IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.295 OF 2017

. [redacted] ... Appellant

Versus

1. The State of Maharashtra
2. [redacted]
3. ... Respondents

.....

Mr.S.S.Jadhav, Advocate for Appellant
Mrs.V.S.Choudhari, APP for Respondent no.1-State
Ms.Harshita Manglani, Advocate for Respondent nos.2 and 3 (Appointed)

.....

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 06 NOVEMBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Conviction and sentence recorded by Additional Sessions Judge, Amalner, Dist.Jalgaon dated 11-05-2017 in Sessions Case No.5 of 2016 for offence under Section 302 of the Indian Penal Code (IPC) has resulted into

filing of instant appeal by invoking Section 374 of the Code of Criminal Procedure thereby questioning the legality and sustainability of the impugned judgment.

CASE OF PROSECUTION IN BRIEF

2. Present appellant was chargesheeted by Amalner Police Station for commission of offence under Section 302, 504 of the IPC in the backdrop of FIR bearing 148 of 2015 registered on the strength of dying declaration Exh.25 recorded by a Lady Police Constable posted at Dhule City Police Station wherein deceased informed that her husband was addicted to liquor. Since 7-8 days prior to the occurrence, he was demanding money from her and on failure to meet the demand he abused her. Deceased gave statement that on 07-10-2015 at around 03:00 p.m. he again put up a demand of money for liquor, abused her and on refusal, sat on her, poured kerosene and thereafter ignited her. Brother and parents shifted her to the hospital where after on examination by PW4 Dr.Kuwar regarding fitness to give statement, her statement was recorded and initially offence was recorded under Section 307 and 504 of the IPC. She succumbed to 96% burns and so crime was converted to Section 302 of the IPC and accused was chargesheeted and finally tried by learned Additional Sessions Judge, Amalner, who passed above mentioned impugned order questioned before us in appeal.

SUBMISSIONS

On behalf of Appellant :

3. For relief of setting aside impugned judgment, learned Counsel for the appellant would submit that there are two dying declarations Exh.24 and Exh.25. He pointed out that deceased allegedly suffered 96% burns and therefore, it is doubtful whether she was in capacity to give statement. His second attack on same count is that in view of scoring and interpolations in the dying declarations, there is possibility of Doctor giving endorsement and certification by not examining the deceased but issuing certification by sitting in chamber. He further submitted that except child witness testimony, there is no other independent witness. When the child was with maternal uncle and being in custody of grand parents, possibility of child to be tutored cannot be ruled out and therefore, his evidence cannot be straightway accepted in absence of corroboration. He pointed out that in dying declarations it is stated that brother and parents of deceased have allegedly shifted her to the hospital, but none of them are examined. That history reported at the time of admission is also doubtful. All such crucial aspects have not been considered by the learned trial Judge and straightway dying declarations are relied and hence he prays to allow the appeal.

On behalf of State :

4. Per contra learned APP would submit that scribes of dying declarations have been examined by prosecution. That dying declarations are promptly

recorded. That they are both consistent regarding role and overt act of appellant husband. That very child of deceased and appellant has deposed against his own father. Inspite of cross-examination, his evidence has remained unshaken and as such it is submitted that there is no reason to interfere in the judgment which is based on sound reasons and findings.

5. Here case of prosecution is rested on oral evidence of in all ten witnesses.

EVIDENCE ON BEHALF OF PROSECUTION

PW1 Dilip Sahebrao Patil is Pancha to spot panchanama. His evidence is at Exh.14. Spot panchanama is at Exh.15.

PW2 [redacted] is son of deceased and accused. He is a child witness. His evidence is at Exh.18-A.

PW3 Dr.Prakash Kisan Tale is the Doctor, who examined accused. His evidence is at Exh.21.

PW4 Dr.Ajayraj Anandraj Kuwar is the Doctor, who made endorsement on the dying declaration Exh.24. His evidence is at Exh.23.

PW5 Kailas Pandit Borse is Circle Officer (Special Executive Magistrate), who recorded dying declaration Exh.24. His evidence is at Exh.26.

PW6 Himmat Dongar Koli is the landlord. His evidence is at Exh.28.

PW7 Zulal Vithhal Patil is father of deceased. His evidence is at Exh.29.

PW8 Rajesh Shivsing Chavan (Police Naik) is carrier of muddemal. His evidence is at Exh.30.

PW9 Pravin Mohan Kadam (PI) is Investigating Officer, who on completion of investigation chargesheeted accused. His evidence is at Exh.34.

PW10 Ms.Aruna Ishwar Gaikwad is Police Head Constable, who recorded dying declaration Exh.25. Her evidence is at Exh.43.

6. On appreciating submissions of both the sides, it appears that here admittedly evidence is in form of dying declarations and child witness account.

Before adverting to verify its veracity and reliability, we wish to narrate the brief account regarding evidentiary value of dying declarations as well as settled principles which are culled out by the Hon'ble Apex Court from the various landmark cases like ***Khushal Rao v. State of Bombay***, AIR 1958 SC 22, ***Paniben v. State of Gujarat;*** *(1992) 2 SCC 774,* ***Laxman v. State of Maharashtra****; (2002) 6 SCC 710,* ***Ganpat Bakaramji Lad v. State of Maharashtra;*** *2011 ALL MR Cri. 2249.* ***Surendrakumar v. State of Punjab;*** *(2012) 12 SCC 120,* ***Jagbir Singh v. State (NCT of Delhi)****; (2019) 8 SCC 779,* ***Madan v. State of Maharashtra****; (2019) 13 SCC 464.*

Off late in the case of ***State of Uttar Pradesh v. Veerapal and another;*** *(2022) 4 SCC 741* while deciding Criminal Appeal No.34 of 2022 on 01-02-2022, the Hon'ble Apex Court has reiterated the principles to be borne in mind

while analyzing and accepting dying declaration. The settled principles are as under:

> *"1. It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;*
>
> *2. Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;*
>
> *3. It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;*
>
> *4. A dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;*
>
> *5. A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character : and*
>
> *6. In order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of*

> *making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."*

Similarly, in the case of ***Uttam v. State of Maharashtra;*** *(2022) 8 SCC 576*, again certain principles are enunciated which are to be borne in mind in a case wherein the evidence is in the form of dying declaration. These principles are as under :

> *"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.*
>
> *(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.*
>
> *(iii) The Supreme Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.*
>
> *(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence.*
>
> *(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.*
>
> *(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.*

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon."

Very recently certain principles of law with regard to case involving multiple dying declarations are spelt out in the case of ***Abhishek Sharma v. State (Govt. of NCT of Delhi)*** [Criminal Appeal No.1473 of 2011, decided on 18-10-2023]. These principles read thus :

"9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

9.3 When inconsistencies are found between various dying

declarations, other evidence available on record may be considered for the purpose of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc."

The ratio that is settled is that dying declaration must be firstly voluntary, truthful and secondly it should not be tutored and further the same should inspire the confidence of the Court. These are the basic principles which are to be borne in mind while appreciating dying declarations.

7. Here apart from dying declarations, there is also testimony of PW2 [redacted], son of deceased and accused. He is apparently a child witness. Therefore, even before touching to his substantive evidence in the witness box, we also propose to give brief account of evidentiary value of child witness.

There are various landmark pronouncements on above aspect and a few could be named as under:

In **Mangoo and another v. State of Madhya Pradesh**; AIR 1995 SC 959, the Hon'ble Apex Court while dealing with the evidence of a child witness observed that;

> *"There was always scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. The Court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring."*

In the case of **Dattu Ramrao Sakhare v. State of Maharashtra**; 1997 (5) SCC 341, Hon'ble Apex Court held that;

> *"A child witness if found competent to depose to the facts and reliable on such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her*

demeanour must be like any other competent witness and there is no likelihood of being tutored."

In **Ratansinh Dalsukhabhai Nayak v. State of Gujarat**; (2004) 1 SCC 64, the Hon'ble Apex Court held that;

"Child witness – evidence of – conviction on the basis of – held, permissible if such witness is found to be competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same."

The Hon'ble Apex Court in the case of ***Gagan Kanojia and another v. State of Punjab;*** (2006) 13 SCC 516 has ruled that,

"Part of statement of child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence."

In **Nivrutti Pandurang Kokate and ors. v. State of Maharashtra**; AIR 2008 SC 1460, the Hon'ble Court dealing with the child witness has observed as under;

"The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may,

however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

In a celebrated case of **Hari Om v. State of U.P.**; (2021) 4 SCC 345, very recently the Hon'ble Apex Court, in para 22 of this judgment, has spelt out legal principles, summarized the evidentiary value of child witness, effects of its discrepancies, and duty of court and corroboration when to be insisted upon, which we borrow and quote here:

"22. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is require to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. If the child witness is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child

witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not. The evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law."

ANALYSIS

8. The dying declarations Exhibits 24 and 25 are reproduced in translated form for proper comprehension :

FIRST DYING DECLARATION

"**Exh. 24**

Dt: 07/10/2015
Dhule: Civil Hospital

Dhule Before the Hon'ble Executive Magistrate,
Dhule Taluka, Dhule.

1	Time of recording Statement:	Dt. 07/10/2015

2	Name of Patient	[redacted]
3	Age	30 yrs
4	Occupation	Household and Labour Work
5	Full Address	At post Takarkhed, Tq. Amalner Dist. Jalgaon
6	The Place of Occurrence	At the residential house on dt: 7/10/2015 Approximately at 3.00 O'clock.
7	Reason for the Occurrence of Incident. Was there any trouble from family members? Names of persons present at the time of incident?	The husband poured Kerosene on her person and set her on fire as she did not give money to drink liquor. Both the husband and wife were present at home. Husband: [redacted] and (She) herself My husband is addicted to liquor. He was demanding money since last 7-8 days for drinking liquor and continuously abusing me badly. Today on dt. 7/10/2015 at about 3:00 o'clock he poured kerosene on me by sitting on my person and set ablaze by the match stick on the reason of not giving money and ran away out of the house. I ran outside the house screaming as my body was burnt. At that time ex-Police Patil of our village Shri Himmat Koli put quilt on my person and extinguished fire. After some time my brother Raghunath Zulal Patil and my parents (mother and father) came to my village as my maternal place is nearby and admitted me in the Civil Hospital Dhule by ambulance. I have complaint against my husband [redacted] regarding the said incident. The above statement is read
8	Do you have suspect on any family members/any other persons? Mentioned the names.	
9	Who admitted in the hospital? And when?	
10	Time and date of commencing the statement?	

		over to me and it is true and correct as per my narration. Hence this statement.....

The time and date of of commencement of statement 7/10/15 on 18:40

Before
Executive Magistrate
Dhule Taluka, Dhule
Patient is conscious and oriented to give statement.

[redacted]
Thumb expression of Big toe due to
burn injuries on both the hands.

D.D.started
at 6:20 pm
7/10/2015
Sd/-
(C.M.O)

R/R In evidence of
P.W. No. 04 in.....
Dt: 2/02/2015
Sd/-
D.J.-1 & A.S.J.
Amalner

Patient is conscious and oriented to give statement.
D.D. ended at 6.40 p.m.
7/10/2015
Sd/-
(C.M.O)
Dhule"

(As translated by Sr. Translator, High Court, Aurangabad).

SECOND DYING DECLARATION

"STATEMENT **Exh. 25**
Dt: 07/10/2015

Patient is conscious oriented
and give statement at
6.45 pm Sd/-
07/10/2015 Medical Officer

Amalner P.S. Part 5.crime Reg.
No. 148/2015 IPC Sec. 307,504
station Diary No. 281/15
Entry is noted at No. 2
on 00/05
Sd/-
S.H.O. Amalner P.S.

Patient is conscious and oriented to give statement. Statement ended at 7.00 p.m.
7/10/2015
Sd/-

(C.M.O)
Sarvopchara Rugnalaya, Dhule

I Mrs. [redacted], age 30 yrs. Occupation Household and Labour work, R/o: Takarkheda, Tq. Amalner, Dist. Jalgaon.

I do hereby make statement upon asking in person that, I am residing at the above mentioned place with my husband [redacted], two sons namely [redacted]. My husband has an addiction of drinking liquor and since last 7 to 8 days he was demanding money to drink liquor and was abusing me badly. He was not working himself and was not allowing me to work either.

Today on dt. 7/10/2015 at 3.00 O'clock in the afternoon he asked for money to drink liquor as usual and as I did not give money to him he abused me badly and by sitting on my person poured kerosene on my person and ablaze me with the match stick and ran away from the house. As my body was burning, I screamed and ran out of the house. At that time our owner, ex-village Police Patil Himmat Koli, has extinguished me by putting quilt on my person. As my maternal village is nearby, after some time my brother Raghunath Zulal Patil, my parents (father and mother) came to my village and put me in an ambulance and admitted me at the Civil Hospital Dhule today on 07/10/2015 at 5.15 in the evening for the treatment and I am undergoing treatment. I have complaint against my husband [redacted] regarding the said incident.

My above statement is read over to me and it is written true and correct as per my narration.

Before
sd/-
(K. M. Gaikwad)
P.H.C. Dhule Civil P.S.

Hence this statement
Dt: 7/10/2015.
Sau. [redacted]
Big toe impression due to burn injuries on both hands"

(As translated by Sr. Translator, High Court, Aurangabad).

9. Dying declarations Exh.24 and Exh.25 are scribed by **PW5** Borse, Revenue Authority and **PW10** Ms.Gaikwad, Lady Police Constable respectively. We have gone through the substantive evidence of both these witnesses. They

claim to have visited hospital, approached Doctor, sought endorsement and certification to record dying declarations and thereafter, have recorded both dying declarations. Exh.24 is first in point of time and Exh.25 seems to be subsequent one. On going through the dying declarations, it is worth noting that they are consistent about appellant / husband's bad vices i.e. consumption of liquor and he abusing her since 7-8 days for not giving her money to buy liquor. In both dying declarations, he has stated about she made to fall, he sitting on her for refusing to give money to buy liquor and then pouring kerosene and setting her on fire. She has named him and held him responsible for the burns.

Inspite of both scribes being subjected to **cross-examination**, their evidence about they going to hospital and recording dying declarations has remained intact. Therefore, there is no reason to discard or disbelieve or even doubt the dying declarations. Both are independent witnesses. There is nothing on record to disbelieve their testimonies. Even we are convinced that the dying declarations carry no infirmity so as to discard the same or doubt the same.

10. Apart from consistent dying declarations, prosecution seems to have examined PW2 [redacted], very child of accused and deceased and PW6 Himmat, landlord, who was also present at the time of incident.

PW2 [redacted], son of deceased and accused is a child witness. After the learned trial Judge has ascertained his efficiency to depose by putting him preliminary questions and on subjective satisfaction to that extent, his statement has been recorded, wherein he stated that on that day, he had been to School at 11:30 a.m. In the morning itself his father had abused his mother by consuming liquor. He stated that he used to make demand of cash for consuming liquor. At 03:00 p.m. to 04:00 p.m. he learnt from his classmates that his mother was set ablaze by his father and so he went home and saw his mother sitting on cot inside the house with severe burns. He stated that even his mother informed him that his father had ablaze her and thereafter, she was taken in Ambulance to hospital. That his father also suffered burns on his hands.

In **cross-examination** child has been asked whether in his statement before Police he had stated that students had informed him that his father had ablaze his mother and the said part is not finding place in his statement and so much part is shown as omission. He further answered that at the time of recording his statement, his grandfather told him to make such statement against accused. Attempt is made by further suggesting him that his father used to bring clothes for him as well as sarees for his mother and maintaining his mother and him. He flatly denied that he falsely stated about his mother telling him that his father set her ablaze.

11. Here above testimony of PW2 [redacted], child witness, on due satisfaction has been recorded by learned trial Judge. Secondly, child has also spoken about his father consuming liquor and even beating her under its influence on that very morning before he went to School at 11:30 a.m. Omission as regards to learning from friend about incident is not material omission. Likewise even his statement that, at the instance of grandfather he is giving statement also need not be given undue importance. There is oral dying declaration to this witness and he has deposed accordingly. Therefore, we do not find any reason to discard or doubt his version merely because he is a child witness. We find that his evidence is inspiring confidence and therefore, there is no need to insist upon corroboration, which is just a matter of caution not rule. Even otherwise testimony of PW2 [redacted] gets corroborated from evidence of PW6 Himmat.

12. Apart from PW2 [redacted], prosecution has also adduced evidence of **PW6** Himmat, landlord at Exh.28, who also in his evidence stated that at 02:30 to 03:00 p.m. on 07-10-2015, he heard shouts from the house of accused and saw wife of accused in flames. He stated that he tried to douse the fire by use of quilt. He also claims that he inquired about reason for burn injuries and she told that her husband set her on fire by sitting on her person and that accused had made demand of money for consuming liquor and when she did not pay the same, he set her on fire.

Nothing is brought in his **cross-examination** to discredit his evidence.

CONCLUSION

13. Therefore, on carefully analyzing the above evidence, we find not only dying declarations to be consistent and worthy of credence but there is also reliable evidence of very child of accused and deceased as well as an independent witness, who corroborates testimony of PW2 [redacted] also. Dying declarations are inspiring confidence. There is evidence of PW2 [redacted] and PW6 Himmat, which is also not shown to be unworthy of credence. Therefore, case of prosecution is squarely proved.

14. We have gone through the impugned judgment. We do not find any reason to interfere in the findings as regards to offence under Section 302 of the IPC is concerned.

15. Ms.Harshita Manglani, learned Counsel for respondent nos.2 and 3 appointed by us, would point out that accused father is in jail, mother has expired and both children were in custody and taken care of by grandparents but unfortunately now even grandfather has expired. Therefore, both children, who are of tender age, are now exposed to adverse condition. They have no means for their survival and better education and therefore, she seeks

indulgence of this Court by invoking Section 357-A of the Code of Criminal Procedure (Cr.P.C.) and issuing directions.

16. Here admittedly deceased has two children and they are named by her in both dying declarations Exh.24 and Exh.25. She has not given their ages but her own age on record has come as 30 years of age. Therefore, there is reason to presume and infer that both children must be of tender age and definitely not above teenage.

Learned Counsel for the appellant also fairly pointed out that after death of mother and after incarceration of accused father, children have lost company and shelter of both parents.

Statement has been made across the bar by the learned Counsel for the respondent nos.2 and 3 that off-late even grandfather has expired and so she seeks arrangement of adequate means for rehabilitation and future of both the children. She has also sought reliance on following rulings :

(a) ***State of Maharashtra Through Police Station, Bhokar v. Baburao Ukandu Sangerao****; 2023 SCC Online Bom 1945*

(b) ***Suresh and Another v. State of Haryana****; (2015) 2 Supreme Court Cases 227.*

17. Section 357-A of the Code of Criminal Procedure provides as under :

*"**357-A. 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 Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

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

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

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

18. Time and again the Hon'ble Apex Court reiterated that victim(s) are generally not kept in sight by trial Courts. Section 357 and 357-A are incorporated with a definite purpose of compensating victim(s) of crime and / or their dependents. It has now become mandate of law that criminal Courts are required to apply its mind to the question of awarding compensation. The landmark case which has become a torch bearer on above aspect is the case of ***Ankush Shivaji Gaikwad v. State of Maharashtra;*** *(2013) 6 Supreme Court Cases 770*. In this judgment, it has been held that "power to award compensation is not ancillary to other sentences, rather it is in addition thereto." The very idea incorporated under Victim Compensation Scheme is to reassure victim that he or she is not forgotten in the criminal justice system and rather has a stake and say in such system. In the selfsame judgment, the factors which are required to be considered while granting compensation are also elaborately dealt with. In paragraph nos.28 to 58 the Hon'ble Apex Court has elaborately discussed and dealt about Victimology since the case of ***Maru Ram v. Union of India****; (1981) 1 SCC 107,* ***Hari Singh v. Sukhbir Singh****; (1988) 4 SCC 551,* ***Sarvan Singh v. State of Punjab****; (1978) 4 SCC 111,* ***Balraj v. State of U.P.****; (1994) 4 SCC 29;* ***Baldev Singh v. State of Punjab****; (1995) 6 SCC 593.*

It has been observed in paragraph no.33 that "*The long line of judicial pronouncements recognized in no uncertain terms, a paradigm shift in the*

approach towards victim of crimes who were held entitled to ***reparation, restitution or compensation*** *for the loss or injury suffered to them*.

19. The aspect of Section 545 incorporated in the Code of Criminal Procedure, 1898 (old Cr.P.C.) has been touched and discussed alongwith 41st Report of Law Commission of India, amendments to Cr.P.C. brought in 2008, introduction of 357-A empowering Courts to direct State to pay compensation to victim has dealt and discussed observations of 154th Report of Law Commission of India on Cr.P.C. in which entire chapter has been devoted to "Victimology" regarding growing emphasis on victim's right, the principles founded in Indian Constitutional Jurisprudence.

20. The upshot of the discussion in above judgment is that, Courts of Law are not only obliged to exercise their power to award compensation but has also legal duty to compensate a victim for the loss and injury inflicted as a result of act and omission on part of other party.

21. Very recently Hon'ble Apex Court in the case of ***Jagjeet Singh and Others v. Ashish Mishra Alias Monu and Another****; (2022) 9 Supreme Court Cases, 321* after dealing with Section 2(wa) of the Cr.P.C., which defines the word "victim", took into account the global perspective of victim's right, UN Declaration of Basic Principles of Justice for Victims of Crimes, laws prevailing

in United States of America, Australia, Canada, taking into account recent amendments made in Cr.P.C., 154th Report of Law Commission of India, in para 20 observed as under "

> *"20. It is pertinent to mention that legislature has thoughtfully given a wide and expansive meaning to the expressions "victim" which "means a person who has* ***suffered any loss or injury*** *caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her* ***guardian or legal heir .*** *(emphasis laid)*

22. Again in the case of ***Suresh and Another v. State of Haryana****; (2015) 2 Supreme Court Cases 227*, above views and observations are echoed for effectuation of Section 357-A by keeping in mind the object and purpose of said provision, which enables a Court to direct even a State to pay compensation, when it is found to be inadequate under Section 357 of the Cr.P.C. even when the case ended in acquittal or discharge.

23. Bearing in mind above settled legal position, we proceed to examine the entitlement of children of deceased [redacted] to seek compensation and rehabilitation.

Before us statements are made across the bar that as on today after loss of mother and incarceration of father for life, children are virtually rendered orphan. We are told that after above incident and conviction, children were

put with grandparents and even off-late grandfather is heavenly abode. However, there is nothing in black and white to that extent before us. We trust the learned Counsel representing victim and therefore, we wish to direct District Legal Services Authority to conduct an enquiry and thereafter, take effective steps for either compensation or making available all means for rehabilitation of both children, which are permissible under law.

24. Before parting, we appreciate and acknowledge the concern raised by Ms.Harshita Manglani, learned Counsel for victims for bringing to our notice the above pivotal question which otherwise would have gone unnoticed.

With above observations, we proceed to pass following order :

ORDER

(I) Criminal Appeal No.295 of 2017 is dismissed.

(II) District Legal Services Authority, Jalgaon is hereby directed to undertake exercise of getting ascertained the current whereabouts of children of deceased, their educational and financial status and then on due enquiry and satisfaction, take appropriate steps for meaningful rehabilitation of children of appellant and deceased.

(III) Fees of the learned Counsel, who is appointed to represent respondent nos.2 and 3, is quantified at Rs.7,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(ABHAY S. WAGHWASE, J.) **(SMT. VIBHA KANKANWADI, J.)**

SPT