

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF SEPTEMBER 2022

PRESENT

THE HON'BLE Mr. JUSTICE K. SOMASHEKAR

AND

THE HON'BLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL No. 1113/2015

BETWEEN :

Sri D Reddeppa

...APPELLANT

(By Sri S.B. Pavin, Advocate)

AND :

-
1. The State of Karnataka
By Nangali Police
Kolar District - 563 131.
 2. K J Dhananjaya @ Bharath

3. Balakrishna

4. Santhosh alias Madesha

5. Ramakrishnappa

6. K.S.Jayapathi Gowda

7. G.R.Venkatachalapathi

8. M Rajappa

9. S Ganapathi

10. Prakash

11. R Suresha

12. Smt.Mangamma

13. Smt. Savithramma

14. Manjunatha

15. R.Shivanna

... RESPONDENTS

(By Sri Vijaykumar Majage, Addl. SPP for R1
Sri Srinath B.V, Advocate
Sri M.R.Nanjunda Gowda, Advocate for R2 to R15)

This Criminal Appeal is filed under Section 372 Cr.P.C praying to set aside the order of acquittal dated 22.06.2015 passed by the Principal Session Judge, Kolar in S.C.No.155/2012- acquitting the accused/respondent 2 to 15 for the offences punishable under section 144, 148, 323,

307, 504, 302 R/W 149 of IPC and convict accused No.1 to 14/respondent No.2 to 15 for the offences charged against them.

This Criminal Appeal having been heard and reserved for orders, this day, **Shivashankar Amarannavar J**, delivered the following:

J U D G M E N T

The complainant has filed this appeal under Section 372 of Cr.P.C. challenging the judgment of acquittal passed in S.C. No. 155/2012 dated 22.06.2015 by the Principal Sessions Judge, Kolar whereunder the respondent Nos. 2 to 15 /accused Nos. 1 to 14 were acquitted for the offence punishable under Sections 144, 148, 323, 307, 504 and 302 read with Section 149 of Indian Penal Code.

2. The facts in brief are that there was a quarrel between the complainant and the accused. The accused had threatened the complainant to leave the village. On 18.08.2012 at 08.00 pm, when the complainant after having meals was talking in his house with his wife, mother,

children, mother-in-law – Smt. Byamaa and sister – Smt. Reddamma, all the accused trespassed in to his house by abusing him in filthy language as 'boli magane' on the ground that inspite of directions given to him, he did not leave the village and threatened him and his family members. The accused were possessing knives, clubs etc., and he was assaulted by hands and was also kicked. When his sister Smt. Reddamma tried to intervene, she and his wife were assaulted and apprehending threat to his life, when he came out of the house, the accused chased him and when his sister Smt. Reddamma came out and intervened, at that time the accused Nos. 4 and 11 caught hold of her and the accused Nos. 1 to 3 and 10 stabbed on her chest with knives 3 to 4 times and as a result, she collapsed at the spot. When the villagers started gathering there on hearing their cries, the accused ran away from the spot. Immediately, the complainant with the assistance of others shifted Smt. Reddamma to Government Hospital,

Mulbagal where the Doctor had declared that she was brought dead. Thereafter, the complainant went to Nangali Police Station and lodged a complaint in this regard. On the basis of the complaint, the Investigating Officer undertook investigation. After completion of investigation the Investigating Officer has filed charge sheet against the accused. The charge for offence under Sections 144, 148, 323, 307, 504 and 302 read with Section 149 IPC came to be framed. The accused pleaded not guilty and claimed to be tried. The prosecution has examined in all 24 witnesses as P.W.1 to P.W.24 and got marked 48 documents as per Ex.P.1 to Ex.P.48 and 18 material objects as M.O.1 to M.O.18. The statement of the accused came to be recorded under Section 313 Cr.P.C. and they have denied the incriminating evidence against them. The accused did not choose to lead any defence evidence. The learned Sessions Judge after hearing the arguments on both the sides, formulated points for consideration and on appreciation of

the evidence has acquitted respondent Nos. 2 to 15 -- accused Nos. 1 to 14 of the charges leveled against them. The said judgment of acquittal has been challenged by the complainant in the present appeal.

3. Heard the arguments of Sri. S.B. Pavin, learned counsel for the appellant, Sri. Vijaykumar Majage, learned Additional SPP for respondent No. 1 and Sri. Srinath B.V. for Sri. M.R. Nanjunda Gowda, counsel for respondent Nos. 2 to 15 – accused Nos. 1 to 14.

4. Learned counsel for the appellant would contend that the learned Sessions Judge has committed material illegality and irregularity in acquitting the respondent Nos. 2 to 15 - accused Nos. 1 to 14 and the impugned judgment is illegal, contrary to the material evidence in the case. The trial Court has erred in holding that the eye witnesses have not supported the case of the prosecution. P.W.20 – Smt. Gowramma - mother of the deceased has given evidence

with regard to the incident and murder of Smt. Reddamma by accused Nos. 1 to 3 and others and she was treated hostile only on the point of recording of her statement. P.Ws.3 to 6, 17 and 18, who are the eye witnesses, have turned hostile will not affect the case of the prosecution. The Court below has erred in observing that in the cross-examination P.W.21 and P.W.22 have never asserted that they have witnessed the incident and P.W.22 is changing his stand as per his convenience and his evidence does not inspire confidence of the Court. He further contends that there is consistent evidence led by the prosecution. There is evidence that the accused formed an unlawful assembly by holding deadly weapons like knives and clubs and trespassing into the house of P.W.2 – complainant and assaulting the inmates and thereafter stabbed the deceased Smt. Reddamma in front of the house of the complainant causing her death. The trial Court ought to have held that the prosecution has proved the guilt of the accused based

on the evidence of P.W.2, P.W.21 and P.W.22 and ought to have convicted them for the offence charged against them. The approach of the trial Court in acquitting the accused of the offence alleged against them is erroneous which has resulted in miscarriage of justice. It is his further contention that even in the case of acquittal the dependents of the victim are entitled for victim compensation. In support of these contentions the learned counsel for the appellant has placed reliance on the following decisions:

- I. Hari Kishan and another Vs. Sukhbir Singh and others,
AIR 1988 SC 2127
- II. Ankush Shivaji Gaikwad Vs. State of Maharashtra, SLP
(Crl.) No. 6287/2011 decided on 03.05.2013
- III. Karan Vs. State of NET of Delhi, Crl.A. No. 352/2020
decided on 27.11.2020

5. The learned Additional SPP appearing for respondent No. 1 – State has reiterated the grounds urged by the learned counsel for the appellant.

6. Learned counsel appearing for respondent Nos. 2 to 15 – accused Nos. 1 to 14 addressed arguments supporting the reasoning assigned by the learned Sessions Judge and submitted that the Sessions Judge has rightly given the benefit of doubt to the accused as the prosecution has not proved the case beyond reasonable doubt. He further submitted that there are no grounds to interfere with the well reasoned judgment of the acquittal passed by the trial Court.

7. It is the case of the prosecution that on 18.08.2012 at 08.00 pm complainant (P.W.22) after having meals was in his house talking with his wife (P.W.21), his mother (P.W.20), his mother-in-law – Byamma (P.W.2) and his sister – Reddamma (deceased) and at that time the

accused trespassed into his house, abused him in filthy language as he did not leave the village as directed by them and assaulted him with hands and legs and he went out of the house and when his sister - Reddamma tried to intervene accused Nos. 4 and 11 caught hold of her and accused Nos. 1 to 3 and 10 stabbed on her chest with knives 3 - 4 times and as a result she sustained injuries and when she was taken to the Government Hospital the Doctor declared that she was brought dead. P.W.22 has filed the complaint in that regard as per Ex.P.20. P.Ws.3 to 6, P.W.15, P.W.17 and P.W.18 who are stated to be the eye witnesses have turned hostile and they have not supported the case of the prosecution.

8. P.W.2 - another eye witness by name Byamma is the mother-in-law of the complainant, who, in her evidence has stated that about 2-3 years back at 09.00 pm, the deceased Reddamma came to their house and at that time, accused came there and they had concealed the knives in

their pockets and were wearing banians and at that time accused No. 1 – Bharath, accused No. 3 – Santhosh and accused No. 2 – Balakrishna dragged Reddamma out of their house, stabbed her and killed her in front of their house and went away. P.W.2 has denied that she has given statement as per Ex.P.1 before the Investigating Officer and in that regard she was treated as hostile witness. In the cross-examination P.W.2 has stated that she did not witness what happened when Reddamma was dragged out of the house and she has given evidence against accused Nos. 1 to 3 as per the say of Sri. Rajendra Gowda. She in the cross-examination has admitted that she was inside the house and she has not seen the accused. Hence, for the said reasons, the learned Sessions Judge has held that she has taken inconsistent stand in her evidence and it does not assist the prosecution in any manner.

9. P.W.21 – Smt. Netravathi and P.W.22 – Sri. D. Reddappa are other two witnesses who have given evidence

regarding accused Nos. 1 to 3 and 10 assaulting and stabbing Reddamma in their chief examination. But, they in the cross-examination have admitted that in front of their house a roof was constructed and there will be always dark in front of the house. P.W.21 in her cross-examination has admitted that Reddamma had already sustained injuries when she came out of the house and she could not identify the persons who ran away and accused were not present at the spot. She has given evidence that she has suspected the accused in this regard as per the say of the Police. P.W.22 - Reddappa in his cross-examination has also admitted that on that day there was galata in front of his house under the roof constructed by him whereunder it was dark all along. He also stated that when he came out of the house, his sister - Reddamma had already sustained injuries and he did not see the accused there and he has deposed that on suspicion he has lodged a complaint against the accused. He has not asserted that he witnessed

the incident personally. P.W.21 who has been subsequently treated as hostile after cross-examination, in cross-examination by Spl.P.P., she has admitted regarding the incident but again in the cross-examination by the defence counsel, she has stated that she is giving evidence as per statement given by her before the Police. As such, P.W.21 has changed her stand as per her convenience and the same has been taken note of by the learned Sessions Judge. Therefore, the trial Court has rightly disbelieved the evidence of P.W.2, P.W.21 and P.W.22.

10. The spot mahazar – Ex.P.6 has been stated to be drawn in the presence of P.W.7 and P.W.12. They have not supported the case of prosecution regarding drawing of scene of offence mahazar. P.W.8, P.W.13 and P.W.16 are panchas to Ex.P.7 – inquest mahazar. P.W.8 turned hostile. P.W.13 and P.W.16 have only stated that Police drew inquest mahazar in their presence but they in the cross-examination have stated that they do not know what is

written in the inquest mahazar. P.W.9, P.W.10 and P.W.11 are circumstantial witnesses and as per the case of the prosecution accused Nos. 1, 3, 4, 9 and 10 have taken shelter in the house of the witnesses immediately after the incident apprehending their arrest, but these witnesses have not supported the case of the prosecution. The material objects, i.e., knives (M.Os.7, 10 and 12) have been recovered under mahazar on the basis of voluntary statements of accused Nos. 1, 3 and 10 which are at Ex.P.22 to Ex.P.24 in the presence of pancha witness P.W.14. The said mahazar Ex.P.11 and Ex.P.12 under which said knives have been seized have not been established since P.W.14 has turned hostile and not supported the case of the prosecution.

11. The PM report is at Ex.P.16 and the opinion of the Doctor with regard to weapons examined by him is at Ex.P.18. P.W.19 – Doctor has opined that the deceased Reddamma died because of stab injuries and it is a

homicidal death. P.W.19 who conducted autopsy over the dead body of the deceased has opined in Ex.P.18 that stab injuries on the dead body of the deceased can be caused by M.O. Nos. 7, 10 and 12. There is no evidence of proof that these material objects were seized at the instance of the accused. The trial Court has held that there is no convincing evidence on the side of the prosecution to establish the guilt of the accused beyond reasonable doubt and has given the benefit of doubt to the accused.

12. In the case of **Ramanand Yadav Vs. Prabhunat Jha** reported in **2003 (12) SCC 606** and in the case of **C.K. Dase Gowda and others Vs. State of Karnataka** reported in **2014 (13) SCC 119** the Apex Court has observed that there is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden

thread which runs through the web of 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. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

13. In the instant case, on perusal of the entire evidence on record we are of the opinion that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt and therefore the learned Sessions Judge has rightly given the benefit of doubt to the accused and there are no grounds to interfere with the judgment passed by the trial Court.

14. Accordingly, the appeal has to be dismissed confirming the judgment of acquittal of the trial Court.

Order under Section 357A OF Cr.P.C.

15. PW.1-S.Ramesh Babu is the husband of deceased Reddamma and he lost his wife in this incident at his age of 40 years. Though a person has died, the State is not able to place evidence before the Court to prove the guilt of the accused. The Sessions Court has not passed any order under Section 357A of the Code relating to compensation payable to the victim.

16. On a plain reading of the entire provisions of Section 357 of Cr.P.C., it is evident that the Court is empowered to award compensation only when fine is imposed as sentence. The provisions of Section 357A of Cr.P.C., which has come into force with effect from 31.12.2009 by virtue of Act No.5 of 2009, enables the Court to award compensation even where the cases end in

acquittal or discharge. Section 357A of the Code is extracted here under:

"357A. Victim compensation Scheme

- (1) *Every State Government in co-ordination 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 Services Authority or the State Legal Services 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*

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.*

Even before introduction of Section 357A of Cr.P.C., Section 357 of Cr.P.C. conferred the jurisdiction on the Criminal Courts to pay compensation. The expression "whole or any part of the fine recovered to be applied" found in sub-section(1) of Section 357 restricted the power of the Court to award compensation from the fine amount imposed. It was not adequate to provide appropriate

compensation under Section 357 of the Code. Section 357A introduced in the Code in terms of Act 5 of 2009, aims to compensate the victims of the crime. Unlike Section 357, the recommendation to pay compensation to the victim is not dependent on the verdict of guilty. Even in the event of acquittal or discharge of the accused, there can be a recommendation for compensation under Section 357A of the Code. Failure on the part of the prosecution to secure a conviction for want of evidence or any other reasons, is not a ground to deny compensation to the victim of a crime. From the combined reading of Section 357 and 357A of the Code, it can be concluded that the Court needs to answer 3 questions before passing appropriate orders under Section 357A of the Code.

- a) *Whether the person is a victim of a crime or not?*
- b) *Whether compensation is to be awarded in favour of the victim or not?*
- c) *Whether compensation can be recovered from the accused?*

If the answer to question (a) and (b) is 'yes' and the answer to question (c) is 'no' then there must be a recommendation to the District Legal Services Authority or the State Legal Services Authority for payment of compensation as provided under Section 357A(2)(3) of the Code.

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. The provisions of Section 357A have been incorporated into the Code of Criminal Procedure on the recommendation of 154th report of the Law Commission submitted in the year 1996 by its Chairman K. Jayachandra Reddy. The Committee headed by Justice V.S. Malimath, to reform the Criminal Justice System, submitted report in the

year 2003 making its recommendations to ensure justice to the victims of crime.

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.

19. The Hon'ble Apex Court in the case of **Ankush Shivaji Gaikwad v. State of Maharashtra** reported in **2013(6) SC 770** has reviewed the entire case law relating to payment of compensation. In the said case, the Hon'ble Apex Court has observed as follows:

"33. The long line of judicial pronouncements of this court recognized in no uncertain terms a paradigm shift in the approach towards victims of crimes who were

held entitled to reparation, restitution or compensation for loss or injury suffered by them. This shift from retribution to restitution began in the mid-1960's and gained momentum in the decades that followed. Interestingly the clock appears to have come full circle by the lawmakers and courts going back in a great measure to what was in ancient times common place. Harvard law Review (1984) in an article on "Victims Restitution in Criminal Law Process: a Procedural Analysis" sums up the historical perspective of the concept of restitution in the following words:

"Far from being novel approach to sentencing, restitution has been employed as a punitive sanction throughout history. In ancient societies, before the conceptual separation of civil and criminal law, it was standard practice to require an offender to reimburse the victim or his family for any loss caused by the offence. The primary purpose of such restitution was not to be compensate the victim, but to protect the offender from violent retaliation by the victim or the community. It was a means by which the offender could buy back the peace he had broken. As the State gradually established a monopoly over the institution of punishment, and a division between civil and criminal

law emerged, the victim's right to compensation was incorporated into civil law."

20. The Hon'ble Apex Court in the case of **Suresh v. State of Haryana** reported in **(2015) 2 SCC 227** referring the earlier judgment of **Ankush's** case held that even interim compensation will have to be paid and rehabilitation of the victim will have to be made by the Government by providing adequacy of upper limit of compensation. Taking judicial note of the fact that 25 out of 29 States have notified victim compensation schemes, the award of compensation has not become a rule in terms of the provisions of Section 357A of Cr.P.C., a direction is issued by the Apex Court to the effect that pending consideration of upward revision of compensation scales, the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State is higher, is to be adopted by all States and those States who have not formulated the scheme have been directed to formulate and notify their schemes within one month from the receipt of a

copy of the aforesaid order. It is further directed that the copy of the judgment be forwarded to National Judicial Academy to sensitize all the judicial officers in the country relating to awarding of compensation under Sections 357 and 357A of Cr.P.C. The Apex Court in the said judgment has also held that it is the duty of the Court to ascertain financial need of victim arising out of the crime immediately and to direct grant of interim compensation, on its own motion, irrespective of application of victim. It is further held that the very object of Section 357A Cr.P.C. is to pay compensation to victims where compensation paid under Section 357 Cr.P.C. is not adequate or where the case ended in acquittal or discharge and where the victim is required to be rehabilitated.

21. The Division Bench of this Court had an occasion to consider the scope of Section 357 and 357A of the Code in the following matters:

- i) *In the case of **State of Karnataka, Police Sub-Inspector, Pattanayakanahalli Police Station,***

Sira taluk v. Rangaswamy reported in **ILR 2015 KAR 4879** wherein it has held that the compensation can be awarded by the appellate Court in exercise of power under Section 357A of the Code.

- ii) In the case of **State of Karnataka, by the Police Sub-Inspector, Moodabidri v. Mr.Vishwanatha Devadiga and another** reported in **ILR 2019 Kar. 4643** wherein certain guidelines are issued for application of Section 357 and 357A of the Code.
- iii) In the case of **The State through CPI Devadurga Police Station v. Laxmi W/o Durappa**, in Criminal Appeal No.3628/2012 decided on 20.04.2022 (whereunder one of us is a Member) has considered the scope of Section 357 and 357A, the Karnataka Victim Compensation Scheme, 2011 and The Compensation Scheme for women/victim/survivor of sexual assault/other crimes, 2018.

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.

23. In the instant case, though the accused is acquitted, there is no denial of the fact that Smt. Reddamma, w/o PW.1-S. Ramesh Babu, died in the incident. The said Ramesh Babu(PW.1) has lost his wife at his age 40. Under the circumstances, this Court is of the opinion that the victim-PW.1-Ramesh Babu is entitled to compensation under Section 357A of the Code.

24. In terms of the mandate under sub-section(2) of Section 357A of the Code, the Court may recommend the

District Legal Services Authority or the State Legal Services Authority for compensation to be paid to the victim.

25. In Laxmi's case (supra), the word 'Court' referred to sub-section(2) of Section 357A has also held to include the 'trial Court' as well as the 'appellate Court'. On receipt of such recommendation by the Court, the District Legal Services Authority acting under sub-section(5) of Section 357A of the Code has to hold an enquiry to determine the compensation payable to the victim. The scope and nature of enquiry are spelt out in 'The Karnataka Victim Compensation Scheme, 2011' ('Scheme 2011', for short). Such an exercise must be carried out in an expedite manner.

26. In the instant case, PW.1-Ramesh Babu was aged 40 years when he lost his wife Reddamma in the incident. No application is filed on behalf of the victim seeking compensation. Clause 9 of the Scheme 2011

provides that an application seeking compensation shall not be entertained after twelve months from the date of the crime. However, the power is conferred on the District Legal Services Authority to condone the delay for sufficient reasons, if the claim is made beyond the prescribed period of twelve months. However, from a reading of sub-section (2) of Section 357A of the Code, no time limit is prescribed for the Court to make recommendation for rehabilitation and compensation.

27. Under the circumstances, we are of the opinion that PW.1-Ramesh Babu, who has lost his wife at his age of 40, should be compensated appropriately as per the provisions of the Karnataka Victim Compensation Scheme, 2011.

The District Legal Services Authority shall determine the compensation payable to PW.1-Ramesh Babu in terms

of the guidelines prescribed under the Karnataka Victim Compensation Scheme, 2011. Hence, the following

ORDER

Criminal Appeal No.1113/2015 is dismissed.

Consequently, the judgment of acquittal dated 22.06.2015 passed by the learned Principal Sessions Judge, Kolar, in Sessions Case No.155/2012 is confirmed.

The District Legal Services Authority, Kolar, shall decide on quantum of compensation payable to the victim-PW.1-Ramesh Babu under the Karnataka Victim Compensation Scheme, 2011. A copy of this order shall be sent to the District Legal Services Authority, Kolar, for further action in terms of this judgment.

Necessary action shall be taken within two months by the District Legal Services Authority, Kolar, as contemplated under sub-Section(5) of Section 357A of the Code from the date of receipt of copy of this judgment and the action

taken report shall be submitted to the Karnataka Legal Services Authority for reference.

A copy of this judgment is marked to the Registrar General, High Court of Karnataka, Bengaluru, for circulation.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

LRS. Upto para 14
Kmv- from para 14 till end