

Orissa High Court

Sanjeet Sandha vs State Of Odisha on 10 June, 2020

HIGH COURT OF ORISSA: CUTTACK

BLAPL No.2418 OF 2020

(In the matter of an application under Section 439, Criminal Procedure Code, 1973)

SANJEET SANDHA ... .. Petitioner

Versus

STATE OF ODISHA ... .. Opp. Party

For petitioner: Mr. B.R.Tripathy, Advocate

For the Opp.Party: Mr. Jyoti Prakash Patra, Addl. Standing Counsel

PRESENT

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing - 02.06.2020

Date of judgment - 10.06.2020

1.

Dreadful crime challenges the belief in fundamental goodness of the society and if there is an understandable motive or response to some form of provocations, we can't comprehend them as it falls beyond the bonds of moral acceptability which is aptly epitomized in the instant case. The petitioner in the present application under Section 439, Cr.P.C. seeks to get enlarged on bail as he is in custody in connection with a case booked under Sections 285, 307 of I.P.C., 1860 arising out of Rairakhol P.S. Case No.260 of 2019 corresponding G.R. Case No 575 of 2019 pending in the file of Ld. S.D.J.M., Rairakhol.

2.The brief factual matrix as set out in the FIR reveals that on 07.11.2019, the petitioner had borrowed the bike of one of the co-villagers named Radheshyam Pradhan to bring petrol in a bottle from the nearby petrol pump. Since the Petitioner failed to turn up for quite some time the said vehicle owner got worried and started looking for the Petitioner. Finally, he found the petitioner along with his bike and a bottle of petrol around 4:30 PM at Old Bank Chowk. The delayed return of the vehicle by the petitioner irked the owner of the vehicle which triggered a verbal squabble with the present petitioner. In the meantime, the injured (the nephew of the informant) who, was a bystander, tried to mitigate the dispute between the two like a Good Samaritan. Little did the Good

Samaritan know that he was, in fact, trying to reason with the devil himself? Instead of being thankful to the victim, the Petitioner, without batting an eyelid and knowing fully well of the consequences of his action, splashed the petrol and hurriedly ran towards a nearby betel shop and snatched away a match box from the said betel shop of Sheta Behera, lit a match stick and tossed it at the victim. The entire upper body engulfed in fire and received scathing burn injury in the upper body part including head, neck, face and chest etc. Having done so, he vanished from the crime scene in a cowardly manner. The shocked passersby and locals immediately rushed to the victim's aid and attempted to douse the fire and took him to the nearby hospital.

3.The entire facts were succinctly narrated to the police by the uncle of the victim, Shri Sribanta Purohit, on the same day of occurrence i.e. on 07.11.2019 at 10:55 PM which culminated into registration of an F.I.R. against the present petitioner under Sections 285, 307 of I.P.C. vide Rairakhol P.S. Case No.260 of 2019.The monstrous act of the petitioner endangered victim's life which is recognized as a serious criminal act under criminal law of the land. The petitioner was taken into custody on 08.11.2019, thereafter he unsuccessfully moved a regular bail on 06.12.2019 before the learned S.D.J.M., Rairakhol. He, once again, invoked Section 439 of Cr. P.C. before the Addl. Sessions Judge, Rairakhol which was rejected vide order dated 27.02.2020.

4.Shri B.R. Tripathy, Ld. Counsel for the Petitioner vigorously contended that the petitioner is in no way involved in the commission of the alleged crime and has been falsely implicated. The petitioner has been arrayed as an accused sans proper investigation and evidence. The petitioner is a poor man and simply a victim of circumstances. He further states that the petitioner is the permanent resident of village Khandadhip P.S. Rairakhol, Dist.-Sambalpur, hence there is no possibility of absconding or fleeing from criminal justice administration. He further pleaded that the petitioner has been languishing in jail custody since 8.11.2019, therefore deserved to be enlarged on bail.

5.Per contra, Shri Jyoti Prakash Patra Ld. Addl. Standing Counsel for the State, pithily advanced his argument and stated that the most telling aspect of the instant case is that the Petitioner is an ill-tempered person. He had a pre- conceived plan to burn the victim with an intention to kill which boiled down to the commission of a heinous and brutish act leading to severe burn injuries. But as providence would have it and perhaps due to the good deeds of the victim, he survived and has lived to tell a rather gory tale. The Petitioner has not acted impulsively but he was fully aware of the consequences of his act. He further averred that there was a clear "mens rea" i.e. 'the intention to kill' at the time of committing the crime. He has shown scant regard for precious human life. In fact, the statement of the victim Harihar Purohit under Section 161 of the Code of Criminal Procedure which was corroborated by other witnesses with near unanimity in displaying that the Petitioner had threatened to kill him and translated into action in the present case. The statement of victim further reaffirmed that the Petitioner is known to be a man of frightening temper which resulted in grave fear among the other bystanders present on the spot.

6.A bare perusal of the up-to-date case Diary, Statements recorded under Section 161 of Cr.P.C., injury report and the arguments advanced by the parties, divulge that the accused/petitioner is in jail custody in connection with this case since 08.11.2019 for alleged commission of offences punishable u/s. 285/307 of IPC. He was alleged to have poured petrol on the body of informant's

nephew leading to severe burn injuries on the sensitive parts of his upper body. The injury report smacks burn injuries on his head, neck, face, left upper limbs, chest, left back of shoulder and clearly indicates that the victim has sustained about 30 to 35% (percent) of deep burn injuries which warranted hospitalization for more than 58 days in various hospitals. The medical opinion on the nature of the injury said to be grievous in nature.

7. In the meantime, the Final Report has been filed on 31.1.2020 with 13 P.W.s (including 2 seizure witnesses). Most of the P.W.s are chance witnesses who own shops/establishments in the vicinity of the crime spot. The statements of all the material witnesses crystallized into a common thread having four limbs namely:

(a) that the Petitioner was fully aware of the consequences of his action; (b) He is known to be a hot headed person; (c) The person who were present near the crime spot being aware of the ill-tempered nature of the Petitioner; and (d) the injured victim had at no point time provoked or aided in provoking to do such act, on the contrary, the victim has acted in good faith and showed good Samaritanism.

8. Amidst avalanche of physical and mental sufferings, the victim has to experience the grim scenario of our criminal justice system towards victims. The approach of the Indian criminal justice system is centripetally directed towards the concerns of the offender, his activities, his rights and his correctional needs but the rights of the victims often take a back seat. Some exceptional and progressive international movements and legal instruments in the past stressed on ameliorating the plights of the victims. The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 has emphasized on the fact that crime is not just a mere violation of a criminal code but also it inflicts harm to victims in terms of economic loss, emotional suffering and physical or mental injury. Originally, the adversarial criminal justice system of our country was also not victim sensitive. The Government appointed Malimath Committee on Criminal Justice Reforms was uncharacteristically candid in its lamentation that "people by and large have lost confidence in the criminal justice system ..... Victims feel ignored and crying for attention and justice."<sup>1</sup> In its turn, the Committee concluded that the criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognized by law and restitution for loss of life, limb and property are provided <sup>1</sup>Report of the Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs-Vol. I March 2003 (hereinafter referred to as "Malimath Committee Report"), 75. for in the system."<sup>2</sup>The committee suggested quite a few changes to the Criminal Procedure Code to give the victim a prominent role.<sup>3</sup>

9. Amidst increasing concern for compensation to victims of crimes, Section 357A was inserted in the Code of Criminal Procedure in the year 2009. It was intended to reassure the victim that he or she is not forgotten in the criminal justice system. Though the amendments in 2009, left the character of Section 357 unaltered, with the introduction of this Section, the Court is empowered to direct the State to pay compensation to the victim in such cases where the compensation awarded under Section 357 is inadequate for such rehabilitation, or where the case ends in acquittal or discharge but the victim has to be rehabilitated. Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services

Authority to award him/her compensation. The scheme made way for an institutionalized payment of compensation to the victim by the state for any loss or injury caused to him by the offender. The responsibility has been imposed on the states to create and maintain a fund for the purpose. Despite the fact that the power stands vested in Courts under Section 357 and 357A of the Code, the provision have by and large faced selective institutional amnesia.

10. Besides, there are provisions in other legislations for payment of compensation to the victim,<sup>4</sup> either by the trial court or by specially set up claims' <sup>2</sup>Ibid at 271.

<sup>3</sup>The Malimath Committee largely concurred with the recommendations of Law Commission of India. See 152nd and 154th Reports of Law Commission of India. <sup>4</sup> Under Section 5 of the Probation of Offenders Act, 1958 while releasing an accused on probation or admonition, the court may order the offender to pay compensation and cost to the victim.

tribunal. The right to compensation was later interpreted by apex court as an integral part of right to life and liberty under Art. 21 of the Constitution.<sup>5</sup>

11. In similar vein, the State of Odisha in exercise of the powers conferred by the provisions of Section 357A has formulated the Odisha Victim Compensation Scheme, 2017. According to the said scheme, compensation for burn injury victims is awarded depending on the grievousness of injury and related factors like disfigurement of the face etc.

12. A bare perusal Section 357 A of the Code of Criminal Procedure, 1973 makes it clear that 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 be saddled with the responsibility of deciding the quantum of compensation to be awarded under the scheme. The reason de'trefor such a reasoning is that if the Court comes across a fit case which shakes its conscience and if it opines that a citizen of the country has been let down by the State then as a measure of restitution as well as rehabilitation, it can order for appropriate compensation to be paid to the victim.

13. There has been a general reluctance on the part of courts to exercise the power under Section 357 to the benefit of the victims. The courts have limited themselves to award of sentences with no mention of compensation to victims thereby denying their basic right. In Hari Singh vs. Sukhbir Singh,<sup>6</sup> the Hon'ble <sup>5</sup> In addition, Article 41 (Directive Principle of State Policy) and Article 51A (Fundamental Duties) of the Constitution cast a duty on the state to secure "the right to public assistance in cases of disablement and in other cases of undeserved want" and to "have compassion for living creatures" and "to develop humanism" respectively.

<sup>6</sup> (1988) <sup>4</sup> SCC 551 Supreme Court has lamented on the failure of the Courts in awarding compensation to the victims in terms of Section 357(1) of the Code of Criminal Procedure. The Court recommended to all Courts to invoke Section 357 of the Code of Criminal Procedure to sub-serve the ends of justice and held that:

".....Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way."

The apex Court in *Delhi Domestic Working Forum v UOI*<sup>7</sup> has reaffirmed its concern through following words herein below:

"It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The 7 1995 SCC (1) 14 Board will take into account pain, suffering and shock as well as loss of earnings...."

Similar sentiment also found expression in *State of Gujarat v Hon'ble High Court of Gujarat*<sup>8</sup> with the following words:

"Section 357 of the Criminal Procedure Code, 1973 provides some reliefs to the victims as the court is empowered to direct payment of compensation to any person for any loss or injury caused by the offence.

But in practice the said provision has not proved to be of much effectiveness."

The above-mentioned views were further endorsed in *K.A. Abbas H.S.A v. Sabu Joseph*<sup>9</sup>, *Ankush Shivaji Gaikwad v. State of Maharashtra*<sup>10</sup>, *Mohd. Haroon v. Union of India*<sup>11</sup>, *Abdul Rashid v. State of Odisha*.<sup>12</sup> In addition, in *Ankush Shivaji Gaikwad (supra)*, the apex Court has categorically held that the trial court is duty bound to decide the issue of sentencing as well as victim compensation at the time of deciding the sentencing aspect of a criminal trial.

14. In the light of facts and circumstances, the present case appears to be a fit case for an order for compensation to the victim through Odisha State Legal Services Authority. The said authority must come to the aid of the victim by disbursing reasonable sum of money commensurate with his sufferings and medical expenses as payable under the Odisha Victim Compensation Scheme, 2017.

Accordingly, this court directs the State legal Service Authority to pay the 8 (1998)7 SCC 392 9 (2010) 6 SCC 230 10 (2013) 6 SCC 770 11 (2014) 5 SCC 252 12 (2014) 1 ILR Cr.L.J. 202 appropriate compensation to the victim within four weeks from today. It is further made clear that in the event the Petitioner is convicted in the present case, the trial court shall consider further compensation which could be recovered from the offender in addition to the aforesaid sum. In addition, it is directed that Ld. Trial Court shall conclude the trial as expeditiously as possible.

15. It is also imperative that the Trial Courts, while deciding bail cases of this nature, should consider awarding a reasonable amount as an interim award so that the victims, especially hailing from poor and underprivileged classes, can utilise the said amount for the purpose of meeting their medical expenses.

16. Considering the aforesaid discussion and taking into account the entirety of facts and circumstances of the case in hand, this Court is not inclined to release the accused Petitioner on bail. Accordingly, the bail petition filed on behalf of the accused/petitioner stands rejected.

17. It is, however, clarified that the above observations shall not come in the way of a fair trial before the Ld. Trial Court and it will proceed to decide the matter on its own merits, uninfluenced by any of the observation made hereinabove. The bail Application under Section 439 Cr.P.C. is accordingly dismissed. Let free copies of this judgment be made available to the State Legal Services Authority, District Legal Services Authority and the informant of the present case.

[S.K.PANIGRAHI,J.] Orissa High Court, Cuttack.

The 10th day of June, 2020/AKP.