

**(2001) 07 GUJ CK 0022**

**In the Gujarat High Court**

**Case No :** Criminal Appeal No's. 405 and 462 of 1996

Ajitbhai Ganpatbhai Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision :** 12-07-2001

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 357, 357(3), 431

Negotiable Instruments Act, 1881 (NI) — Section 138

Penal Code, 1860 (IPC) — Section 149, 307, 323, 324, 34

**Citation :** (2001) 4 GLR 3253

**Hon'ble Judges :** B.C. Patel, J;A.L. Dave, J

**Bench :** Division Bench

**Advocate :** B.P. Munshi, for Petitioner Nos. 1-2 in Criminal Appeal No. 405 and 462 of 1996, for the Appellant; K.T. Dave, App for Respondent No. 1 in Criminal Appeal Nos. 405 and 462 of 1996, for the Respondent

**Final Decision :** Dismissed

## Judgement

A.L. Dave, J.—These two appeals arise out of the Judgment and order rendered by the Additional Sessions Judge, Kheda at Nadiad in Sessions Case No. 120 of 1995 on 23rd April, 1996 convicting the appellants for the offences punishable under Sections 376(2), 323 and 324 of the Indian Penal Code.

2. The facts of the case, in brief, are that;

Lalitaben, wife of Viththalbhai, resident of Vaddala, Taluka Mehmdavad, lodged a first information report before the Senior Police Sub-Inspector of Mehmdavad Police Station on 1st December, 1994 at about 10.00 p.m. alleging that on that evening at about 8.00 p.m., when she was cleaning vessels in the courtyard of her house, the present appellants came there suddenly. Accused, Ajit Ganpat, held her hands; accused Ramesh Mahotbhai Chauhan, held her legs and raised her clothes whereas accused, Rajendra Bhudar, mounted on her and he committed rape. At this time, she started raising shouts but Rajendra Bhudar gagged her mouth with his hands and, therefore, she could not raise shouts. She

stated further that in the course of transaction, one of the fingers of Rajendra Bhudar entered her mouth and came between her teeth, as a result of which, the tip of the finger was severed. During this transaction, she tried to free herself from the clutches and at that time, Rajendra Bhudar gave a bite on her left cheek, just below the left eye. Accused, Ajit Ganpant, caused scratch injuries with nail on her right cheek. Because of the injury on his finger, Rajendra Bhudar lifted his hand from her mouth. She, therefore, shouted for help shouting that "Neeru rush as I am assaulted". Responding to the call, her sister in law (husband's younger brother's wife) came there and the three assailants, therefore, ran away. Thereafter, Neeru raised shouts and hearing those shouts, the complainant's husband, Viththal, and his younger brothers Navinbhai & Ghanshyambhai and neighbour, Pravinbhai, came to the spot. She narrated the incident to all of them divulging the fact of rape and bite injuries. She stated that as the assailants were from her village, she knows them.

2.1 On the basis of above first information report, an offence was registered by Mehmdavad Police at C.R.No. 276/94. The Police investigated the case and having found sufficient evidence, the police filed chargesheet in the Court of Judicial Magistrate First Class, Mehmdavad and a Criminal Case came to be registered in the Court of Judicial Magistrate First Class, Mehmdavad. As the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class committed the case to the Court of Sessions and the Sessions Court, Kheda at Nadiad, registered Sessions Case No. 1205 of 1995.

3. The learned Additional Sessions Judge, on commencement of the trial, framed charges against the accused at exhibit 2 for the offences punishable under Sections 376(2) 323 and 324 read with Section 34 of the Indian Penal Code. All the accused persons pleaded not guilty to the charges. The trial, therefore, was proceeded with.

3.1 Considering the evidence led by the prosecution, the learned Additional Sessions Judge came to a conclusion that the prosecution was successful in proving the charges levelled against the accused persons. The learned trial Judge, therefore, convicted all the accused persons for the offences punishable u/s 376(2) of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.2000/- and in the event of default in payment of fine, they were directed to undergo further rigorous imprisonment for a period of two months.

3.2 Each of the accused was convicted for an offence punishable u/s 323 and was sentenced to undergo rigorous imprisonment for a period of one month and to pay a fine of Rs.100/- and to undergo further rigorous imprisonment for a period of one month, in the event of default in payment of fine.

3.3 Each of the accused was convicted for the offence punishable u/s 324 and was sentenced to undergo rigorous imprisonment for a period of one year and was also directed to pay a fine of Rs.500/- and to undergo further rigorous

imprisonment for a period of one month, in the event of default in payment of fine.

4. Aggrieved by the said judgment and order, original accused no.1, Rajendra Bhudar, has preferred Criminal Appeal No. 462 of 1996 and the accused, Ajit Ganpat and Ramesh Mahot, have preferred Criminal Appeal No. 405 of 1996.

5. As these two appeals arise out of the same judgment and order, they are heard together and are disposed of by this common judgment. For the sake of convenience, original accused no.1, appellant in Criminal Appeal No. 462 of 1996, is addressed to as accused no.1 and the appellants No.1 & 2 in Criminal Appeal No. 405 of 1996 are addressed to as accused nos. 2 and 3 respectively in this judgment.

6. The appellants are represented by the learned advocate, Mr. B.P.Munshi, whereas, the respondent is represented by the learned APP, Mr. K.T.Dave. The record and proceedings of the trial Court is before us.

7. The learned advocate, Mr. B.P.Munshi, has taken this Court through the evidence of witnesses and other material on record, so also the judgment and order impugned herein. He has vehemently submitted that here is a case, which stinks of concoction, unnatural and improbable story. According to Mr. Munshi, young persons have been framed up by the complainant. The prosecution, on the basis of such investigation, has resulted into miscarriage of justice. Mr. Munshi submitted that the learned trial Judge has overlooked certain vital aspects of the case which would render the prosecution story doubtful and improbable. Mr. Munshi submitted that the conduct of the prosecution witnesses is unnatural which renders their testimony prone to untrustworthiness.

7.1 In order to substantiate his contentions, Mr. Munshi has raised the following contentions :

(a) There is a change in the place of incident if the evidence of the prosecution witnesses, particularly, first informant / victim, is seen in the light of the first information report lodged by herself. He has drawn our attention to the deposition of the prosecutrix, the F.I.R., the map prepared, the deposition of investigating officer, the panchnama and the depositions of Neeruben Hirabhai.

(b) The medical evidence and the report of Forensic Science Laboratory do not support the prosecution case.

(c) The description of the manner in which the incident has occurred is full of imagination and away from reality. Mr. Munshi submitted that if the role attributed to each of the accused is imagined, then, it would be clear that commission of the crime alleged would be impossible.

(d) Mr. Munshi submitted that the prosecution witnesses have made improvements in their depositions so as to suit the requirements of the prosecution case.

(e) It is contended that the whole case is outcome of political rivalry between the father of the accused no.1 and the husband of the prosecutrix.

(f) Independent witnesses who are claimed to have arrived at the place of incident, soon after the incident, have not been examined and those who were examined are relatives of the prosecutrix and are interested witnesses.

(g) The panch witnesses are also relatives and interested witnesses.

(h) Recovery of clothes is made on the next day and no blood stains are found.

(i) The defence cannot be expected to explain as to why the witnesses are deposing against the accused.

7.2 Mr. Munshi, therefore, submitted that considering all these aspects, the appeals may be allowed; the conviction may be set aside and the accused persons may be acquitted of the charges for which they have been convicted.

8. In reply to the contentions raised by Mr. Munshi, the learned APP, Mr. K.T.Dave, has raised the following contentions.

8.1 The appellants, out of political verdict, have victimised the prosecutrix because of an application made by the husband of the prosecutrix against the father of accused no.1. Mr. Dave submitted that the contentions by the appellants are only a highly magnified version of microscopic discrepancies. He submitted that as such, there is no discrepancy or contradiction regarding the place of incident. The first information report only states that while the lady was working in courtyard of her house, the incident occurred. In the first information report, exact place of incident is not described, and as such, it is not expected that every minute detail should be given in the first information report. Mr. Dave submitted that the first information report is only an instrument for setting the investigation machinery in motion and it is to be examined whether it discloses the correct facts about commission of offence or not. It is not a substantive piece of evidence. Therefore, omission on the part of the informant-prosecutrix in describing the exact place of the offence cannot shake the prosecution case at its root. Mr. Dave submitted that the first information report is lodged almost immediately after the incident. The police has visited the place, soon thereafter, and guards were deployed till the panchanama was drawn in the next morning. These facts support the oral deposition of the prosecutrix about the place of the incident. Mr. Dave submitted that the report of Forensic Science Laboratory indicates the commission of rape by accused no.1. The group of the semen of accused no.1 is found to be 'B' and the semen with the same group has been found on the petticoat of the prosecutrix. Mr. Dave submitted that the Court has to consider mental condition of the prosecutrix when such incident occurred and, therefore, minor omissions or even contradictions may be ignored. Mr. Dave submitted that there is no need for the prosecution to examine all the witnesses who are not likely to further enlighten the Court about the incident. Examination of the witnesses who are going to repeat the same story is not mandatory. There

is no point in increasing burden on the Court record. Mr. Dave, therefore, submitted that the trial Court has taken into consideration all these aspects.

8.2 Above all, Mr. Dave submitted that here is the case which does not rely only on verbal say of the prosecutrix or witnesses. There is strong circumstance which would clearly implicate the accused with the offence. The circumstance is that during the course of commission of the offence, finger tip of accused no.1 was bitten by the prosecutrix and that piece of finger tip was produced by her before the Police which was found to be a part of Muddamal which has been identified. In this behalf, there is medical evidence also. An attempt on the part of defence to explain this injury by suggesting that the injury was caused by the prosecutrix in previous incident which occurred earlier in that evening, does not deserve any acceptance, as suggestion has been denied and there is no contemporaneous material in the form of first information report or complaint in respect of the earlier incident. Mr. Dave, therefore, submitted that the appeals may not be entertained and the same may be dismissed.

9. We have been taken through the record and proceedings by both the sides. We have closely examined the record and proceedings as well as judgment and order impugned herein.

10. Despite a close scrutiny of the record from the angle suggested by the appellants, we are not able to accept the contentions raised on behalf of the appellants for the reasons that would be discussed in the paragraphs to follow.

11. At the outset, it may be noted that here, it is a case where the prosecutrix is a married woman who has been ravished by the accused - appellant no.1 aided by other two accused - appellants. The first information report is lodged soon after the incident implicating the accused persons. On the basis of the first information, offence is registered and the investigation was initiated. The investigating officer visited the place of incident immediately. The police personnel were deployed at the place of incident as panchnama was not possible to be drawn at night. The witnesses who reached the place of the incident immediately after the incident have been examined and they support the prosecution case. The medical evidence as well as report of the Forensic Science Laboratory support the case of the prosecutrix and in this view of the matter, there hardly remains any scope for entertaining the appeals.

12. The prosecutrix has been examined at exhibit 28. She states that at the time of incident, she was attending her household work in the courtyard behind her house and three accused came there and physically carried her to the courtyard of Hirubhai Keshavbhai Patel where she was pushed to the ground. Accused, Ramesh, held her by legs and raised her clothes whereas accused, Rajendra, mounted on her and committed rape. Her hands were held by the third accused. She stated that she tried to free herself from the clutches of the accused but in vain. Accused-Rajendra gagged her mouth with his hand and during the transaction, his finger entered her mouth. She, therefore, gave strong bite on

the finger, as a result of which, tip of the finger of the accused Rajendra was severed in her mouth. At that time, accused-Rajendra gave a bite on her left cheek. Nail scratches were caused by the accused-Ajit Ganpat. She raised shouts for rescue to her sister-in-law, Neeru. Hearing her shouts, Neeru came to her rescue. All the accused then ran away. The prosecutrix immediately told Neeru about what had happened. Soon thereafter, husband of the prosecutrix, Vitthalbhai, his brothers, Ghanshyambhai and Navinbhai and neighbour, Pravinbhai, also arrived. They went to home and at that time, she showed the tip of the finger of accused no.1. Thereafter, they went to the Police and lodged the first information report. An attempt is made to render the evidence of the prosecutrix doubtful by stating that she improves upon her story from what she gave in the first information report by changing the place of incident. It was vehemently urged before us that in the first information, she stated that incident occurred in the courtyard of her house where she was working and on finding that her version is not likely to be supported by other circumstances, she improved upon her story and stated that while she was working in the courtyard behind her house, she was physically carried from her courtyard to the courtyard of Hirubhai Keshavbhai Patel where the rape was committed. In support of this, Mr. Munshi placed reliance on the decision in the case of Amar Singh and Others Vs. State of Punjab, wherein it was held that evidence of eye witness as to place of incident was found to be inconsistent and, therefore, the accused were entitled to benefit of doubt.

13. We have closely scrutinised the first information report as well as depositions and other record. We find that in the first information report what is stated by the prosecutrix is that while she was working in the courtyard behind her house, three accused persons came and ravished her. She does not state that the rape was committed at that very place. So, what emerges is that in the first information report, she has omitted to state that she was taken to the courtyard of Hirubhai Keshavbhai Patel and then, the rape was committed about which she deposes. It comes in evidence that distance between courtyard of house of the prosecutrix and courtyard of Hirubhai Keshavbhai Patel is about 55 ft. Thus, there is no much distance between the two places. Apart from this, the Court, while accepting or rejecting the prosecution case, has to take overall view of the evidence and not to examine the evidence on piecemeal basis. While examining the evidence of the prosecution case, what emerges is that soon after the incident, the lady has lodged the first information report wherein she clearly implicates the accused persons and the role played by each of them is clearly indicated. Following the lodging of the first information report, Police goes to the place of the incident and there is evidence that at both the places, i.e. courtyard behind house of the prosecutrix as well as courtyard of Hirubhai Keshavbhai Patel, police personnel were deployed to guard the place and in the next morning, Panchnama is drawn in presence of panch witnesses of the place of incident. This Panchnama is produced at exhibit 37 which indicates both the places. It also indicates the exact place where rape was committed which has

been indicated by the prosecutrix in the presence of panchas. Thus, the argument that the prosecutrix improves upon her story while deposing before the Court to suit the requirements of the prosecution case, does not deserve to be accepted.

14. It would be worthwhile to note that in the decision relied upon by Mr. Munshi in case of Amarsingh (Supra), the facts of the case were different. In that case, it was found in deposition that witness has stated that all the accused have taken Piara Singh to the courtyard of the house of Bachchan Singh where he was beaten by Amar Singh with Thappi. Thereafter Piara Singh was dragged inside the room of the house of Bachchan Singh by the accused persons. However, in the cross examination, the witness stated that after killing Piara Singh on the spot, the accused took him inside the room. Against this version, there was evidence to the effect that the blood was recovered from the room and no blood was found on the courtyard. The Apex Court, therefore, observed that "the evidence of witness is inconsistent as to place where Piara Singh was killed by the accused" and, therefore, the Court gave benefit of doubt. In the case before us, as discussed above, there is no inconsistency as such. Omission that was found in the first information report does not assume importance because of the reason that soon after the incident the actual place of the incident was shown by the prosecutrix and panchnama of both the places where she was working and where she was raped, has been drawn. A very similar situation arose before the Apex Court recently in the case of State of Himachal Pradesh Vs. Lekh Raj and Another, . In that case, the prosecutrix stated in her deposition that she was dragged from road down path which was about 20 feet away from road. However, in the first information report, she mentioned the place of occurrence as road. Discrepancy of shifting of place of occurrence from main road to 20 feet away was considered by the Apex Court as minor one. The Apex Court observed that "such mention was based upon recording of complaint by Advocate after hearing prosecutrix who was at that time nervous, hesitant and scared. In the opinion of the Court, discrepancy was trivial and cannot be considered as contradiction." In the case before us, we find that the first information report was lodged soon after the incident . Naturally, the prosecutrix who was badly ravished could not be in a composed state of mind. The strata of the society from which she comes, cannot be expected to know the importance of first information report and the requirements of giving detailed and exact description of the incident including the place of the incident and, therefore, omission on the part of the prosecutrix while alleging in respect of the place of incident cannot assume much importance.

15. It was contended on behalf of the accused-appellants that the story of the prosecutrix is unnatural and improbable. The incident as described could not have occurred as it would not have been possible for accused no.1 to have committed the rape, if other two persons were holding the prosecutrix by legs and hands. This contention cannot find favour of acceptance for the reason that the prosecutrix in clear terms has described this and has implicated the accused

persons immediately after the incident before her sister-in-law and soon thereafter, in the first information report. The sister-in-law has supported her case. Apart from this, the factum of commission of rape stands established by the medical as well as evidence of the Forensic Science Laboratory. The report of the Forensic Science Laboratory indicates that the blood group of victim, Lalitaben, was 'O'. The stains of semen were found on the pants of accused no.1 was of group 'B' and the semen found on petticoat of the victim was also of group 'B'. This would clearly establish that what is alleged by the prosecutrix is supported by other evidence. The prosecutrix was examined by Dr. Naishadh B. Bhatt who has deposed at exhibit 47. He says that the prosecutrix was brought before him at 0.45 hour on 2nd December, 1994, i.e. within a few hours of the incident and before him also, the prosecutrix gave history of intercourse. The Doctor deposes that there were bite marks on her left cheek and abrasion on her right cheek as well as behind right knee. The Doctor had microscopically examined vaginal smear and had found spermatozoa. The Doctor opined that she was subjected to intercourse.

16. Thus, the deposition of the prosecutrix gets support from the medical as well as evidence from the Forensic Science Laboratory.

17. There is another strong circumstance which would render support to the prosecution case. This circumstance is that according to the prosecutrix, she had bitten off the tip of the finger of accused no.2 which had entered her mouth while he was trying to gag her mouth. That tip of the finger was immediately produced by the prosecutrix before the Police and has been seized as such. Dr. Naishadh Bhatt (exhibit 47), in his deposition, states that on 12/12/1994, three accused persons were brought to him and were examined. That on 18/12/1994, the tip of the finger severed because of biting was also shown to him for an opinion as to whether the tip was of the same finger of accused no.1. He opined that severed piece of tip and the finger matched with each other. This aspect also gets support from the say of the accused himself who does not deny that the finger was bitten off by the prosecutrix. But, his say is that it was bitten off earlier in the evening in another incident. Be that as it may, the fact remains that the tip of the index finger of accused no.1 was bitten off by the prosecutrix. The say of the prosecutrix, gets support from the first information report lodged soon after the incident. The say of the defence about the incident that occurred earlier gets no support from other contemporaneous material. No complaint was made, no first information report was lodged regarding earlier incident alleged to have occurred in the previous evening. Under circumstance, the case of the prosecution remains unshaken and far from doubt.

18. Non examination of independent witness in the present case assumes no importance. The reason is that the case of the prosecutrix gets ample and adequate corroboration from other evidence. Apart from this, witness Neeruben is examined and simply because Neeruben supports the case of the prosecutrix and because she happens to be sister in law of the prosecutrix, it cannot be said

that her version cannot be accepted. It would only call for a close scrutiny. Despite a close scrutiny, we are unable to find any defect in the deposition of this witness nor do we find anything to render the prosecution case as doubtful, improbable or unbelievable. In our opinion, the trial Court, therefore, was justified in convicting three accused persons who are the appellants before us. The role of each of the accused - appellants has clearly been indicated which would indicate that accused no.1 committed heinous crime of rape and other two accused have helped in commission of the crime by their active participation and, therefore, appellant nos. 1 and 2 cannot escape from the liability. We have closely scrutinised the judgment and order impugned herein. We are in agreement with the reasonings adopted by the learned trial Judge and the conclusion arrived at. We do not find any error of law or fact committed by the learned trial Judge while convicting the accused persons-appellants. We, therefore, confirm the conviction.

19. Coming to the question of sentence, we do not find that any error is committed by imposing substantive sentence. However, the learned trial Judge has overlooked the aspect of compensating the victim for the trauma, both physical and mental that the lady was required to undergo and, therefore, in our opinion, the prosecutrix deserves to be compensated. Mr. Munshi submitted that the compensation can be paid only out of the fine which is imposed. In support of his say, Mr. Munshi has relied on the provisions contained in Section 357 of the Criminal Procedure Code and the decision rendered in the case of MER MALDE VEJA & ANOTHER VS. STATE OF GUJARAT reported in 1998(3) G.C.D. 2318 (GUJ.) wherein this Court observed as under :

"There is however, a direction by the Trial Court that both the accused persons should pay Rs.15,000/- each to the heirs of Vaghaji Hirji and Mahajan Valji Samat, jointly by way of compensation. We take note of the fact that the amount is straightway awarded as compensation and it is not as if a fine is imposed of that amount with a direction that it should be paid by way of compensation. u/s 357 of the Code of Criminal Procedure, an order to pay compensation can be made when a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part and while passing judgment, the Court can order the whole or any part of the fine recovered, inter alia to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court recoverable by such person in a Civil Court. In subsection (3) of Section 357, it is provided that when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. In the present case, the fine imposed on each of the accused is of Rs.500/- for the offence u/s 302 read with Section 34 of the IPC, Rs. 200/- for the offence u/s 324 read with Section 34 of the IPC and Rs.100/- for the offence u/s 323 read with Section 34 of the IPC, over and above,

the substantive sentence of life imprisonment. It is not as if the amount which is ordered to be paid by way of compensation is out of any fine imposed. Therefore, the direction of the Trial Court on the accused persons that over and above undergoing the sentence of life imprisonment and paying fine as ordered, they should also pay compensation, does not appear to be justified by the provisions of Section 357 of the Code. We, therefore, while confirming the conviction and sentence imposed by the Trial Court on all counts on both the accused, set aside the direction regarding payment of compensation. Subject to this modification, the judgment and order of the Trial Court is confirmed and the appeal is dismissed.

19.1 Mr. Munshi also relied upon the decision in the case of AAMAD @ KALU ABDULBHAI MAJOTHJI & ANOTHER VS. STATE OF GUJARAT reported in 1991(1) G.L.R. 466 wherein, the Court resorted to provisions of Section 357 while awarding compensation to the victim out of the fine imposed. The contention of Mr. Munshi, therefore, is that when fine is imposed along with substantive sentence, no separate compensation can be ordered to be paid. If there is no fine and only substantive sentence, compensation can be awarded or if there is a substantive sentence with fine, compensation can be awarded only out of fine that is imposed. He, therefore, urged that no additional compensation may be awarded.

20. In this regard, the decision of the Apex Court in case of Hari Kishan Vs. Sukhbir Singh and Others, may profitably be referred to. The Apex Court had occasion to consider the provisions of Section 357 and it was held as under:

"The power of the Courts to award compensation to victim u/s 357 while passing judgment of conviction, is not ancillary to other sentence but 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 as of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes, a step forward in our criminal justice system. Therefore, all courts are recommended to exercise this power liberally so as to meet the ends of justice in a better way. Any such measure which would give the victim succor is far better than a sentence by deterrence."

20.1 The Apex Court also observed that "award of compensation to victims should be reasonable and reasonableness of the compensation would depend upon facts and circumstances". The Court further observed in para-11 as under :

"The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless the capacity to pay varies considerably. The payment may also vary

depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The court may enforce the order by imposing sentence in default."

20.2 The said judgment in the case of HARI SINGH (Supra) was again relied upon by the Apex Court in the case of Balraj Vs. State of U.P., . The Apex Court in para-11 observed as under :

"Under these circumstances, we think it may not be safe to award death sentence. Learned Counsel for the State, however, invited our attention that PW 2 is left without any support with a family to be maintained. Therefore, it is a fit case where this Court should award compensation to her. We are also of the view that this is very much necessary. Section 357(3), CrPC provides for ordering of payment by way of compensation to the victim by the accused. It is an important provision and it must also be noted that power to award compensation is not ancillary to other sentence but it is in addition thereto. To the same effect are the decision of this Court in Sarwan Singh V. State of Punjab and Hari Singh V. Sukhbir Singh. In the instant case the records show that the appellant Balraj has property and also some means."

20.3 The law, as established by the Apex Court from the above two judgments, therefore, is that the provision of Section 357 of Cr.P.C. is an important provision and that the power to award compensation therein is not ancillary to other sentence but it is in addition thereto. In the case of HARI SINGH (Supra), conviction was u/s 307 read with Section 149 of the Indian Penal Code and the accused were sentenced to undergo rigorous imprisonment for four years and three years respectively. The High Court awarded compensation of Rs.2500/- from each of the accused to the injured victim. The Apex Court enhanced the said amount to Rs.15,000/while upholding the conviction u/s 307 after considering the facts of the case. Likewise, in case of BALRAJ (Supra), the accused was convicted u/s 302 of IPC and was sentenced for imprisonment for life and was directed to pay Rs.10,000/- by way of compensation and even in default of payment of compensation within three months, it was directed that the same may be collected as provided u/s 431 of Cr.P.C. For considering the scope and span of provisions of Section 357(3) of Cr.P.C., it would be relevant to refer to decision of the Apex Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . In that decision, the Court considered the provisions of Section 357 of Cr.P.C. and held that although magistrate cannot impose a fine of an amount exceeding Rs.5,000/-, he can very well award a compensation in excess of Rs.5,000/- in a given case. The Apex Court was considering the case u/s 138 of the Negotiable Instruments Act. The Apex Court in para-31 observed as under :

"However, the magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasized the need for making liberal use of that provision, Hari Kishan Vs. Sukhbir Singh and Others, . No limit is mentioned in

the subsection and therefore, a magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation, the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of magistrate of first class in respect of a cheque which covers an amount exceeding Rs.5,000/- the Court has power to award compensation to be paid to the complainant."

20.4 In light of what is settled by the Apex Court, the law, as it is settled, is that the provisions of Section 357 of Cr.P.C. is required to be liberally applied, so that, the victim is not forgotten and is taken due care of. It also gets settled that the power to award compensation is not ancillary to other sentence but it is an addition thereto and, therefore, in the case before us, we are of the view that a compensation is required to be awarded to the victim from the accused persons while upholding the conviction as well as sentence imposed by the trial Court.

21. We have heard Mr. Munshi, learned advocate appearing for the accused-appellants as well as Mr. Dave, learned APP appearing for the State for determining the quantum of compensation. Mr. Munshi submitted that the accused-appellants are young boys and come from poor families. His first argument and attempt was that no compensation may be awarded. However, he submitted that if the Court is not convinced about that argument, a nominal compensation may be awarded.

21.1 From the record, we find that accused no.1 was running his own business. He happens to be son of Sarpanch. It is because of application made by the husband of the victim that animosity between the families was established. Apart from this aspect, all the three accused-appellants are young and able bodied persons and even if they are taken to be coming from lower economical strata of the society, their income can be assessed at the rate of minimum wages fixed under the relevant law.

22. For fixing the amount of compensation, the nature of crime, the trauma suffered by the victim and stigma attached to and suffered by the victim have also to be considered. In the instant case, the victim is a married lady and she has been subjected to rape without any fault on her part. It is an insult to her womanhood. She will suffer socially also considering the fact that she is from a small town.

23. Considering social background of the victim and the accused; status of the victim as well as the accused and their financial condition, in our opinion, ends of justice would be met, if, accused no.1 is directed to pay a compensation of Rs.10,000/- to the prosecutrix and accused nos. 2 and 3 each is directed to pay a compensation of Rs.5,000/- to the prosecutrix within a period of two months from today.

24. The conviction of all the three appellants stands confirmed. There shall be no change in substantive sentence imposed on them. Accused No.1 is directed to pay a compensation of Rs.10,000/- to the prosecutrix. Accused No.2 & Accused

No.3 each is directed to pay a compensation of Rs.5000/- to the prosecutrix within a period of two months from today. In the event, they fail to pay the compensation within the said stipulated time, the same would be recovered from them by following the procedure laid down u/s 431 of Cr.P.C.

25. In the result, both the appeals are dismissed.