did not tell anything to accused Sunil Jha and he kept mum. Prior to that he went to see the dead body and after seeing the dead body, he came to his room and talked to persons at home. At that time, accused Sunil Jha was in his room. He informed Sunil Jha that dead body of your wife Sanju Devi is lying at Bhagalpur railway station. Sunil Jha responded that he has no information. Thereafter, till 12.00 noon Sunil Jha left his room and he had given the information to Sunil Jha at 11:15 am. He had given information to the police station by mobile at 12:00 noon. At the time of giving information to the police, Sunil Jha was in his room. After the information, police came to his room and



arrested Sunil Jha. He has further deposed that at platform the dead body of Sanju Devi was lying alone and her 8-9 years old son Ashish was sitting beside her dead body. After seeing him, Ashish Kumar did not talk to him and he kept sitting at the Railway Police Station. Thereafter, he went to the Police Station to meet him and gave some biscuits. He has denied the suggestion that nothing has been done by the Sunil Jha. He has also denied the suggestion that he has no personal information about the occurrence and he has deposed as Suman Jha had informed him.

15. PW-7 is Muneshwar Paswan who is the Investigating Officer. In his **examination-in-chief**, he has deposed that on 21.4.2009 he was posted at Railway Police Station, Bhagalpur, as Police Inspector and he was entrusted with the investigation in this case by the Officer-in-Charge of the Police Station. He identified the endorsement of the Officer-in-Charge of the Police Station, on written report by the informant. This endorsement has been marked as **Ext.-2**. He has further deposed that after getting the duty of investigation, he visited the place of occurrence and prepared the inquest report. He has identified the copy of the **inquest report** and also identified his signature on the same. It has been marked as **Ext.-**



3. He has deposed that the place of occurrence is a hall-type room adjoining the Portico at main exit gate of Bhagalpur Railway Station. Six years old child was found sitting beside the dead-body of the deceased and he was calling her as his mother. He recorded the statement of Harsh Kumar Jha, aged six years, Nand Kishore Jha, Gangesh Jha, Akhilesh Jha and Hira Kant Jha. This child was handed over to Radha Kant Jha. After investigation, he filed the charge sheet under Sections 302 and 201 of the Indian Penal Code against the accused Sunil Jha. He identified the charge sheet written in his writing and his signature on the same. It is marked as **Ext.-4**.

16. In his **cross-examination**, he has deposed that statement of the witness was recorded at the place of occurrence, Railway Police Station, Bhagalpur and Tatarpur lodge. However, no witnesses had stated that they had seen the occurrence. Even administration of poison was not seen by the witnesses. Accused Sunil Jha was apprehended by Tatarpur Police. He was trying to flee away. However, it must have been mentioned in the diary. He got information from Officer-in-Charge, Tatarpur Police Station, that the accused was in Tatarpur and entry regarding this must be mentioned in the station diary. Information regarding place of occurrence was received at that



place. He has denied the suggestion that he has filed charge sheet only on account of supervision. He has admitted that he has no personal information regarding the occurrence.

17. PW-8 is Dr. Sandeep Lal. He had conducted the postmortem examination on deceased Sanju Devi at 4:30 pm on 22.04.2009. At that time, he was posted as JLNMC, Bhagalpur as Assistant Professor. The body was brought and identified by J. Khan having Constable No. 308. At the time of examination, he found over the dead body 8 Cynosis present over lips and finger nail bed. He also found 1" x 1" Blackish Blue Present right side of neck upper part and 1" x ½" Blackish Bruise over left side of upper part of neck. On dissection there was collection of Blood and Blood Clots beneath the skin of neck, corresponding to bruises of both side of neck. There was fracture & dislocation of tracheal ring with collection of blood inside trachea. Base of tongue found bruised. All solid viscera found congested and mucosa of stomach was normal.

18. In the opinion of PW-8, Dr. Sandeep Lal, the aforesaid finding were ante mortem and caused due to pressure applied by some soft and blunt object over neck front and injury was found grievous and dangerous to life in ordinary course of nature. The cause of death was asphyxia and shock due to



pressure over to neck, i.e. manual strangulation (throttling). Time since death has been found to be 24 to 48 hours prior to postmortem examination. **Postmortem report** has been marked as **Ext.-5**, which was prepared in his pen and it bears his signature.

19. In his **cross-examination**, this witness has deposed that body was decomposed and on that basis time of death was assessed by him.

20. After closure of the prosecution evidence, the Accused/Appellant herein was examined under Section 313 Cr.PC to confront incriminating circumstances and give opportunity to him to explain the same. During examination under Section 313 Cr.PC, only three questions were put before the accused. The questions and the answers given by the accused are as follows:

“Question - Have you heard the deposition of the witnesses ?

Answer.- Yes.

Question - There is evidence against you that on 17.04.2009 you were taking your wife, Sanju Devi and son, Harsh Kumar to Delhi, and in the night at Bhagalpur railway station you killed your wife and fled away, leaving your son and



the dead body of your wife.

Answer - It is true that I was taking my wife, Sanju Devi and son, Harsh Kumar to Delhi. I reached Bhagalpur Railway Station to get Vikramshila train, but I missed the train. Hence, On 20.04.2009 I was constrained to stay during night. During that night at 10:00 PM, we sat on the platform after taking dinner. At that time my son Harsh Kumar expressed his desire to eat *namkeen* (salty snacks). I told him not to take *namakeen* because he had taken food. Thereafter, he started nagging his mother. Then my wife asked me to give *namakeen* to him. I went to a shop on the platform along with the child for purchasing *namakeen* for him. I got *namakeen* for the child and myself ate paan (betel). After half an hour, when I came back to the platform, I did not find my wife there. I started searching her. During search on platform no. 1, I went to the drinking water point at some distance. There I saw one boy in intoxicated condition, misbehaving with my wife. I gave beating to him and then he fled away. Thereafter, I asked my wife what had happened. Then she told me that she had come for taking water and at the same time that boy came and asked her to sit and he would bring water for her. That boy came with a bottle full of water and handed over to my wife which she drank. Some water



was left in the bottle. Thereafter, after giving her water, that boy was misbehaving with my wife. Thereafter, we came to the place where we were staying earlier. We slept during night and at 4:00 am in the morning I woke up my wife but she did not rise. She was dead. Thereafter, leaving my son Harsh Kumar sleeping, I went to Urdu Bazar to call the *Chachera Samdhi*. I met Chachera Bhatija, Nishant Kumar there. I told everything to him. Then he told me that it's okay, they are going. In the meantime, Nishant talked to his father over telephone. I have enmity with father of Nishant. Hence, father of Nishant asked him to inform the police. Nishant informed the police and the police arrested me in Urdu Bazar and took me to the police station. I had left my home on 17.04.2009 and after leaving home, I stayed at the house of brother-in-law in the village Amani for two days. On 20.04.2009, I went to Bhagalpur to catch train. On 22.04.2009 my *Chachera Sasur* Radha Kant Jha came and lodged the case. Radha Kant Jha came from Bengal and asked me to pay Rs. 1,75,000/-(Rupees One lac seventy five thousand), failing which he would lodge case. I told him that I had no money and on non-payment of the money he lodged the case. The information had reached to my father-in-law also but he told that he will not lodge case.



Question - Have you anything to say in your defence ?

Answer - Radha kant Jha (my chachera Sasur) took my son Harsh Kumar to Bengal to keep him and he tutored him to depose. After deposition, my son was left at his Nanihal (Home of wife's Parents). He will submit something in writing".

21. No evidence was adduced on behalf of the accused in his defence.

22. Ld. Trial Court, after appreciating the evidence on record and considering the submission of the parties passed the impugned judgment of conviction and sentencing order.

23. Ld. Trial Court found that none of the Prosecution witnesses were eye witness who could see the occurrence happening. He did not find even PW-4 Harsh Kumar, the minor son of the deceased, to be an eye witness. Ld. Trial Court did not even find him reliable as he found him to be tutored and sleeping at the time of the alleged occurrence. He found the Prosecution case based on circumstantial evidence and relying upon the evidence of PW-1, PW-2, PW-3, PW-5, PW-6, PW-7 and PW-8, read with the explanation of the accused as given during his examination under Section 313 Cr.PC found that the circumstantial evidence inevitably led to only one conclusion that Accused Sunil Jha committed murder of his wife Sanju



Devi. Hence, the Accused who is appellant herein was found guilty under Section 302 IPC, but was discharged of charge under Section 201 IPC. Consequently, the Convict/Appellant was sentenced to rigorous life imprisonment and fine of Rs.10,000/- and in default to pay the fine, additional imprisonment of three years.

24. However, Ld. Trial Court failed to give any finding regarding who was victim of the crime and entitlement of the victim to compensation under Section 357-A of the Cr.PC though under Section 357 Cr.PC the fine amount of Rs.10,000/- has been directed by Ld. Trial Court to be paid to Harsh Kumar (PW-4) who was minor son of the deceased Sanju Devi and the Convict Sunil Jha.

25. We have heard Ld. Amicus Curiae, Ld. Counsel for the Appellant and Ld. APP for the State.

26. Ld. Amicus Curiae and Ld. Counsel for the Appellant vehemently submit that the impugned judgment of conviction or order of sentence passed by Ld. Trial Court is not sustainable either in law or on facts. Ld. Trial Court has not applied its judicious mind and has failed to properly appreciate the evidence on record. They also submit that the Appellant is innocent and has falsely been implicated only on the basis of



suspicion. They claim that the prosecution has failed to prove its case against the Appellant beyond reasonable doubts. There is no cogent evidence on record to fasten the Appellant with guilt as alleged by the prosecution. To substantiate their claim, they submit that the evidence of P.W.1, P.W.-2 and P.W.-3 is not legal evidence as they have been discharged by the Trial Court without cross-examination. They further submit that P.W.-4 is a child witness who was six year old at the time of alleged occurrence and seven years old at the time of deposition. His competency as witness as required under Section 118 of the Indian Evidence was not properly conducted by Ld. Trial Court. Moreover, he is a tutored witness and not reliable. They further submit that P.W. -5 and P.W.-6 are hearsay witnesses and their evidence is not admissible being hit by Section 60 of the Indian Evidence Act. Their evidence is also full of discrepancies and contradictions and, hence, their evidence cannot be relied upon to convict the Appellant . P.W.-7 is an investigating officer and P.W.-8 is doctor who conducted the postmortem of the deceased. They also submit that there is material contradiction in the evidence of the investigating officer, P.W.-7. They also submit that the prosecution case is not reliable because the first version of the prosecution case has been withheld by the prosecution,



because the SANHA as filed in regard to the alleged occurrence has not been produced by the prosecution before the Court during the trial. They also submit that the examination of the Appellant under Section 313 Cr.PC was perfunctory, to say the least. Moreover, all the incriminating circumstances were not brought before the Appellant. They also submit the statement of the Accused-Appellant under Section 313 Cr.PC is not substantive evidence and the prosecution has to stand on its own leg. They further submit that the case of the prosecution is based not on direct evidence, but on circumstantial evidence, and as per the evidence on record, a chain of evidence is not complete to lead to irresistible conclusion that the Appellant is guilty of the offence as alleged by the prosecution. Suspicion, howsoever strong cannot take the place of legal proof. Ld. Amicus Curiae refers to and relies upon the following case laws in support of his submissions:-

- (i) Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116.
- (ii) Asraf Ali Vs. State of Assam, (2008) 16 SCC 328.
- (iii) Premchand Vs. State of Maharashtra, (2023) 5 SCC 522.

27. However, Ld. Additional P.P. for the State vehemently submits that there is no illegality or infirmity in the impugned judgment and sentencing order. The Appellant has



been rightly convicted for offence punishable under Section 302 of the Indian Penal Code and appropriately sentenced.

Consideration

28. We carefully perused all the relevant materials on record and sincerely considered the submissions advanced by both the parties. The main question which arises for consideration by this Court is whether the prosecution succeeds to establish its case against the Appellant beyond all reasonable doubts.

29. Before we proceed, it would be pertinent to find what is “proof beyond reasonable doubts” and when the Accused is entitled to get benefit of doubt.

30. In this context, in **Kali Ram Vs. State of HP (1973) 2 SCC 808**, Hon’ble Apex court has observed as follows:

“23. One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused.....

.....
25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the



accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

26. It needs all the same to be re-emphasised that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. The Courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record.... ”

27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the



unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiation. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Alien quoted on p. 157 of *The Proof of Guilt* by Glanville Williams, 2nd Edn.:

“I dare say some sentimentalists would assent to the proposition that it is better that a thousand or even a million guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos.”

31. In regard to proof, **Hon’ble Supreme Court** in **Collector of Customs Vs. D. Bhoormal (1972) 2 SCC 544**, has also observed as follows:

“30. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

.....
32..... On the principle underlying Section 106 of the of the Evidence Act, the burden to establish those facts is cast on the person concerned; and, if he fails to establish or explain those facts, an adverse inference of fact may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the



Department would rebut the initial presumption of innocence in favour of that person, and in the result, prove him guilty. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden, to discharge which, very slight evidence may suffice.”

32. In Narender Kumar v. State (NCT of Delhi), (2012) 7 SCC 171, Hon’ble Supreme Court observed as follows in regard to proof:

“29. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.....

.....
31. The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation.

33. Now we come to the submissions advanced by Ld. Amicus Curiae and Ld. Counsel for the Appellant. Their first submission is that evidence of P.W. -1, P.W.-2 and P.W.-3 is not legal evidence because at the time of recording the examination-in-chief, the defence counsel was not present and even at the time of cross-examination the defence counsel could not turn up and hence, these witnesses P.W. -1, P.W.-2 and P.W.-3 were discharged.



34. In this context, it would be relevant to refer to **Ekene Godwin & Anr. Vs. State of Tamil Nadu** as decided by **Hon'ble Supreme Court** on 18.03.2024, wherein Hon'ble Supreme Court has observed as follows:

“6. When the examination-in-chief of a material prosecution witness is being recorded, the presence of the Advocate for the accused is required. He has a right to object to a leading or irrelevant question being asked to the witness. If the trial is conducted in such a manner, an argument of prejudice will be available to the accused.”

35. In **Sunil Vs. State** as decided by **Delhi High Court** on 05.01.2023. The High Court observed as follows:

“12.There is no doubt that right of cross-examination to any accused in a criminal case do discredit the witnesses and to test veracity of the statement is the most vital part of a criminal trial.”

36. **Hon'ble Supreme Court** in **Mohd. Hussain Vs. State (Govt. of NCT of Delhi), (2012) 2 SCC 584** has held as follows:

“42. While holding the appellant guilty the trial court has not only relied upon the evidence of the witnesses who have been cross-examined but also relied upon the evidence of witnesses who were not cross-examined. The fate of the criminal trial depends upon the truthfulness or otherwise of the witnesses and, therefore, it is of paramount importance. To arrive at the truth, its veracity should be judged and for that purpose cross-examination is an acid test. It tests the truthfulness of the statement made by a witness on oath in examination-in-chief. Its purpose is to elicit facts and materials to establish that the evidence of the witness is fit to be rejected. The appellant in the present case was denied this



right only because he himself was not trained in law and not given the assistance of a lawyer to defend him. Poverty also came in his way to engage a counsel of his choice.....”

37. In Ram Kumar Vs. King Emperor, ILR XII

553, it has been held as follows:

“.....The testimony of a witness is not legal evidence unless it is subject to cross-examination; and where as in this case no opportunity has been given to the appellant's counsel to test the veracity of the principal prosecution witness or where owing to the refractory attitude of the witness the court is constrained to terminate all of a sudden and prematurely the cross-examination of the witness, the evidence of such a witness is not legal testimony and cannot be the basis of a judicial pronouncement.”

38. In the case on hand, we find from perusal of evidence of P.W. -1, P.W.-2 and P.W.-3 that the defence counsel was not present at the time of examination-in-chief and hence, the Accused-Appellant could not object to a leading or irrelevant question which might have been asked to the witnesses. We also find that even at the time of cross-examination, the defence counsel did not turn up and hence, these witnesses were discharged. We further find that the defence counsel was engaged by way of legal aid and when he could not turn up at the time of examination-in-chief of these prosecution witnesses, Ld. Trial Court should have engaged another defence counsel by way of legal aid. Even subsequently



when another defence counsel was engaged and application was filed on behalf of the Accused-Appellant for recalling P.W. -1, P.W.-2 and P.W.-3 for cross-examination, the application was never disposed of by the Ld. Trial Court and trial was concluded. We also find that evidence of P.W. -1, P.W.-2 and P.W.-3 has been considered for passing judgment of conviction. Needless to say that such trial has been conducted against concept of fair trial where the Accused was facing charge of heinous crime having severe punishment.

39. We further find that even Ld. Trial Court did not put up any question to these witnesses when defence counsel was not present, whereas Ld. Trial Court is empowered under Section 165 of the Evidence Act to elicit relevant materials necessary for reaching the correct conclusion. Ld. Trial Court is not required to be mute spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. Here it would be relevant to referred to **State of Rajasthan Vs. Anil @ Hanif and Ors., (1997) 6 SCC 162**, wherein **Hon'ble Supreme Court** has observed as follows:

“ 11. Section 165 of the Evidence Act confers vast and unrestricted powers on the trial court to put “any question he pleases, in any form, at any time,



of any witness, or of the parties, about any fact relevant or irrelevant” in order to discover relevant facts. The said section was framed by lavishly studding it with the word “any” which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words “relevant or irrelevant” in Section 165. Neither of the parties has any right to raise objection to any such question.

12. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the Judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth.....”

40. In Ram Chander Vs. State of Haryana (1981)

3 SCC 191, Hon’ble Supreme Court has observed as follows:

“2. If a criminal court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.”

41. In view of the aforesaid facts and circumstances, this is a fit case to be remanded for fresh trial. However, we



find that the alleged occurrence had taken place long back in 2009 and the sole Accused-Appellant is in custody for about 15 years since 21.04.2009. Moreover, we find that P.W. -1, P.W.-2 and P.W.-3 are hearsay witnesses and not eyewitnesses and, hence, not material for the trial. As such, it is not desirable to remand the matter for fresh trial. It would be better to decide the matter excluding the evidence of P.W. -1, P.W.-2 and P.W.-3.

42. The next submission of Ld. Amicus curiae and Ld. Counsel for the Appellant is that P.W. 4 is a child witness, who was about six years old at the time of alleged occurrence and about seven years old at the time of deposition was not properly subjected to competency test in terms of Section 118 of the Indian Evidence Act.

43. Section 118 of the Indian Evidence Act reads as follows:

“118. Who may testify.-All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation. - A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.”

44. Elucidating the import of Sec 118, Evidence



Act, **Hon'ble Supreme Court** in **Pradeep Vs. State of Haryana, AIR 2023 SC (Crim.) 1066**, has observed as follows:

“7..... However, in view of the requirement of Section 118 of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.

.....
9. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.

10. In the facts of the case, the preliminary examination of the minor is very sketchy. Only three questions were put to the minor on the basis of which the learned Sessions Judge came to the conclusion that the witness was capable of giving answers to each and every question. Therefore, the oath was administered to him. Following are the questions put to him:

"Q. In which school you are studying? Ans. I am studying in Govt. Primary School, Barwashni.

Q. What is occupation of your father? Ans. My father is a Pujari in a Mandir named Hanuman, at Gohanba. **PRADEEP V. STATE OF HARYANA.**

Q. Should one speak truth or false?



Ans. Truth”

11. “ We are of the view that the learned Sessions Judge has not done his duty. Nevertheless, we have carefully scrutinized the evidence of the minor witness Ajay.....”

45. As such, we find that before recording evidence of a child witness, the Trial Court is duty bound to ask preliminary questions to the child witness with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. the Trial Court is also duty bound to record his opinion that the child is able to understand the questions put to him and he is able to give rational answers to the questions put to him and he understands the importance of speaking the truth. However, in the case on hand, we find that the Trial Court has only stated that the witness understands questions. The questions asked to the child witness and the answers given by him are not mentioned in the deposition. Needless to say that the competency test conducted by Ld. Trial Court is not proper in terms of Section 118.

46. It has also been submitted by Ld. Amicus curiae and Ld. Counsel for the Appellant that this child is not an eye witness to the alleged occurrence. It has also been submitted that this child witness was tutored and he deposed as tutored by his Nana (maternal grandfather) and his advocate. They point



out that even Ld. Trial Court has not found him reliable finding the child tutored and sleeping at the time of occurrence.

47. From the perusal of the deposition of this child, we find that after the occurrence he was living with his Nana (maternal grandfather) and he came to the Court on the date of deposition along with his maternal grandfather. As per his own deposition, he was not aware of the date of occurrence and he was informed about the date of occurrence by his advocate. It also appears to be improbable for a child to remember a ten digit mobile number of his maternal uncle and dial to him after the occurrence as he has deposed in his evidence. In totality of the evidence, even this witness P.W.-4 is not reliable.

48. It has also been submitted by Ld. Amicus curiae and Ld. Counsel for the Appellant that P.W.-5 and P.W.-6 are hearsay witnesses and their evidence is also full of contradiction and discrepancies and hence, their evidence cannot be relied upon to convict the Appellant. Here we find, after perusal of the evidence of P.W.-5 and P.W.-6, that they are no doubt hearsay witnesses. They have not seen the alleged murder of the deceased. Hence, they have no evidentiary value.

49. In this context, it would be relevant to refer to **Neeraj Dutta Vs. State (NCT of Delhi), (2023) 4 SCC 731,**



wherein **Hon'ble Supreme Court** has observed as follows:

“52. Again, oral evidence can be classified as original and hearsay evidence. Original evidence is that which a witness reports himself to have seen or heard through the medium of his own senses. Hearsay evidence is also called derivative, transmitted, or second-hand evidence in which a witness is merely reporting not what he himself saw or heard, and not what has come under the immediate observation of his own bodily senses, but what he has learnt in respect of the fact through the medium of a third person. Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other witnesses, it would be admissible vide *Mukhtiar Singh*.

.....
58. Although the expression “hearsay evidence” is not defined under the Evidence Act, it is, nevertheless, in constant use in the courts. However, hearsay evidence is inadmissible to prove a fact which is deposed to on hearsay, but it does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed such as evidence of an informant of the crime.”

50. In Rajendra Prabhu Chikane and Anr. Vs. State of Maharashtra & Ors., (2007) 13 SCC 511, Hon'ble Supreme Court has observed as follows:

“24. Thus, Dipak's evidence regarding the incident is only hearsay and no value can be attached to the same.”

51. As per the next submission of Ld. Amicus Curiae and Ld. Counsel for the Appellant, even the PW-7, who is the Investigating Officer is not trustworthy, because there is material contradictions in his evidence. Moreover, he has not brought the first version of the prosecution case by placing the



SANHA on record during trial. Here, we find that as per the inquest report, Bhagalpur Sanha No. 630 of 2009 was lodged on 21.04.2009 regarding the alleged occurrence. This fact has been mentioned in the inquest report which was prepared on 21.04.2009 itself. It further transpires that FIR was lodged on 22.04.2009 on receipt of the written report and after this lodging of the FIR, the investigation was entrusted to PW-7 (Investigating Officer) and as per his evidence, he visited the place of occurrence after getting entrustment of the investigation of the case and prepared inquest report, meaning thereby that he prepared inquest report on 22.04.2009, whereas the date of inquest report shows that inquest report was prepared on 21.04.2009. We also find that the FIR number has not been mentioned in the postmortem report, whereas, the dead body of the deceased was received by the hospital for postmortem on 22.04.2009 at 3:30 PM whereas FIR was lodged on 15 'O' clock (3:00 PM) on 22.04.2009. All these facts and circumstances of the case make a serious dent into veracity of the prosecution case.

52. The next submission of Ld Amicus Curiae and Ld. Counsel for the Appellant is that the examination of the Appellant under Section 313 Cr.PC is perfunctory. They also



submit that all the incriminating circumstances which were relied upon by the Trial Court were not confronted to the Appellant. Moreover, the incriminating circumstances not put to the accused for his explanation have to be excluded from consideration. They also submit that the statement of the Accused-Appellant under Section 313 Cr.PC is not substantive evidence and the prosecution has to stand on its own leg. We find substance in the submission. From perusal of the examination of the Appellant under Sec 313 Cr.PC, we find that all the incriminating circumstances which were relied upon by the Trial Court were not confronted to the Appellant. Moreover, the incriminating circumstances were asked in one question in a complex sentence, whereas such circumstances should have been asked separately and distinctly in simple sentences so as to make them comprehensible to the accused/Appellant. There is also substance in the submission that the statement of the Accused-Appellant under Section 313 Cr.PC is not substantive evidence and the prosecution has to stand on its own leg. Such statement at most can lend credence to the prosecution case. Conviction can not be based solely on the basis of the statement of the Accused made under section 313 Cr.PC. Here, it would be relevant to refer to some authorities on the subject.



53. In Premchand Vs. State of Maharashtra, (2023)

5 SCC 522, Hon'ble Supreme Court, after referring to several authorities, has summarized observing as follows:

“ 15. What follows from these authorities may briefly be summarised thus:

15.1. Section 313CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.

15.2. Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.

15.3. When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.

15.4. The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognised defences.

15.5. An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.

15.6. The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).

15.7. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.

15.9. If the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.

15.10. Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.”



(Emphasis Supplied)

54. Hon'ble Supreme Court in the case of Rautu Bodra

Vs. State of Bihar, 1999 SCC (Cri) 1319 has held as under:

“ 4. Though the above findings of the trial court and the High Court are based on proper appreciation of the evidence, we are unable to sustain the conviction of the appellants in view of the grave error committed by the trial court, in that, while examining the appellants under Section 313CrPC, it did not ask them to explain any of the circumstances appearing in the evidence against them. Indeed, except one question as to what they have got to say about the prosecution case, the trial court did not put any other question to the appellants. In the context of the facts of the instant case, it was obligatory on the part of the trial Judge, in view of Section 313CrPC, to put questions to the appellants relating to the evidence of PW 6 and their going to the police station with the head of the deceased and the weapons of offence immediately after the occurrence. What would be the effect of such non-compliance was considered by a three-Judge Bench of this Court in Sharad Birdhichand Sarda v. State of Maharashtra and it was held, following earlier decisions of this Court, that the circumstances which are not put to the accused in his examination under Section 313 CrPC must be completely excluded from consideration because he did not have any chance to explain them.”

55. Hon'ble Supreme Court in the case of Ranvir

Yadav Vs. State of Bihar, (2009) 6 SCC 595 has held as under:

“11. Above being the position the appeal deserves to be allowed. It is a matter of regret and concern that the trial court did not indicate the incriminating material to the accused. Section 313 of the Code is not an empty formality. There is a purpose behind examination under Section 313 of the Code. Unfortunately, that has not been done. Because of the serious lapse on the part of the trial court the conviction as recorded has to be interfered with.”



56. Hon'ble Supreme Court in the case of **State of U.P. Vs. Raghttvir, (2018) 13 SCC 732** has held as under:

“11. If any circumstance had not been put to the accused in his statement, the same shall be excluded from consideration. Of course, this is subject to a rider whether omission to put the question under Section 313CrPC has caused miscarriage of justice or prejudice to the accused.”

57. In the case of Asraf Ali Vs. State of Assam, (2008) 16 SCC 328, Hon'ble Supreme Court has observed as follows:

“21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice.

(Emphasis Supplied)

58. In the case of Yogesh Singh Vs. Mahabeer



Singh, (2017) 11 SCC 195, Hon'ble Supreme Court has held as follows:-

“48. It was further contended by the learned counsel for the respondents that material questions regarding marriage, on which the prosecution had allegedly relied upon, were not put to the accused under Section 313 CrPC, thereby causing great prejudice to them. We feel that there is no weight in this submission of the learned counsel for the respondents since the purpose of Section 313 is only to bring the attention of the accused to all the *inculpatory* pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so.

49. We feel that no such prejudice has been caused to the accused on account of the failure of this Court to examine them under Section 313 on the facts alleged by the prosecution since they were not incriminating in nature. In any case, *Nar Singh v. State of Haryana*, (2015) 1 SCC 496 is an authority for the proposition that accused is not per se entitled for acquittal on the ground of non-compliance with mandatory provisions of Section 313 CrPC.”

59. The next submission of Ld Amicus Curiae and Ld. Counsel for the Appellant is that the prosecution case is based on circumstantial evidence, and as per the evidence on record, a chain of evidence is not complete to lead irresistible conclusion that the Appellant is guilty of the offence as alleged by the prosecution. Suspicion, howsoever strong, cannot take the place of legal proof. Before we consider this submission, it would be relevant to refer to authorities on the subject.

60. In regard to circumstantial evidence, **Hon'ble Supreme Court** in **Neeraj Dutta Vs. State (NCT of Delhi)**,



(2023) 4 SCC 731 has observed as follows:-

“71. Thus, circumstantial evidence is evidence of circumstances as opposed to what is called direct evidence. The prosecution must take place and prove all necessary circumstances constituting a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence *vide Navaneethakrishnan v. State*, (2018) 16 SCC 161 .

.....

73. It is trite law that in cases dependent on circumstantial evidence, the inference of guilt can be made if all the incriminating facts and circumstances are incompatible with the innocence of the accused or any other reasonable hypotheses than that of his guilt, and provide a cogent and complete chain of events which leave no reasonable doubt in the judicial mind. When an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. If the combined effect of all the proven facts taken together is conclusive in establishing the guilt of the accused, a conviction would be justified even though any one or more of those facts by itself is not decisive. *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 as reiterated in *Prakash v. State of Rajasthan*, (2013) 4 SCC 668.”

61. In the case of **Pritinder Singh Vs. State of Punjab**, (2023) 7 SCC 727, Hon’ble Supreme Court after referring to *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 , observed as follows:-

“17. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned “must or should” and not “may be” established. It has been held that there is not only a grammatical



but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

18. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the light of these guiding principles, we will have to consider the present case.”

(Emphasis Supplied)

62. In the case of **Ravi Sharma Vs. State (NCT of Delhi)**, (2022) 8 SCC 536, **Hon’ble Supreme Court** has observed as follows:-

“14. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence.”

63. In the case of **Shailendra Rajdev Pasvan Vs. State of Gujarat**, (2020) 14 SCC 750, **Hon’ble Supreme Court** has observed as follows:-

“13. Thus, the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates twofold requirements:



(i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.

(ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

.....

15. Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person.....

.....

17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.

18. Having gone through the material on record, we are of the considered view that evidence adduced against the appellants do not form the complete chain connecting them with the crime and the prosecution has failed to prove the guilt beyond doubt.”

64. In the case of Padala Veera Reddy Vs. State of A.P., 1989 Supp (2) SCC 706, Hon’ble Supreme Court has observed as under:

“10. ... (1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should



form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

65. In the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116, Hon’ble Supreme Court has observed as follows:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

.....

163. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one



which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.”

66. Underlining the importance of Motive in circumstantial evidence, **Hon’ble Supreme Court** in **Shankar Vs. State of Maharashtra, 2023 SCC Online SC 268**, has observed as follows:-

“18. There can be no doubt with respect to the fact that in a case where the conviction is based on circumstantial evidence, motive assumes great significance.”

67. In **Indrajit Das Vs. State of Tripura, AIR ONLINE 2023 SC 150, Hon’ble Supreme Court** has observed as follows:-

“12. The basic links in the chain of circumstances starts with motive, then move on to last seen theory, recovery, medical evidence, expert opinions if any and any other additional link which may be part of the chain of circumstances.

.....
15. In a case of circumstantial evidence, motive has an important role to play. Motive may also have a role to play even in a case of direct evidence but it carries much greater importance in a case of circumstantial evidence than a case of direct evidence. It is an important link in the chain of circumstances....”

68. In the case of **Nandu Singh Vs. State of Chhattisgarh, 2022 SCC OnLine SC 1454, Hon’ble Supreme Court** has observed as follows :

“12. In a case based on circumstantial evidence,



motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.”

69. In the case of Shivaji Chintappa Patil Vs. State of Maharashtra, (2021) 5 SCC 626, Hon’ble Supreme Court

has observed as follows:-

“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances.”

70. Now, coming to the case on hand, we find that the prosecution has examined altogether eight witnesses and exhibited five exhibits. Out of the eight witnesses, we have already seen that the testimony of P.W.-1, P.W.-2 and P.W.-3 are not legal evidence and consequently, it cannot be considered. P.W.-4 is a child witness and even he has not been found reliable. P.W.-5 and P.W.-6 are also hearsay witnesses. P.W.-6 is at most witness to the fact that he met the Appellant on 21.04.2009, at 6:00 am and he also saw the dead body of the deceased at Bhagalpur Railway Station and the minor son was sitting beside the dead-body of his mother. The Appellant, Sunil Kumar Jha had also told him that he had no information about the death of his wife.



71. P.W.-7 is the Investigating Officer. He also saw the dead-body of the deceased at Bhagalpur Railway Station and the minor son of the deceased was sitting beside her.

72. P.W.-8 is the doctor, who conducted postmortem examination on the dead-body of the deceased. As per this witness, the victim Sanju Devi was throttled to death.

73. As such, we find that there is no direct evidence regarding commission of the alleged offence. The prosecution case is based on circumstantial evidence and as per the legal evidence on record, the following circumstances are established by the prosecution-

- (i) Sanju Devi was throttled to death.
- (ii) Her dead-body was found at Bhagalpur Railway Station on 21.04.2009.
- (iii) Six year old son of the deceased, namely, Harsh Kumar was sitting beside the dead-body of the deceased.
- (iv) P.W.-6 had met the Appellant on 21.04.2009 at Bhagalpur.
- (v) The Appellant had told P.W.-6 that he had no information about the death of Sanju Devi.

74. Needless to say that the aforesaid circumstances do not form a complete chain which could connect the Appellant



with the alleged crime. Even the motive behind the commission of the alleged crime is not established. There is no link in the circumstantial evidence to suggest that the alleged offence has been committed by the Appellant. Suspicion, howsoever strong, is not proof and it cannot be basis of conviction of the Accused.

75. As per the statement of Accused-Appellant under Section 313 Cr.PC, it transpires that the Appellant had visited Bhagalpur Railway Station along with his wife and son and he was with them on 21.04.2009, before the death of his wife. But, there is no prosecution evidence to this effect and statement under Section 313 Cr.PC is not substantive evidence and cannot be sole basis of conviction. The prosecution case has to stand on its own leg and the statement of the Accused under Section 313 Cr. P.C. could have, at most, lent credence to the prosecution case.

76. We also find that all the aforesaid incriminating circumstances were not put to the Appellant for his explanation. The examination of the Appellant under Section 313 Cr.P.C. was perfunctory vitiating the Trial.

77. In view of the aforesaid facts and circumstances, we clearly find that the prosecution has miserably failed to prove its case against the Appellant beyond reasonable doubts.



The Appellant deserves acquittal getting benefit of doubt. Consequently, the impugned judgment of conviction and the order of sentence is liable to be set aside.

78. The Appeal is, accordingly, allowed setting aside the impugned judgment of conviction and order of sentence dated 06.11.2014 passed by Ld. 3rd Additional District & Sessions Judge, Bhagalpur in Sessions Trial No. 857 of 2009, arising out of Bhagalpur Rail P.S. Case No. 17 of 2009. The Appellant is in custody. He is directed to be released forthwith, if he is not required in any other case.

79. However, before we part with the Appeal, we are duty bound to pass order in regard to compensation to the victim of the crime. Though the Accused / Appellant has been acquitted by giving the benefit of doubt, the commission of the crime has been proved by the evidence on record. Sanju Devi has been found to have been done to death by throttling. She is survived by her minor son Harsh Kumar who was six year old at the time of her death. There is no dispute that Harsh Kumar is a victim in terms of Sec. 2(wa) Cr.PC as per which Victim includes her legal heir. He is victim also because he has lost not only love and affection of his mother, but even his dependency on her, deserving succour from the State, who has failed to



protect fundamental right of her mother, as per the Victim Compensation Scheme as made under Sec. 357 A Cr.PC.

80. In regard to entitlement of the aforesaid victim to compensation, Ld Counsel for the Appellant submits that the Accused Appellant is innocent and hence, the question to pay compensation by the Appellant to the victim does not arise.

81. Ld APP for the State submits that this Appellate Court can not pass any order under Section 357A Cr. PC in regard to compensation to the victim in this Appeal which has been filed not by the victim but by the Accused/Convict. She also submits that the victim can not get benefit of the Bihar Victim Compensation Scheme 2014, because the concerned crime has been committed prior to 20.3.2014 when the scheme came in effect.

82. Now let us consider the submissions of the parties adverting to relevant statutory provisions and case laws on the issues.

83. Compensation to victim in criminal trial has been provided under Section 357 and 357A Cr.PC. The word victim has been also defined by Section 2 (wa) of the Cr.PC. These statutory provisions are reproduced herein for ready reference:

“Sec. 2(wa). “victim” means a person who has suffered any loss or injury caused by reason of the act of omission for which the accused person has been charged



and the expression “victim” includes his or her guardian or legal heir”

“Sec. 357. Order to Pay compensation : -

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied -

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

2. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

3. When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

4. An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

5. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”



“Sec. 357A. Victim compensation scheme. -

(1) Every State Government in coordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied that 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, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

84. In terms of Sec. 357 A of Cr.PC, Bihar Government has made the **Bihar Victims Compensation Scheme, 2014** providing for compensation to victim from State fund named as “Victim Compensation Fund”. It has been notified in Bihar Gazette (Extraordinary) dated 20.3.2014 and



amended from time to time. It contains the same provisions as provided in Section 357A Cr.PC including eligibility for compensation as well as procedure for grant of compensation. Section 4 of the scheme deals with eligibility for compensation whereas Section 5 of the scheme deals with procedure for grant of compensation. The Schedule annexed to the Scheme describes the offence/ injuries or loss for which compensation is to be provided by legal services authorities. It has also specified the minimum and maximum amount of compensation provided for specified injures, loss or offence. The discretion to decide the quantum has been left with the State/District legal Services Authorities as per the Scheme. In Section 7 of the Scheme, there is also provision for instituting recovery proceeding by the Legal Services Authority against the wrong doers or the accused responsible for causing loss or injury as a result of the crime committed by him.

85. It is pertinent to notice that there is no limitation prescribed to pay compensation amount by Legal Services Authorities to the victim on recommendation by any Court. Section 8 of Bihar Victim Compensation Scheme deals with Limitation which reads as follows:

“8. Limitation.—No claim made by the victim or his dependents under sub-section(4) of section 357-A of the



Act shall be entertained after a period of six months of the crime; Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.”

86. This limitation is only in regard to the applications by the victims to Legal Services Authority in cases where the offender is not traced or identified or no trial takes place. Even in case of such applications, the Legal Services Authority is empowered to condone the delay as per its satisfaction for reasons to be recorded in writing. Even there is provision for appeal against the order of District Legal Services Authority before State Legal Services Authority within 90 days of the order and even this limitation of 90 days to file appeal before State Legal Services Authority (in short ‘SLSA’) is liable to be condoned by the SLSA as per its satisfaction for reasons to be recorded in writing.

87. Now coming to the statutory provision of Section 357 Cr.PC and Section 357 A Cr.PC, it transpires that compensation can be granted under Section 357 Cr.PC only in case of conviction of the accused and such compensation to victim is payable by the convict and not by the State from its State fund. The power to direct payment of compensation to the victim under Section 357 Cr.PC is not only conferred on the Trial Court but even on the Revisional and Appellate Court as



provided under sub-Section 4 of Section 357 Cr.PC. The provisions of Section 357 Cr.PC has been recently resorted to by Hon'ble Apex Court in **Harendra Rai Vs. State of Bihar and Ors. 2023 (9) SCC 702** which was a Criminal Appeal filed against acquittal. Here **Hon'ble Apex Court** convicted the Respondent, Prabhunath Singh under Sections 302 and 307 IPC. and imposed a fine of Rupees twenty five lacs upon the convict and the same was directed to be paid to the legal heirs of the deceased under Section 357(1)(c) CrPC.

88. The compensation under Section 357A of Cr.P.C. is paid from the State compensation fund created under the provisions of Section 357 A by the Government. It is paid in two ways - on recommendation of a Court under Section 357A (2) or Section 357A (3) of the Cr.PC or on an application made by a victim under Section 357A(4) Cr.PC to the Legal Services Authorities for compensation.

89. Section 357A (3) empowers and casts duty upon the Court to recommend compensation at the conclusion of the trial, whether the case ends in conviction, acquittal, or discharge of the accused. In case of conviction, if the Trial Court is satisfied that the compensation awarded under Section 357 Cr.PC is not adequate for rehabilitation of the victim, it is



empowered to recommend the District/State Legal Services Authority to pay compensation to the victim from State compensation fund as per the scheme of the Government as made under Section 357A (1) Cr.PC.

90. When the Accused is not traced out or identified, and no trial takes place, Section 357A(4) allows the victim or his dependents to make an application to the Legal Services Authorities seeking compensation. Section 357 (5) empowers and casts duty upon the Legal Services Authorities to award compensation after due inquiry within two months of the receipt of the recommendation of the Court or application of the victim.

91. Hon'ble Supreme Court in Neeraj Sharma Vs. State of Chhattisgarh, (2024) 3 SCC 125, elucidating the provisions of compensation under Sec 357(1) and Sec 357 A of Cr.PC has observed that Section 357 (1) of Cr.PC empowers Court to order compensation to the victim out of fine imposed upon the Convict. But at times, there may be a situation that convict may not have paying capacity to pay the required compensation to the victim. To meet such situation, Section 357(A) has been introduced in the Cr.PC providing for compensation to the victim out of State funds, because State has the responsibility to protect the victim against the offence that



has been committed against him or her. Accordingly, Hon'ble Apex Court enhanced the compensation amount under Section 357 A and directed the State to pay it to the victim. The relevant paragraph of the judgment may be referred to which is as follows:

“43. A victim of a crime cannot be treated merely as a prosecution witness. Section 357(1) of the Criminal Procedure Code empowers the court to order that the fine amount recovered be given to any person as compensation who has suffered any loss or injury caused due to that offence. In this case, the victim had suffered burn injuries of 45-48% and lost one leg, when he was only eighteen years of age. There may be times when the situation may demand that a substantive amount of compensation be paid to the victim and the convict may not be financially that strong to bear that burden. For such situations, Section 357-A was therefore introduced in the Criminal Procedure Code for this reason, where compensation to the victims may be paid out of State funds, as the State had the responsibility to protect the victim against the offence that had been committed against the victim of the crime.

44. In the present case, the victim i.e. PW 6 has suffered grievous injuries, not only this, his left leg below his knee had to be amputated. Consequently, we direct that an amount of Rs 5,00,000 (Rupees five lakhs only) be paid by the State of Chhattisgarh to the victim as compensation under Section 357-A CrPC, instead of Rs 1,00,000 as directed by the High Court. Let the same be done within a period of three months from today.”

(Emphasis supplied)

92. Ankush Shivaji Gaikwad Vs. State of Maharashtra, (2013) 6 SCC 770, is a landmark judgment on the subject. Herein Hon'ble Supreme Court has clearly held that award or refusal of compensation in a particular case comes



within Court's discretion, but there is mandatory duty on the part of the Court to apply its mind to the question of payment of compensation in every criminal case, observing as follows:

“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.

.....
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.”



(Emphasis supplied)

93. Hon'ble Supreme Court in another landmark judgment **Suresh Vs. State of Haryana, (2015) 2 SCC 227**, has reiterated the view that it is mandatory duty on the part of the Court to apply its mind to the question of compensation to the victim at every stage of the criminal case even without any application by the victim, meaning thereby that not only Trial Court but even Revisional or Appellate Court is also duty bound to pass order in regard to compensation to the victims even if there is no application filed by the victim for compensation or the revision or the appeal has been filed by other than the victim. Hon'ble Apex Court in this regard has observed as follows:

“16. We are of the view that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.



.....
19. 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 the deceased Devender Chopra and his son Abhishek Chopra. The same has been dismissed [*Raman Anand v. Ashok Kumar*, Criminal Revision No. 1477 of 2004, order dated 2-9-2004 (P&H)] 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's family should not be awarded compensation under Section 357-A CrPC 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 lakhs, without prejudice to any other rights or remedies of the victim's family in any other proceedings.”

(Emphasis supplied)

94. In XXXXX Vs. State of Kerala, 2023 SCC OnLine

Ker 6708, Hon’ble Kerala High Court has also expressed similar view observing as follows:

“9. Now there is a statutory duty upon the State, under Section 357A of Cr. P.C., to award compensation to victims of crime. While sub-section (1) of Section 357A makes it mandatory for the State Government to frame a Scheme in co-ordination with Central Government for providing funds for compensation to victims or his/her dependents, sub-section (2) casts a duty on DLSA or State Legal Services Authority (for short, ‘SLSA’) to decide the quantum of compensation to be awarded to the victim under the Scheme referred to in sub-section (1). By incorporating Section 357A, the legislature gave statutory acknowledgment to the constitutional duty of the State to compensate and rehabilitate victims of crime or their dependents in addition to compensation payable by a convict under S. 357 Cr. P.C.

.....
20. Despite the binding precedents in *Ankush* (supra), *Suresh* (supra) and the mandate of Section 357A of Cr. P.C. and Section 33(8) of the POCSO Act, it is unfortunate to notice that the Courts in the State often fail to award



compensation to the victims as in the instant two cases. The obligation cast upon the Criminal Courts under Section 357A of Cr. P.C. and upon the Special Courts under Section 33(8) of the POCSO Act r/w Rule 9 of the POCSO Rules is a statutory obligation, and its objects and meaning can be achieved only when the Criminal Courts/Special Courts award requisite compensation to the victims in deserving cases without fail.”

(Emphasis supplied)

95. It is also pertinent to refer to **Sri D Reddeppa Vs. The State Of Karnataka** (Cr. Appeal No. 1113 of 2015 as decided on 05.09.2022). This Criminal Appeal was filed by the Complainant before **Karnataka High Court** against acquittal of the accused. Though the acquittal was upheld, High court recommended District Legal Services Authority under Section 357A for payment of compensation to the victims as per Victim Compensation Scheme of the State, holding as follows :

“ 17. The primary object of the provisions of Section 357A of the Code of Criminal Procedure is to enable the Court to direct the State to pay the compensation to the victim where, the compensation awarded under Section 357 Cr.P.C. is inadequate irrespective of the fact that the case ended in acquittal or discharge and where the victim is required to be rehabilitated.

18. Looking into the welfare object behind Section 357A of the Code, which is apparent from the text of the provision, this Court is of the opinion that the Magistrate and the Sessions Judge while delivering final judgments, after completion of the trial, must pass a reasoned order as to whether there is a need to make a recommendation for payment of compensation for the rehabilitation of the victim of a crime or not.

.....
22. Adjudication of criminal cases without reference to Section 357A of the Code where there is a person who is a victim of a crime is antithetical to the concept of Victim's



Compensation envisaged in Section 357A of the Code. However, the trial Court, before recommending compensation under Section 357A of the Code, should ensure that the scheme is not misused to claim compensation by registering a false criminal case. Whenever the Court finds that the crime has not taken place and there is no victim of the crime, then there cannot be a recommendation to pay the compensation.”

(Emphasis supplied)

96. It is also relevant to refer to **Kamal Sk. Vs. State of West Bengal and Anr., (2023 SCC Online Cal 3683)**. In this case, Trial Court had directed the convict to pay Rs 50,000/ to the Victim under Sec 357 Cr.PC, but had not recommended compensation to the Victim under Sec 357A Cr.PC. Hence, **Calcutta High Court** directed the W.B. Legal Services Authority to pay Rs. 3,50,000/- to the victim under Sec 357 A Cr.PC observing as follows:

“12. We should not be unmindful to the fact that provision of Section 357A of the Code of Criminal Procedure is one of the facets of right to life with dignity, as enshrined under article 21 of the Constitution.

13. Learned Trial Court ought to have invoked the provision of Section 357A of the Criminal Procedure Code, to award compensation for financial rehabilitation of the family of the deceased.”

(Emphasis supplied)

97. In **Rahul Vs. State (NCT of Delhi), (2023) 1 SCC 83, Hon’ble Supreme Court** acquitted the appellant but directed the Legal Services Authority to pay compensation to the victim as per law holding as follows:



“47. It is needless to say that in view of Sec. 357-A, CrPC, the family members of the deceased victim would be entitled to the compensation even though the accused have been acquitted. Hence, while allowing these appeals and acquitting the appellant-accused, we direct that the parents of the victim would be entitled to the compensation, if not awarded so far by Delhi State Legal Services Authority, as may be permissible in accordance with law.”

98. In this context, **Karnataka High Court** in paragraph no. 19 of **State of Karnataka Vs. Rangaswamy, 2015 SCC OnLine Kar 8587**, has held that the appeal proceedings are nothing but continuation of trial proceedings. Therefore, it is open for the Appellate Court to recommend for compensation even after acquittal of the Accused in the appeal. Accordingly, Karnataka High Court recommended the State Legal Service Authority to pay compensation to the victim as per the Victim Compensation Scheme under Section 357A Cr.PC, though the appeal was preferred by the State against the acquittal of the Accused by the Trial Court.

99. Ranjeet Naik Vs. State (NCT of Delhi), 2021 Cri. LJ. 4290, is also relevant to be referred to. This appeal was not filed by the Victim. It was filed by the convict against the judgment of conviction and sentence passed by the Trial Court. But upholding the conviction and sentence of the Appellant, Delhi High Court also recommended Delhi State Legal Services Authority to pay compensation to the Victim as per the Victim



Compensation Scheme, observing that Trial Court has failed in its duty to refer the prosecutrix to the Delhi Victim Compensation Scheme, 2018.

100. It still remains to be considered whether compensation under Bihar Victim Compensation Scheme, 2014 read with Section 357A Cr.PC can be awarded to the victim of the crime which has been committed prior to coming into being Bihar Victim Compensation Scheme, 2014 on 20.03.2014. In this context, it is relevant to point out that there is no limitation prescribed in Bihar Victim Compensation Scheme, 2014 in regard to recommendation of a Court for compensation to the victim under Section 357A Cr.PC. The limitation as prescribed by Section 8 of Bihar Victim Compensation Scheme is only in regard to the applications by victims to Legal Services Authority in cases where the offender is not traced or identified or no trial takes place. Even in case of such applications, the Legal Services Authority is empowered to condone the delay as per its satisfaction for reasons to be recorded in writing. Even there is provision for appeal against the order of District Legal Services Authority before State Legal Services Authority.

101. Similar question arose before **Karnataka High Court** in **State of Karnataka Vs. Rangaswamy, 2015 SCC**



OnLine Kar 8587, wherein High Court held that an appeal proceeding is nothing but continuation of trial proceeding and hence, it is open for Appellate Court to recommend for compensation even after acquittal of the accused in the appeal. It also held that the benefits of the State Victim Compensation Scheme should be given in all pending matters as on the date of the notification of the scheme. It observed as follows:

“18The intention of the provision appears to provide specifically for the joint and several liability of the guilty persons and the Government and to set out the important factors to be taken into account in assessing the compensation. In that regard, the Victim Compensation Scheme is notified by the State Government. Having regard to the intention and the object with which the provisions of Sections 357 and 357A of Cr. P.C. are enacted, in our considered opinion, the benefit of the said provision should be given to all the pending matters, as on the date of the notification i.e., as on 31.12.2009..... The appeal proceedings are nothing but continuation of trial proceedings. Therefore it is open for the Appellate Court to recommend for compensation even after acquittal of the accused in the appeal...”

(Emphasis supplied)

102. Similar question also arose before **Calcutta High Court** in **Piyali Dutta Vs. State of W.B., 2017 SCC OnLine Cal 8743**. In this case it was argued on behalf of Legal Services Authority that expansive interpretation cannot be given to Section 357A Cr.PC to award compensation to victim under Section 357A Cr.PC, even if the concerned crime has been committed prior to date of notification of the State Victim Compensation Scheme. Repulsing such argument



Calcutta High Court held as follows:

“13..... Section 357A does not introduce any criminal liability to the accused. It requires and enforces the directive principles enshrined in the Constitution of India under Article 38 which obligates the State to render social justice to its citizens. Right to receive just compensation as a victim of a crime, notwithstanding the result of the criminal proceedings emanating out of the incident of crime can be read into Article 21 of the Constitution of India guaranteeing Right to life. Right to life, encompasses within its fold, the Right to live with dignity. A citizen cannot be asked to forfeit the right to live with dignity just because such citizen has become a victim of an act of crime. The state is obliged to protect the life and property of its citizen. The victim may or may not receive compensation in the criminal proceedings. The criminal proceedings may result in acquittal of the accused. Disposal of such criminal proceedings with a particular result does not mean that, the incident of crime did not happen or that, the victim is not entitled to or require compensation. In an acquittal, the Court does not find the accused guilty of the crime. Acquittal of the accused, ipso facto, does not mean that, the incident of crime did not take place. The victim of the crime, may require support, monetary and otherwise to mitigate the loss and injury suffered as a result of the crime. The victim may require rehabilitation.....Section 357A of the Code of Criminal Procedure, 1973 and the Scheme of 2017 of the State formulated in exercise of such powers, seek to address such issues and put in ameliorative measures for the victims of the crime.....

14. Section 357A is a beneficial piece of legislation introduced for the benefit of the victims of a crime. It does not prescribe a time limit. It does not say that, a crime occurring prior to a specified date is not covered thereunder. As noted above, it is not introducing a criminal liability. It is time neutral, that is to say that, it does not distinguish between victims of a crime happening prior to the introduction of the section to the statute with those incidents of crime happening post its introduction in the statute book. The section itself not making any distinction between victims on the basis of the time of occurrence of the crime, the same cannot be read into it. The plain reading of the section does not permit one to interpret the same to mean that, it contemplates differential treatment of victims of the specified crimes on the basis of time of occurrence of such crime. Such a difference if sought to



be read into Section 357A of the Code of Criminal Procedure, 1973 it would do violence to it. It would not be an intelligible or a reasonable differentia to distinguish between victims of crime on the basis of time of occurrence, more so when the section itself is silent on time. The requirement on the State to extend compensation for loss and injury suffered by reason of the crime and rehabilitation of the victims of the specified crimes are universal to all victims irrespective of the time of occurrence of the crime. Victims have not been segregated on the basis of time of occurrence of the crime. Segregation on such basis is unacceptable. It would militate against the right to equality and equal treatment by the State guaranteed under the Constitution of India. In such perspective, the victims of the specified crimes are similarly situated and circumstanced. Therefore, to segregate them on the basis of time of occurrence of crime, would be unjust, improper and militate against the very object of the Section 357A of the Code of Criminal Procedure, 1973, and the fundamental rights of the victims to be treated equally, fairly and justly.....”

(Emphasis supplied)

103. A similar question arose before **Kerala High Court** in **District Collector Vs. District Legal Service Authority, 2020 SCC OnLine Ker 8292**, with reference to sub-Section 4 and 5 of Section 357 A Cr.PC. Here also **Kerala High Court** took the view that victim is entitled to compensation under Section 357 A (4) Cr.PC even if the concerned crime was committed prior to coming into force the State Victim Compensation Scheme framed under Section 357 A Cr.PC. The High Court held as follows:

“ 28. As a substantive law, the aforesaid statutory provision will have only prospective application. However, in the case of Section 357A(1)(4)&(5) Cr.P.C, there is a difference. Rehabilitation of the victim is the scope, purport and import of Section 357A(4) Cr.P.C,



when read along with Section 357A(1) Cr.P.C. This is more explicit when understood in the background of the recommendation of the 154th report of the Law Commission of India.....

29. In remedial provisions, as well as in welfare legislation, the words of the statute must be construed in such a manner that it provides the most complete remedy which the phraseology permits. The Court must, always, in such circumstances, interpret the words in such a manner, that the relief contemplated by the provision, is secured and not denied to the class intended to be benefited.

.....
31. A substantive law that is remedial, can reckon a past event for applying the law prospectively. Such an approach does not make the substantive law retrospective in its operation. On the other hand, it only caters to the intention of the legislature.”

**104. In Vakalpudi Venkanna Vs. State of Karnataka,
2022 SCC OnLine Kar 1828, Karnataka High Court**

expressing similar view observed as follows:

“10. As can be seen from the aforesaid decisions of this Court and other High Courts, Section 357-A Cr. P.C. as well as the Karnataka Victim Compensation Scheme, 2011 are applicable even to the incidents that occurred prior to the said provision/said scheme coming into force.”

105. It clearly emerges from the aforesaid statutory provisions and case laws that the Court conducting a criminal trial is duty bound to pass reasoned order, on the conclusion of the trial, regarding compensation to victims as per Section 357 and Section 357 A Cr.PC, irrespective of conviction, acquittal or discharge. Such order has to be passed by the Trial Court even when the victim has not filed an application for compensation.



In such order, the Court is required to give finding whether the alleged offence has been committed or not, and if committed who is victim of the committed offence, and if there is any victim in terms of Section 2 (wa) Cr.PC, whether victim is entitled to compensation under Section 357 and Section 357 A Cr.PC and if yes, how much and from whom.

106. The Appellate and Revisional Court are equally duty bound to pass such order regarding compensation to the victims in their final judgments even if the appeals/revisions have been filed by a party other than the victim, only condition being that appeal or revision or any other proceeding arising out of the crime is pending before the Court.

107. Moreover, victims are entitled to benefits under State Victim Compensation Scheme made under Section 357A Cr.PC even when the concerned offence has been committed prior to the scheme coming into force if the trial, appeal or revision are pending on or after the scheme came into force.

108. In case of conviction of the Accused, compensation payable to the victim may be imposed upon the convict as per his paying capacity either by way of fine or otherwise under Section 357 Cr.PC and if the compensation directed to be paid under Section 357 Cr.PC is not sufficient to



rehabilitate the victim, the Court is empowered to recommend the Legal Services Authority to pay the compensation to the victim from the State fund created under Victim Compensation Scheme made under Section 357A Cr.PC. In case of acquittal of the Accused-Appellant, the Court is duty bound to resort to Section 357A Cr.PC to recommend Legal Services Authorities to pay compensation to the victim as per Victim Compensation Scheme of the State as made under Section 357A Cr.PC.

109. Coming to the case on hand, we are of the considered view that even as the Appellant stands acquitted, the victim Harsh Kumar is entitled to get compensation from the Bihar Victim Compensation Fund under Section 357A Cr.PC read with Bihar Victim Compensation Scheme, 2014. Accordingly, we recommend Bihar State Legal Services Authority to pay compensation to the victim, Harsh Kumar as per Bihar Victim Compensation Scheme, 2014 within two months of the receipt of this order.

110. We also appreciate the assistance provided by Mr. Anil Singh, Ld. Amicus Curiae in course of hearing on several dates. At the same time, we record our appreciation for Ld. Additional P.P. for the State. Patna High Court Legal Services Committee is directed to pay an honorarium of Rs. 15,000/- to



Mr. Anil Singh, Ld. Amicus Curiae, within one month from the
date of receipt of this order.

(Rajeev Ranjan Prasad, J.)

(Jitendra Kumar, J.)

S.Ali/ravishankar/
Chandan/Shoaib-

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