

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL APPEAL (SJ) No.1553 of 2023**

Arising Out of PS. Case No.-132 Year-2017 Thana- SHEKHPURA District- Sheikhpura

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Upendra Chaudhary Son Of Sita Ram Chaudhary Resident Of Village -  
Wajidpur, P.S.-Sheikhpura, District- Sheikhpura

... ... Appellants

Versus

1. Bindu Choudhary S/O Late Harangi Choudhary Resident Of VillageBazidpur,  
P.S.-Sheikhpura, District-Sheikhpura
2. Sudil Choudhary S/O Bindu Choudhary Resident Of Village-Bazidpur, P.S.-  
Sheikhpura, District-Sheikhpura
3. Rajo Choudhary S/O Bindu Choudhary Resident Of Village-Bazidpur, P.S.-  
Sheikhpura, District-Sheikhpura
4. Manohar Choudhary S/O Nande Choudhary Resident Of Village-Bazidpur,  
P.S.-Sheikhpura, District-Sheikhpura
5. Ashok Choudhary S/O Late Nande Choudhary Resident Of VillageBazidpur,  
P.S.- Sheikhpura, District-Sheikhpura
6. Navrangi Choudhary S/O Late Jitan Choudhary Resident Of VillageBazidpur,  
P.S.-Sheikhpura, District-Sheikhpura
7. Bhuneshwar Choudhary @ Muneshwar Choudhary S/O Late Jitan Choudhary  
Resident Of Village-Bazidpur, P.S.-Sheikhpura, DistrictSheikhpura
8. Umesh Choudhary S/O Brahmdeo Choudhary Resident Of Village-Bazidpur,  
P.S.-Sheikhpura, District-Sheikhpura
9. Jato Choudhary S/O Late Brihaspti Choudhary Resident Of VillageBazidpur,  
P.S.-Sheikhpura, District-Sheikhpura
10. Rajendra Choudhary S/O Jato Choudhary Resident Of Village-Bazidpur, P.S.-  
Sheikhpura, District-Sheikhpura
11. Sito Choudhary S/O Late Sohray Choudhary Resident Of Village-Bazidpur,  
P.S.-Sheikhpura, District-Sheikhpura
12. Bato @ Batoran Choudhary S/O Sito Choudhary Resident Of VillageBazidpur,  
P.S.-Sheikhpura, District-Sheikhpura

13. Ranjit Choudhary S/O Late Krishna Choudhary Resident Of VillageBazidpur,  
P.S.-Sheikhpura, District-Sheikhpura
14. The State Of Bihar.

... .. Respondents

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*Acts/Sections/Rules:*

- *Sections 307, 379, 147, 148, 341/149, 323/149, 324, 427 and 504 of the Indian Penal Code*
- *Section 3, 5 of the Probation of Offenders Act*
- *Section 357(3) of the Cr.PC, 1973*
- *Section 395(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023*

*Cases referred:*

- *Parvinder Kansal Vs. State (NCT of Delhi), (2020) 19 SCC 496*
- *Harbans Singh v. State of Punjab, 1961 SCC OnLine SC 40*
- *Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415*
- *Murugesan Vs. State, (2012) 10 SCC 383*
- *H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581*
- *Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561*
- *Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of A.P, (2006) 11 SCC 444*
- *Maru Ram & Ors V/s Union of India & Ors (1981) 1 SCC 107*
- *Hari Kishan V/s Sukhbir Singh, (1988) 4 SCC 551,*
- *Sarwan Singh V/s State of Punjab (1978) 4 SCC 111,*
- *Ankush S. Gaekwad V/s State of Maharashtra (2013) 6 SCC 770.*

*Appeal - preferred by the informant against judgement of conviction whereby all the private Respondents herein have been acquitted of charges framed under Sections 307, 379 and 504 of the Indian Penal Code, though they have been found guilty for the offence punishable under Sections 147, 148, 341/149, 323/149. All the convicts/Respondents have been set free after admonition under Section 3 of the Probation of Offenders Act. But compensation has been directed to be paid by the convicts to the victims.*

*Held - View taken by learned Trial Court in the case on hand is well reasoned and based on proper appreciation of law and evidence on record. In such situation, there is no scope for this Court to interfere in the impugned judgment supplanting the view of learned Trial Court by another view. This appeal is, therefore, liable to be dismissed. (Para 34)*

*While assessing the quantum of compensation, the facts and circumstances of the case, the nature of crime and justness of claim and capacity of the offender to pay are relevant factors to be considered by the Court. (Para 39)*

*The question may arise whether the Court can direct the convict to pay compensation to the victims while giving benefit of Section 3 or 4 of the Probation of Offenders Act to the offender without any application filed on behalf of the victims. The answer to this question is in the positive in the considered view of this Court. (Para 40)*

*It is also required to be remembered that in the administration of criminal justice, victims should not be forgotten. Penalogy and victimology must go hand in hand to take care of the interest of the individual victims and the society at large. (Para 44)*

*Hence, in the case on hand, the Convicts are directed to pay a sum of Rs. 2,500/- each as compensation to the victims. (Para 45)*

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- 14. The State Of Bihar.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Pramod Kumar Sinha, Sr. Advocate
For the Respondent/s	:	Dr. Anjani Kr. Singh, Advocate
For the State	:	Mr. Zeyaul Hoda, APP



**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**  
**ORAL JUDGMENT****Date : 20-07-2024**

The present appeal has been preferred by the informant against the impugned judgment of conviction and order of sentence dated 15.02.2023 passed by Ld. District & Sessions Judge, Sheikhpura, in Sessions Trial No. 54 of 2018, arising out of Sheikhpura P.S. Case No. 132 of 2017, whereby all the private Respondents herein have been acquitted of charges framed under Sections 307, 379 and 504 of the Indian Penal Code, though they have been found guilty for the offence punishable under Sections 147, 148, 341/149, 323/149. Respondent No. 8/Umesh Chaudhary has been found guilty under Section 324 also read with Section 149 of the Indian Penal Code by the impugned judgment. However, all the convicts/Respondents have been set free after admonition under Section 3 of the Probation of Offenders Act. But compensation has been directed to be paid by the convicts to the victims.

2. The prosecution case as emerging from the *fardebayan* of the informant Upendra Chaudhary is that at 10 O'clock in the morning on 29.3.2017, he along with his family members was at his home. The accused persons came to his house and asked him why he was not partitioning the land, whereupon the informant told them that litigation was going on



in the Court and he would do as per the order of the Court. The accused persons were carrying lathi, danda, *katta* and axe. They started abusing and assaulting him. His family members came to save him, whereupon all the accused persons exhorted each other to kill all of them. Thereupon, accused Umesh Chaudhary assaulted him with *Katta* on his forehead. Hence, he got injured and became unconscious. On hearing hulla, the local people came and the accused persons fled away.

3. On the basis of the *fardebayan*, Sheikhpura P.S. Case No. 132 of 2017 was registered on 29.03.2017 against all the thirteen accused persons (Respondents herein) for the offence punishable under Sections 147, 148, 149, 341, 323, 324, 307, 427, 504 and 379 of the Indian Penal Code.

4. After investigation, charge-sheet bearing no. 384 of 2017 was submitted against all the FIR named accused persons. After cognizance, the case of the accused persons (Respondents herein) was committed to the Court of Sessions and charges were framed against all of them on 10.09.2018 under Sections 379/149, 504/149, 341/149, 307/149, 147 and 148 of the Indian Penal Code. The charges were read over to the them which they pleaded not guilty and claimed to be tried.

5. During trial, the following eight witnesses were



examined on behalf of the prosecution:

- (1) **P.W.-1** – Md Akhter Khan
- (2) **P.W.-2** – Ashok Chaudhary
- (3) **P.W.-3** – Raj Kumar Chaudhary
- (4) **P.W.-4** – Munni Devi
- (5) **P.W.-5** – Sarita Devi
- (6) **P.W.-6** – Upendra Chaudhary
- (7) **P.W. 7** - Dr. Ravi Shankar Sharma
- (8) **P.W. 8** - Bachchu Chaudhary

6. The prosecution brought on record the following documentary evidences also:

- (i) **Ext. 1** – Signature of Sarita Devi on the fardebayan
- (ii) **Ext. 1/1** – Signature of Upendra Chaudhary on the fardebayan
- (iii) **Ext. 2** – Injury report of Upendra Chaudhary
- (iv) **Ext. 3** – Injury report of Rajkumar Chaudhary
- (v) **Ext. 4** – Injury report of Sarita Devi
- (vi) **Ext.5** – Injury report of Munni Devi

7. After closure of the prosecution evidence, the accused persons were examined under Section 313 Cr.PC, during which they were confronted with incriminating circumstances which had come in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During the examination, they admitted that they had heard the evidence of the prosecution witnesses against them, but they did not explain any circumstances though they denied every charge and claimed to be innocent.

8. Only one witness has been examined on behalf of



the defence, viz., Radhey Prasad Singh as D.W. -1.

9. The following documents were also exhibited on behalf of the defence:-

- (i) **Ext. A** – Certified copy of the plaint of T.S. 88/2016
- (ii) **Ext. B** – Certified copy of all order-sheets of G.R. No. 453/2017
- (iii) **Ext. C** – Certified copy of FIR of G.R. No. 453/2017
- (iv) **Ext. D** – Certified copy of charge-sheet of G.R. No. 453/2017

10. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties passed the impugned judgment and order whereby the Respondents No. 1 to 13 were acquitted of the charges framed under Sections 307, 379 and 504 IPC, but were convicted under Sections 147, 148, 341/149 and 323/149 IPC. By the impugned order, convict/Respondent No. 8, viz., Umesh Chaudhary was also convicted under Section 324 read with Section 149 IPC. However, all the convicts/Respondents herein were released after admonition under Section 3 of the Probation of Offenders Act, 1958. However, no compensation was directed by the Ld. Trial Court to be paid by the offenders to the victims under Section 5 of the Act, 1958.

11. Learned counsel for the Appellant has submitted that the learned Trial Court has not properly appreciated the





evidence on record and has erroneously acquitted the Accused/Respondents of the charges framed under Section 307, 379 and 504 IPC and convicted them only under Sections 147, 148, 341/149 and 323/149 IPC. By the impugned judgment, Accused viz., Umesh Chaudhary/Respondent No.8 was also convicted under Section 324 read with Section 149 IPC, whereas all the accused persons should have been convicted of all the charges framed against them. He has also submitted that the convict/Respondents have not been adequately sentenced. By the impugned order, all of the convicts/Respondents have been released after admonition under Section 3 of the Probation of Offenders Act, 1958 whereas all should have been sentenced to imprisonments or in the alternative, the convicts should have been directed by the Court to pay compensation to the victims under Section 5 of the Probation of Offenders Act.

**12.** However, learned counsel for the Respondents no. 1 to 13 and learned APP for the State have defended the impugned judgment and order submitting that as per the evidence on record, there is no evidence to prove that the Respondents no. 1 to 13 had any intention to commit murder. Had they such intention, they could have repeated the assaults to cause grievous injury on vital parts of the body. They have



further submitted that as per the evidence on record, only simple injury has been caused and that too on non-vital parts of the body. There is also no evidence on record to prove the allegation of theft.

**13.** He has further submitted that in case of appeal against acquittal, the principles required to be applied by the Appellate Court are somewhat different from those which are applied in case of appeal against conviction. In case of acquittal, Appellate Court is required to interfere only when the view taken by Ld. Trial Court is not reasonable one as per the evidence on record. Even if two views are possible and Ld. Trial Court has taken one view, the Appellate Court is not required to supplant the view of the Ld. Trial Court by another view. Moreover, the view taken by Ld. Trial Court is based on proper appreciation of law and facts requiring no interference by the Appellate Court.

**14.** He has also submitted that the convict/Respondents have been also rightly released after admonition under Section 3 of the Probation of Offenders Act. Sentencing is discretionary power of the Court and the informant has no right to question the impugned order whereby the convicts have been granted benefits under the Probation of Offenders Act. Under the proviso to Section 372 Cr.PC, the victim has no right to file appeal against



the impugned order. Only State can file appeal under Section 377 of Cr.PC against inadequacy of sentence or grant of benefits to the convicts under the Probation of Offenders Act.

**15.** I find substance in the submission of learned APP for the State and learned counsel for the Respondents no. 1 to 13 that the informant/victim has no right to file appeal against inadequacy of sentence or grant of relief to the convicts under the Probation of Offenders Act, 1958. Right to file appeal for enhancement of sentence has been provided only to State under Section 377 of the Cr.PC. The right of the victim to prefer an appeal has been provided under the proviso to Section 372 Cr.PC which reads as follows:-

**“372. No appeal to lie unless otherwise provided.-** No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

**16.** The proviso to Section 372 Cr.PC clearly provides that the victim has right to prefer an appeal only under the following three situations:

- (i) if the accused has been acquitted, or
- (ii) the accused has been convicted for a lesser offence, or
- (iii) inadequate compensation has been imposed



upon the convict.

17. Hence, it transpires that no right has been provided to the victim to file an appeal against inadequacy of sentence. Appeal for enhancement of sentence has been provided under Section 377 Cr.PC giving right to State to file such appeal. Moreover, right to appeal is statutory right. Unless a right to appeal has been created by statutory provision, the appeal cannot be maintainable. Here, it would be apposite to refer to **Parvinder Kansal Vs. State (NCT of Delhi), (2020) 19 SCC 496**, wherein **Hon'ble Supreme Court** has held as follows:-

“8. ....A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377 CrPC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377 CrPC but similarly no appeal can be maintained by victim under Section 372 CrPC on the ground of inadequate sentence. It is fairly well-settled that the remedy of appeal is creature of the statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable.....”

18. Similarly, grant of benefits under the Probation of Offenders Act is also not provided as a ground for filing an



appeal by the victim/informant under the proviso to Section 372 Cr.PC, perhaps because sentencing the convicts to imprisonment or fine and grant of benefits under the Probation of Offenders Act to the victims are alternative choices for the Court.

**19.** Hence, the appeal of the victim against grant of benefits of Section 3 of the Probation of Offenders Act is not maintainable. Therefore, this Court cannot look into legality/illegality or propriety/impropriety of the impugned order whereby the benefit of the Probation of Offenders Act has been granted by learned Trial Court to the convicts.

**20.** I also agree with the submission of learned APP for the State and learned counsel for the private Respondents that in case of appeal against acquittal, the principles required to be applied by the Appellate Court are drastically different from those which are applied in case of appeal against conviction.

**21.** In **Harbans Singh v. State of Punjab, 1961 SCC OnLine SC 40, Hon'ble Supreme Court** has held that a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower court that the guilt of the



person has not been proved is unreasonable.

**22. In Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon'ble Supreme Court** after referring to several authorities has held that an appellate court, must bear in mind that in case of acquittal, the presumption of his innocence is reinforced, reaffirmed and strengthened by the trial court and if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.

**23. In Murugesan Vs. State, (2012) 10 SCC 383, Hon'ble Supreme Court** has held that so long as the view taken by the Trial Court is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 Cr.PC was not called for.

**24. In H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581,** Hon'ble Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows:

**“8.1.** The acquittal of the accused further strengthens the presumption of innocence;

**8.2.** The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and



documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

(Emphasis Supplied)

**25. In Babu Sahebagoada Rudragoudar Vs. State of**

**Karnataka, 2024 SCC Online SC 561, Hon’ble Supreme Court,**

after referring to relevant precedents, has observed as follows:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the **following principles**:

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)



26. Coming to the case on hand, I find after perusal of the prosecution evidence that **P.W.-6** Upendra Chaudhary, who is informant of this case, in his **examination-in-chief**, has supported the prosecution case deposing that the occurrence had taken place at 9-10 O'clock in the morning about 2 ½ years back and at that time, he was at his home. For measurement of the land, the accused persons came. The informant asked them whether the Court had given any order for measurement. To this question, the accused persons replied that even without Court's order, they would measure the land. The same was protested by the informant, whereupon, accused Jato Chaudhary exhorted Umesh Chaudhary to assault. Thereafter accused persons started throwing bricks and stone. Sarita Devi, Munni Devi, Chandra Kishore Chaudhary, Raj Kumar Chaudhary and Upendra Chaudhary had got injured by bricks and stone. However, accused Umesh Chaudhary assaulted him hitting the eye-lid of his right eye and the rest accused had thrown bricks and stone. The injured persons were taken to Sadar Hospital for treatment. In his **cross-examination**, he deposed that accused persons had also lodged Sheikhpura P.S. Case No. 131 of 2017 against the prosecution side and the partition suit is also going on between the two sides and on the date of occurrence, notice of partition





suit was received. Only the house of the informant is situated at the place of occurrence. The house of the accused persons is also situated at 700 feet to the South of the informant. He has denied the suggestion that he had filed false case as a counter blast to the Sheikhpura P.S. Case No. 131 of 2017.

**27. P.W.-1** Md. Akhtar Khan has deposed that he knows nothing about the alleged occurrence and he had not given any statement to the police. As such, the evidence of P.W.-1 is of no use for the prosecution. **P.W.-2**, Ashok Chaudhary is only a hearsay witness. As such, his evidence is also not helpful to the prosecution case.

**28. P.W.-3** is Raj Kumar Chaudhary. In his **examination-in-chief**, he has deposed that at the time of occurrence he was at home. When the accused persons came to his house, they assaulted him. Thereafter he had gone to hospital for treatment. In his **cross-examination**, he has deposed that he had come to depose on account of land dispute going on between the accused persons and his father and title suit bearing No. 88 of 2016, going on between them. On account of notice in the title suit, this criminal case has been lodged against the accused persons. As such, his evidence shows that the accused persons were falsely implicated. **P.W.-4** in his **examination-in-**



**chief**, has supported the prosecution case, but in his **cross-examination**, he has admitted that the accused persons are his agnates and partition suit is going on between the prosecution and accused side.

**29. P.W.-7** is doctor Ravi Shankar Sharma who had examined informant Upendra Chaudhary and other injured persons, viz., Raj Kumar Chadhary, Sarita Devi and Munni Devi. As per his finding, the informant had received an incised wound of dimension 1" 1/3"x 1/3" over the right forehead which was simple in nature caused by sharp edged weapon. Raj Kumar Chaudhary had received an abrasion over the left leg of dimension 1"x1" in its middle, caused by hard blunt substance. Sarita Devi had no visible injury on her person and she had complained only of body ache. On the person of Munni Devi there is lacerated wound over the back of left heel of dimension 1/2"x1/4"x1/4", caused by hard blunt substance which is also simple in nature. **P.W.-8** Bachchu Chaudhary is a hear-say witness.

**30. D.W.-1**, Radhey Prasad Singh is a formal witness examined on behalf of the defence. He has proved certified copy of the civil case bearing no. 88 of 2016, in which, defendant is Sita Ram Chaudhary and others. The certified copy has been



exhibited as **Ext. A** with objection.

**31.** From perusal of the prosecution evidence, it clearly emerges that the accused persons had no intention to commit murder. They were not carrying any dangerous weapons, nor have they committed any overt act to show that they intended to commit murder. It is also evident from the injury of the injured persons including the informant who had received simple injury. There is also nothing on record to prove that the accused persons were bent upon to commit murder of the informant or any other members of the prosecution side and they were saved by intervening circumstances. There is also no evidence on record in support of the allegation of theft.

**32.** Here, it would be apposite to refer to **Sagayam Vs. State of Karnataka, (2000) 4 SCC 454**, where **Hon'ble Supreme Court** has held that to justify conviction under Section 307 IPC, it is sufficient in law if there is present an intent coupled with some overt act in execution thereof, if the attempt has gone so far that it would have been complete but for the extraneous intervention which frustrated its consummation.

**33.** In **Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of A.P, (2006) 11 SCC 444**, **Hon'ble Supreme Court** has held as follows in regard to how to form opinion regarding



intention to cause death:

“29..... The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”

**34.** As such, I find that the view taken by learned Trial Court in the case on hand is well reasoned and based on proper appreciation of law and evidence on record. In such situation, there is no scope for this Court to interfere in the impugned judgment supplanting the view of Ld. Trial Court by another view. This appeal is, therefore, liable to be dismissed.

**35.** Hence, for want of any merit, this appeal is dismissed upholding the impugned judgment of conviction and order of sentence dated 15.02.2023 passed by Ld. District &



Sessions Judge, Sheikhpura, in Sessions Trial No. 54 of 2018, arising out of Sheikhpura P.S. Case No. 132 of 2017.

**36.** However, before I part with the present appeal, it is also pertinent to point out that the Respondents no. 1 to 13 have been found guilty under Sections 147, 148, 341/149 and 323/149 IPC and the victims, viz., Upendra Chaudhary, Raj Kumar Chadhary, Sarita Devi and Munni Devi have received some injuries. However, learned Trial Court while directing the release of the convicts under Section 3 of the Probation of Offenders Act, has not taken note of Section 5 of the Act which provides for payment of compensation and cost to the victims.

**37.** As per **Sec. 5** of the Act, if an offender is released under section 3 or 4 of the Act, the Court is empowered to further direct the offender to pay compensation and costs to the victims for loss or injury to the victim. The statutory provision of Section 5 of the Act is in consonance with the principle as laid down by **Hon'ble Supreme Court in Maru Ram & Ors V/s Union of India & Ors (1981) 1 SCC 107**, wherein legendary Justice Krishna Iyer speaking for the Apex Court, had said that while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or



bereaved but is futility compounded with cruelty.

**38.** The provisions of the Section 5 of the Probation of Offenders Act is also in tune with Section 357(3) of the Cr.PC, 1973 and Section 395(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which provide for payment of compensation by the convict to the victim of his crime.

**39.** While assessing the quantum of compensation, the facts and circumstances of the case, the nature of crime and justness of claim and capacity of the offender to pay are relevant factors to be considered by the Court. Refer to the following authorities:

- 1. Hari Kishan V/s Sukhbir Singh, (1988) 4 SCC 551,**
- 2. Sarwan Singh V/s State of Punjab (1978) 4 SCC 111,**
- 3. Ankush S. Gaekwad V/s State of Maharashtra (2013) 6 SCC 770.**

**40.** The question may arise whether the Court can direct the convict to pay compensation to the victims while giving benefit of Section 3 or 4 of the Probation of Offenders Act to the offender without any application filed on behalf of the victims. The answer to this question is in the positive in the considered view of this Court.

**41.** Here, it would be pertinent to refer to Section 5 of the Act, 1958 which reads as follows:



**“5. Power of Court to require released offenders to pay compensation and costs-** (1) The Court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay(a)such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence; and(b)such costs of the proceedings as the Court thinks reasonable.  
(2).....  
(3).....”

(Emphasis supplied)

**42.** The wordings of Section 5 of the Act of 1958 clearly show that while directing the release of an offender under Section 3 or 4 of the Act, the Trial Court can direct the offender to pay to the victims such compensation for loss or injury and such cost of the proceeding, which the Court may consider reasonable.

**43.** It is also pertinent to note that there is no mandatory requirement of filing of any application on the part of the victim to get such compensation or cost of the proceeding. The Court can *suo motu* pass such direction against the convict in favour of the victims, if the Court is of the view that the victim deserves the payments of compensation and cost. Only precondition for such direction is that the offenders have been released under Section 3 or 4 of the Act of 1958.

**44.** Like the Trial Court even the Appellate Court is empowered to pass such direction if the Appellate Court deems



it reasonable in the facts and circumstances of the case, because the appeal is nothing but continuation of the Trial and such direction by the Appellate Court can be passed not only in the appeal filed by the victims/informant, but also in the appeal filed by the convicts, because such direction is required to be passed by the Court on its own satisfaction regarding reasonability of such direction irrespective of application or no application by the victims. Here it is also required to be remembered that in the administration of criminal justice, victims should not be forgotten. Penalogy and victimology must go hand in hand to take care of the interest of the individual victims and the society at large.

**45.** Hence, in the case on hand, the Convicts/Respondents no. 1 to 13 are directed to pay a sum of Rs. 2,500/- each as compensation to the victims, out of which 30% will go to the informant who has got lacerated injury on forehead, and 30% will go to Munni Devi who had received lacerated wound. The rest 40% will go to the rest injured persons viz., Raj Kumar Chadhary and Sarita Devi in equal amounts.

**46.** In case of default of the Respondents no. 1 to 13 to pay the compensation to the victims in two months, the





Respondents no. 1 to 13 would undergo simple imprisonment for one month. Hon’ble **Supreme Court** in **Hari Singh Vs. Sukhbir Singh (1988) 4 SCC 551** has held that Court may enforce the order of compensation by imposing sentence in default.

**(Jitendra Kumar, J.)**

shoaib/chandan/  
ravi shankar/s.ali

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