

IN THE HIGH COURT OF JUDICATURE AT PATNA

Om Prakash Giri

vs

The State of Bihar & Ors.

Criminal Appeal (SJ) No. 2813 of 2022

05 August, 2024

(Hon’ble Mr. Justice Jitendra Kumar)

Issue for Consideration

- Whether the appeal filed by the victim challenging the acquittal under certain IPC sections and grant of probation was maintainable in law.
- Whether the appellate court can suo motu direct compensation under Section 5 of the Probation of Offenders Act, 1958.

Headnotes

No right has been provided to the victim to file an appeal against inadequacy of sentence. 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 (Para 16,17)

It was night and there was darkness at the time of occurrence. No witnesses could state who assaulted whom. 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 and the victims could be saved only by intervening circumstances. There is also no evidence on record in support of the allegation of theft. (Para 35)

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. (Para 47)

Respondents directed to pay compensation. (Para 49)

Case Law Cited

Parvinder Kansal v. State (NCT of Delhi), (2020) 19 SCC 496; Harbans Singh v. State of Punjab, 1961 SCC OnLine SC 40; Chandrappa v. State of Karnataka, (2007) 4 SCC 415; Murugesan v. State, (2012) 10 SCC 383; H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581; Babu Sahebagouda Rudragoudar v. State of Karnataka, 2024 SCC OnLine SC 561; Sagayam v. State of Karnataka, (2000) 4 SCC 454; Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P., (2006) 11 SCC 444; Maru Ram v. Union of India, (1981) 1 SCC 107; Hari Kishan v. Sukhbir Singh, (1988) 4 SCC 551; Sarwan Singh v. State of Punjab, (1978) 4 SCC 111; Ankush S. Gaekwad v. State of Maharashtra, (2013) 6 SCC 770

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Probation of Offenders Act, 1958

List of Keywords

Victim Appeal; Probation of Offenders Act; Compensation to Victim; Acquittal Challenge; Section 372 CrPC; Section 377 CrPC; Section 5 Probation Act; Grievous Injuries; Night Assault; Intention to Murder

Case Arising From

Sessions Trial No. 251 of 2017 (arising out of Manjhagarh P.S. Case No. 101 of 2013)

Appearances for Parties

For the Appellant: Mr. Vikas Ratan Bharti, Advocate; Mr. Kumar Abhishek, Advocate; Mr. Deepak Kumar, Advocate
For the State: Mr. Bal Mukund Prasad Sinha, APP
For Respondents: Mr. Devashish Giri, Mr. Sumit Kumar, Advocate

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2813 of 2022

Arising Out of PS. Case No.-101 Year-2013 Thana- MANJHAGARH District- Gopalganj

Om Prakash Giri Son of Shiv Shankar Giri R/V- Ahirwalia, P.O and P.S-
Manjhagarh, Dist- Gopalganj (Bihar)

... .. Appellant/s

Versus

1. The State of Bihar
2. Dilip Giri Son of Deo Saran Giri R/V- Shekh Parsa, Ahirwalia, P.O and P.S-
Manjhagarh, Dist- Gopalganj
3. Munna Giri Son of Deo Saran Giri R/V- Shekh Parsa, Ahirwalia, P.O and
P.S- Manjhagarh, Dist- Gopalganj
4. Amit Giri Son of Deo Saran Giri R/V- Shekh Parsa, Ahirwalia, P.O and P.S-
Manjhagarh, Dist- Gopalganj
5. Sujeet Giri Son of Deo Saran Giri R/V- Shekh Parsa, Ahirwalia, P.O and P.S-
Manjhagarh, Dist- Gopalganj
6. Deo Saran Giri Son of Late Raj Ballabh Giri R/V- Shekh Parsa, Ahirwalia,
P.O and P.S- Manjhagarh, Dist- Gopalganj
7. Jugul Giri Son of Late Raj Ballabh Giri R/V- Shekh Parsa, Ahirwalia, P.O
and P.S- Manjhagarh, Dist- Gopalganj
8. Shiv Nath Gir @ Shiv Nath Giri Son of Ram Prasad Giri R/V- Shekh Parsa,
Ahirwalia, P.O and P.S- Manjhagarh, Dist- Gopalganj
9. Ram Surat Giri Son of Sheo Nath Giri R/V- Shekh Parsa, Ahirwalia, P.O and
P.S- Manjhagarh, Dist- Gopalganj
10. Shivjee Chaudhari Son of late Babu LaL @ shiv Nath Chaudhari R/V-
Shekh Parsa, Ahirwalia, P.O and P.S- Manjhagarh, Dist- Gopalganj
11. Baleshwar Chaudhari Son of Ramdhari Chaudhari R/V- Shekh Parsa,
Ahirwalia, P.O and P.S- Manjhagarh, Dist- Gopalganj
12. Shree Bhagwan Chaudhari Son of Babu lal Chaudhari R/V- Shekh Parsa,
Ahirwalia, P.O and P.S- Manjhagarh, Dist- Gopalganj
13. Ram Ekbal Giri Son of Late Madho Giri R/V- Shekh Parsa, Ahirwalia, P.O
and P.S- Manjhagarh, Dist- Gopalganj

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vikas Ratan Bharti, Advocate Mr. Kumar Abhishek, Advocate Mr. Deepak Kumar, Advocate
For the State	:	Mr. Bal Mukund Prasad Sinha, APP
For the Resp. No. 2 to 13:	:	Mr. Devashish Giri, Advocate Mr. Sumit Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 05-08-2024



The present appeal has been preferred by the informant against the impugned judgment of conviction and order of sentence dated 30.04.2022 passed by Ld. Additional District & Sessions Judge-VIIth, Gopalganj in Sessions Trial No. 251 of 2017 (Reg No. 251 of 2017 and Gr. No. 9607 of 2014), arising out of Manjhagarh P.S. Case No. 101 of 2013, whereby all the private respondents herein have been acquitted of charges under Sections 188, 148, 149, 307, 452, 379 and 504 of the Indian Penal Code though they have been convicted for the offence punishable under Sections 147, 447, 341, 323 and 427 of the Indian Penal Code and released after admonition under Section 3 of the Probation of Offenders Act, 1958.

2. The prosecution case as emerging from the written report of the informant as addressed to the Officer-in-Charge of Manjhagarh Police Station, Gopalganj, is that at 8:00 PM on 19.5.2013 the accused persons, who are Respondents No. 2 to 13 herein, came to the door of his house with arms in their hand and entered into his house and assaulted him, his wife Hemanti Devi and mother Bhagirathi Kunwar and Lalasa Devi causing injuries on their persons. On account of the assault, informant and all the injured persons got unconscious. The accused persons forcibly put makeshift cottage and put up trough (Naad)



and Khuta with intent to take forceful possession of the land and accused Dilip Giri, Munna Giri, Ajit Giri, Sujit Giri and Shivji Giri also took away gold and Cash of Rs. 10,000/-(total value of Rs. 1,00,000/-) from his house. They also threw bricks and stone on his house. Presently proceeding under Section 144 Cr.P.C. is proclaimed on the disputed land, but despite such proclamation, the accused persons had tried to take forceful possession of the disputed land of the informant.

3. On the basis of the written report, Manjhagarh P.S. Case No. 101 of 2013 was registered on 19.05.2013 against all the accused persons (Respondents herein) for the offence punishable under Sections 147, 148, 149, 447, 341, 323, 324, 307, 452 and 379 of the Indian Penal Code.

4. After investigation, charge-sheet bearing no. 69 of 2013 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 them on 26.05.2017 under Sections 147, 148, 447, 341, 323, 452, 427, 504, 307/149, 379/149 and 188 of the Indian Penal Code against all the accused persons. The charges were read over to the accused persons which they pleaded not guilty and claimed to be tried.



5. During trial, the following six witnesses were examined on behalf of the prosecution:

- (1) **P.W.-1** – Bhagirathi Kunwar (Mother of the Informant)
- (2) **P.W.-2** – Hemanti Devi (wife of the informant)
- (3) **P.W.-3** – Om Prakash Giri (informant)
- (4) **P.W.-4** – Lalasa Devi
- (5) **P.W.-5** – Ramakant Singh
- (6) **P.W.-6** – Dr. Chandika Prasad Mishra

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

- (i) **Ext. 1** – Signature on the formal FIR application
- (ii) **Ext. 1/1** – Signature of the informant
- (iii) **Ext. 1/2** – Signature of the In-charge Police Station on endorsement FIR
- (iv) **Ext. 2** – Signature of the In-charge Police Station on the formal FIR
- (v) **Ext. 3 to 3/7** – wound and supplementary injury report of PWs.

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. No witness has been examined on behalf of the defence. However, the following documents have been exhibited on behalf of the defence:-

- (i) **Ext. A** – Deed document dated 03.04.2012
- (ii) **Ext. B to B/2** – Certified copy of FIR No. 223/18 decision dated 30.09.2021
- (iii) **Ext. C** – Case No. 1265/13
- (iv) **Ext. D** – Case No. 409/13

9. Learned Trial Court, after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment and order whereby all the accused persons, who are Respondents herein, were found guilty only of the charges framed under Sections 147, 447, 341, 323 and 427 of the Indian Penal Code and were acquitted of the rest charges framed against them and by the impugned order, they were released after admonition under Section 3 of the Probation of Offenders Act, 1958. However, no compensation was directed to be paid by the convicts to the victims towards compensation on account of injury or cost of the proceeding under Section 5 of the Act, 1958.

10. Learned counsel for the Appellant/informant has submitted that the learned Trial Court has not properly appreciated the evidence on record and has erroneously acquitted the Accused/Respondents No. 2 to 13 of the charges



framed under Sections 148, 149, 307, 452, 379 and 504 IPC and were convicted only under Sections 147, 447, 341, 323 and 427 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. All of them should have been sentenced to imprisonment or in the alternative, they should have been directed to pay compensation to the victims under Section 5 of the Probation of Offenders Act.

11. However, learned counsel for the Respondents No. 2 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. 2 to 13 had any intention to commit murder. Had they such intention, they could have repeated the assaults to cause serious injury on vital parts of the bodies of the informant and other members of the prosecution side. There is also no evidence on record to prove the allegation of theft.

12. 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.

13. 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.

14. I find substance in the submission of learned APP for the State and learned counsel for the Respondents No. 2 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.

15. 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.

16. 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.....”

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 reappreciate 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)

24. In Babu Sahebagouda 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)

25. From perusal of the prosecution evidence, I find that the **informant Om Prakash Giri** has been examined as **P.W.-3**. In his **examination-in-chief**, he has supported the prosecution cases reiterating his statement as made in his written report. In his **cross-examination**, he has admitted that the accused persons had also lodged Manjha P.S. Case No. 140 of 2012 against the informant side in which Shivji Choudhary and Shivrath Giri are witnesses. He has also deposed that he



cannot say who assaulted whom, because lathis were being weilded from all sides and the injured have received injury caused by only lathi/danda and at the time of occurrence, there was darkness, though there was some electric light. He has also admitted that there is land dispute between both the sides and civil litigation is going on between them. In case, the accused persons relinquished their claim, no dispute would survive. He has denied the suggestion that the accused persons were in peaceful possession of the land and the informant's side took forceful possession of the same.

26. P.W.-1 Bhagirathi Kuar, wife of Shiv Shankar Giri, in her **examination-in-chief**, has supported the prosecution case. In her **cross-examination**, she has also admitted that the accused side has also lodged Manjhagarh P.S. Case No. 140 of 2012. She has also deposed that at the time of occurrence there was darkness. She could not say who assaulted whom. She could also not state who assaulted Om Prakash Giri.

27. P.W.-2 is Hewanti Devi, wife of Om Prakash Giri. She has also supported the prosecution case in her **examination-in-chief**. In her **cross-examination**, she has deposed that at the time of occurrence, there was darkness. She has also not made any statement to the Police earlier. She could also not state who



assaulted whom.

28. P.W.-4 Lalasa Devi, wife of Shri Kameshwar Giri. She has also supported the prosecution case in her **examination-in-chief**. However, in her **cross-examination**, she has stated that in the night of alleged occurrence, there was moon light. She has also admitted that the case has been lodged from the accused side also. She has also deposed that the accused persons had taken away one box only.

29. P.W.-5 is Ramakant Singh. He is Investigating Officer of the case. He had sent the injured persons for medico legal examination. In his **cross-examination**, he has deposed that he had not found any blood on the place of occurrence.

30. P.W.-6 is Doctor Chandika Prasad Mishra, who had examined the injured persons on 19.05.2013 at the Primary Health Centre, Manjhagarh, Gopalganj. As per his examination, on the person of Mrs. Bhagirathi Kunwar, he had found as follows:-

- a) Bleeding wound with pain and swelling left arm, size- 1" x 1/4" x 1/4.
- b) Painful swelling of extensor surface of right hand.
- c) Complaint of pain both legs and feet.
- d) Complaint of pain around hip.

As per the supplementary injury report, two injuries were found to be grievous, whereas other two injuries were



found to be simple on her person.

31. Doctor (**P.W.-6**) has also examined Hemanti Devi and on her person, he found as follows:

- a) Bleeding wound 1/2" x 1/4" x 1/4" on left forearm extensor surface with pain left hand.
- b) Bleeding wound 1/2" x 1/4" x 1/4" on right elbow with swelling and pain
- c) Echymosis left gluteal with pain around hip

As per the supplementary injury report of Om Prakash Giri, one injury was found to be grievous.

32. Doctor (**P.W.-6**) has also examined Om Prakash Giri and on his person, he found as follows:

- a) Bleeding wound left arm size- 1" x 1/4" x 1/4" with echymosis 1" x 1/4", pain and swelling left shoulder and left palm.
- b) Complaint of pain right arm.
- c) Complaint of pain around hip.
- d) Complaint of pain around skull.

As per the supplementary injury report, one injury was found to be grievous.

33. Doctor (**P.W.-6**) has also examined Lalsa Devi and on her person, he found as follows:

- a) Scratched wound right palm and right wrist with swelling right forearm.
- b) Echymosis left forearm 2" x 1/4"
- c) Two lacerated wound on skull, measuring 4" x 1/2" x deep upto superficial surface of skull bone. 3" x 1/2" x 1/2" temporal part of skull.

As per the supplementary injury report, injuries were



found to be simple.

34. All the injuries found on the persons of the injured of the case were caused by hard and blunt object. He also admitted that x-ray plates, on the basis of which, nature of injury was stated by him were not before him.

35. From perusal of the prosecution evidence, it clearly emerges that it was night and there was darkness at the time of occurrence. No witnesses could state who assaulted whom. Moreover, 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 and the victims could be saved only by intervening circumstances. There is also no evidence on record in support of the allegation of theft.

36. 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.

37. 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.”

38. 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.

39. Hence, for want of any merit, this appeal is



dismissed upholding the impugned judgment of conviction and order of sentence dated 30.04.2022 passed by learned Additional District & Sessions Judge-VIIth, Gopalganj in Sessions Trial No. 251 of 2017, arising out of Manjhagarh P.S. Case No. 101 of 2013.

40. However, before I part with the present appeal, it is also pertinent to point out that the Respondents no. 2 to 13 have been found guilty under Sections 147, 447, 341, 323 and 427 IPC and the informant/Om Prakash Giri, Bhagirathi Kunwar, Hemanti Devi, have suffered grievous injuries, whereas Lalsa Devi has received simple injuries. Moreover, the informant, who is the Appellant herein, has also incurred expense during Trial and in filing and prosecuting the present appeal. 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.

41. 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.

42. 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.

43. 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.**

44. 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.

45. 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)

46. 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.

47. 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.

48. 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.

49. Hence, in the case on hand, the Respondents no. 2, 3, 4 and 5 are directed to pay a sum of Rs. 4,000/- (Rupees Four thousand only) each to the informant/Om Prakash Giri towards compensation and cost of the proceedings. Respondents No. 6, 7



and 8 will pay a sum of Rs. 4,000/- (Rupees Four thousand only) each to Bhagirathi Kunwar; Respondents No. 9, 10 and 11 will pay a sum of Rs. 4,000/- (Rupees Four thousand only) each to Hemanti Devi and Respondents No. 12 and 13 will pay a sum of Rs. 4,000/- (Rupees Four thousand only) each to Lalsa Devi towards compensation.

50. The payment, as directed, must be made by the Respondents no. 2 to 13 within a period of two months from the date of this order, failing which they 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.

51. Let the record of this appeal be returned to the concerned Trial Court forthwith.

(Jitendra Kumar, J)

shoaib/ravi shankar

AFR/NAFR	AFR
CAV DATE	02.08.2024.
Uploading Date	05.08.2024
Transmission Date	05.08.2024.

