

Ram Phal Vs. State and Ors.

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Court : Delhi

Decided On : May-28-2015

Judge : S.Ravindra Bhat

Appellant : Ram Phal

Respondent : State and Ors.

Advocate for Pet/Ap. : Mr. Kaushik Dey

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

30. 10.2014 Judgment pronounced on:

28. 05.2015 + CRL.A.1415/2012 RAM PHAL Appellant Represented by: Mr.P.K.Dey, Advocate with Mr.Kaushik Dey and Mr.Vijay Pal Singh, Advocates Versus STATE & ORS. Respondents Represented by: Mr.Dayan Krishnan, Sr.Advocate/ Amicus Curiae instructed by Ms.Manvi Priya, Advocate Ms.Aashaa Tiwari, APP Mr.Krishnan Venugopal, Sr.Advocate instructed by Mr.Siddharth, Advocate for R-7 Mr.Javed Ahmad, Advocate with Mr.Zeshan Khan, Advocate in Crl.A.No.939/2012 Mr.Mohit Mathur, Advocate with Mr.Badar Mehmood, Mr.Shishir Mathur, Mr.Pranav Mathur, Mr.Amish Dabas and Mr.Devinder Dedha Advocates for Mr.Pawan Kumar, APP in Crl.A.No.151/2013 CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MR. JUSTICE S. RAVINDRA BHAT MR. JUSTICE S. RAVINDRA

BHAT % CRL.A.1415/2012 Page 1 1. This is a reference to a Full Bench in CrI. A. No.1451/2012. The reference stems from issues arising out of the judgment of a Division Bench of this Court in *Chattar Singh v. Subhash and Ors.*, 176 (2011) DLT356 and concerns the locus standi of private parties to maintain appeals by virtue of the proviso to Section 372 of the Code of Criminal Procedure, 1973 (hereafter Cr.PC).

2. The relevant statutory provisions are excerpted for convenience. First, Section 2(wa) of the Cr.PC defines victim as: "victim" 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.

The second provision is Section 372 of the Cr.PC, which stipulates that:

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force.

The third statutory provision is the proviso to Section 372, Cr.PC, which was introduced in 2008, conferring upon victims, the right of appeal in these terms: "Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

The reference 3. The two questions that arise for this Courts consideration, by virtue of the order of reference, are outlined below: (a) Whether the word 'victim' in Section 2(wa) of the Cr.PC would mean only the legal heirs entitled to the property of the victim under the law applicable of inheritance or would embrace any person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged. CRL.A.1415/2012 Page 2 (b) Whether the appellate remedy is available with respect to only such offences which were committed as on the date when the appellate right was conferred by law or the appellate right would be available with respect to the date of the decision or the appellate remedy is without any reference to the two points of time

i.e. the date when the offence was committed or when the appellate right was conferred by law, (Act No.5 of 2009 with effect from 31.12.2009). Legislative History 4. A victim-oriented approach to certain aspects of criminal procedure was advocated in the Law Commission of India's 154th Report, 1996, which noted that increasingly, the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of the victims of crimes.

(Chapter XV, Paragraph

1) While focused on issues of compensation, the Law Commission Report cited the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power for its definition of victim:

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws.

(Chapter XV, Paragraph 6.2).

5. The said report prompted the Code of Criminal Procedure (Amendment) Bill of 2006. Its Statement of Objects and Reasons noted that the Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th report and its recommendations have been found very appropriate, particularly those relating to provisions concerning arrest, custody and remand, procedure for summons and warrant-cases, compounding of offences, victimology, special protection in respect of women and inquiry and trial of persons of unsound mind.

It also noted that CRL.A.1415/2012 Page 3 at present, the victims are the worst sufferers in a crime and they don't have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system.

The definition of victim, as well as the proviso to Section 372 was eventually inserted into the Code of Criminal Procedure through the Code of Criminal Procedure (Amendment) Act, 2008 (Act No.5 of 2009). The Amendment inserts

victim-oriented provisions at a number of places in the Cr.PC. For instance, a proviso to Section 157(7) is added, stipulating that Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

Through a new Section, 357A, it is provided that 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.

6. This, of course, is quite apart from the insertion of S. 2(wa) and the proviso to Section 372, the interpretation of which is the core issue in this case. Re: Point No.1 A.1 The Courts view in Chattar Singh (supra) 7. In Chattar Singh (supra) the Division Bench held that the phrase loss or injury in Section 2(wa) is limited to the person whose suffering is the direct and most proximate result of the crime.

It further reasoned that the phrase "victim" 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. According to the Court, the concerned expression means x and includes y refers to a situation where CRL.A.1415/2012 Page 4 the word means exhausts the range of potentialities ordinarily accorded to x, and the expression includes extends it to a set y, that would not ordinarily be covered by x. In other words, the Division Bench held that the set of people who qualify under Section 2(wa) on account of suffering loss or injuries, and the set of people who qualify as legal heirs of the former, constitute two separate, non-overlapping categories. The Division Bench further held that the phrase legal heirs was a term of art, and was limited to a person who is entitled to the property of the victim under the applicable law of inheritance.

Under Hindu law, this meant, for instance, that Class II heirs (in terms of the Hindu Succession Act, 1956) would lack the locus standii to maintain a criminal appeal, since they were excluded from inheriting by Class I heirs. A.2: Disparate and conflicting views of various High Courts 8. The view of this Court in Chattar Singh

(supra) is not the only one in the field. A number of High Courts have considered the issue, and have come to varying conclusions. In *D. Sudhakar v. Panapu Sreenivasulu* 2013 Cri LJ2764 the Andhra Pradesh High Court agreed with the view in *Chattar Singh* (supra). It held that:

The word "heir" has been interpreted by the Supreme Court in several cases which means all persons who are entitled to the property of another under the law of inheritance. In Section 2(wa) of Cr.P.C., since the word heir is preceded by the word "legal", it must be construed in the legal sense as that is the clear intention of the Legislature. The expression "legal heir" in relation to a victim, therefore, clearly refers to a person who is entitled to the property of the victim under the applicable law of inheritance.

9. Disagreeing with the Delhi High Courts construction of the term legal heir, a Full Bench of the Punjab & Haryana High Court in *Tata Steel v. Atma Tube Products* (2014) 173(1) PLR1 cited the Supreme Court judgment in *Vasant Pratap Pandit v. Anant Trimbak Sabnis* (1994) 3 SCC481 for the proposition that:

the word "heir" may be construed both in a wider as well as in a narrower sense and therefore, which sense would be applicable to the CRL.A.1415/2012 Page 5 facts of a particular case would depend upon the intention and scheme of the particular legislation in which the question occurred.

In the context of the proviso to Section 372, the Court held that every heir who, in law, is entitled to succeed to the estate of a deceased 'victim' in one or the other eventuality, shall fall within the ambit of Section 2(wa) of the Code, even if the estate of such deceased 'victim' is to devolve upon the legal heirs as per the order of preference prescribed under the personal law of such 'victim'.

10. The Punjab & Haryana High Court reasoned further that as the purpose of inserting the proviso to Section 372 was to give restricted participation in trial to the victim and assist the Court to arrive at a just conclusion, it was not necessary that only the legal heir with a preferential entitlement to succeed to property was entitled to maintain an appeal. According to the Court, the 'right to appeal' under proviso to Section 372 at the best enables the Appellate Court to call for the

records, re-appraise the evidence and determine - (i) whether acquittal of the accused is justified?. Or (ii) whether the accused has been rightly convicted for a lesser offence?. Or (iii) whether the compensation determined under Section 357 is inadequate?. Such an exercise can be undertaken by the appellate court on presentation of appeal by any 'legal heir' irrespective of his proximity with the deceased under the personal law.

11. The Guwahati and the Patna High Courts (while agreeing with the Division Bench in *Chattar Singh* (supra) on the meaning of legal heir) have, on the other hand, held that the word victim must be given a broader interpretation. The Guwahati High Court, in *Gouranga Debnath v. State of Tripura*, 2011 (4) GLT379 discussing the locus standi of the victims father, noted that as the words 'loss' and 'injury' were not defined in the Code, we have to consider that loss and injury, as mental and physical injury and also emotional sufferings and the deceased being the lone daughter of the petitioner, absence of his daughter due to alleged murder by the accused respondents created a void in the heart of the petitioner and also his family members.

CRL.A.1415/2012 Page 6 12. Likewise, in *Parmeshwar Mandal v. the State of Bihar*, 2014 (1) PLJR377 in Crl. A. No.1708 of 2012, the Patna High Court concurred with the Guwahati High Court on the meaning of victim, holding that in case of allegations of crime being committed was on the husband of the deceased (e.g.- u/s 304B IPC), father of the lady (or her any close relation) may also come within the definition of victim, on account of loss or emotional injury suffered by him, while simultaneously holding - along with the Division Bench in *Chattar Singh* (supra) and the Andhra Pradesh High Court - that for the purposes of determining the locus standi of the legal heir of a victim to file an appeal under the said proviso to Section 372, necessary (sic) fall back upon the line of succession to his property laid down in his/her personal law.

13. A survey of these High Court decisions thus reveals four possible approaches to the question of the victims locus standi to maintain an appeal under the proviso to Section 372: (a) A narrow reading of the word victim (limiting it to direct and proximate physical harm), and a narrow reading of the term legal heir (limiting it to

lines of succession under personal law). This is the approach of the Division Bench of this Court in *Chattar Singh* (supra) and of the Andhra Pradesh High Court. (b) A broad reading of the word victim (expanding it to emotional harm caused by the direct harm to someone that one is close to), and a narrow reading of the term legal heir (limiting it to lines of succession under personal law). This is the approach of the Patna High Court. The Guwahati High Court has also favoured a broad reading of the word victim, while returning no finding on the meaning of legal heir (c) A narrow reading of the word victim and a broad reading of the term legal heir. CRL.A.1415/2012 Page 7 (d) A broad reading of the term victim and of the term legal heir: This appears to be the view of the Punjab & Haryana High Court, which favours a broad reading of legal heir, although it does not appear to have returned a conclusive finding on the reading of the word victim. A.3: Contentions of the parties A. 3(a) Amicus Curiae 14. Mr. Dayan Krishnan, learned Amicus Curiae, submitted that this Court should adopt the fourth approach - i.e., the broad reading of the word victim and of legal heir (this is the approach of the Punjab & Haryana High Court, which he referred to as the middle path). According to him, it is a well-established rule of statutory interpretation that the use of the phrase includes y after means x is meant to expand the ordinary definition of x, to cover y as well. He, therefore, submitted that the formula means x and includes y should enure to a wider interpretation being given to the definition rather than a restrictive one.

Mr. Krishnan further argued that a combined reading of Section 2(wa) of the Cr.PC, the word injury in the Indian Penal Code, and the 154 th Law Commission Report, all point to the fact that mental injury and emotional suffering is included within the meaning of injury, under S. 2(wa) of the Cr.PC. At the same time, Mr. Krishnan cautioned that a broad definition should not lead to opening a floodgate of claims, which can undermine the rights of the accused. The Amicus Curiae urged the court to accept a wider interpretation of the term legal heir. He argued that the words legal heir must be understood to mean all legal heirs pursuant to the very purpose of the Amendment and the expansive definition prescribed therein.

Relying upon the judgment of the Division Bench of this Court in *Dharam Pal v. Delhi Administration*, 2009 (110) DRJ185(DB) - where the word legal heir was expanded to include testamentary successors, the Amicus Curiae submitted that the elucidation of the term heir depends upon context, and in particular, upon the CRL.A.1415/2012 Page 8 intention and scheme of the legislation in which the question occurs.

Thus, there was no warrant for restricting legal heirs to those who have the first right of succession according to the rules of devolution of property.

A.3 (b) 15. On behalf of accused Learned counsel for the accused in Crl. A. No.1451/2012, on the other hand, supported the judgment and reasoning in *Chattar Singh* (supra). He urged that the narrow, personal law based interpretation adopted in *Chattar Singh* (supra) is in consonance with statutory intent, because enlarging locus, based on potentialities of various heirs to succeed to property, would lead to uncertainty vis--vis accused, who would always be under the specter of multiple appeals by different heirs who may all not choose to approach the Court at the same time. It was contended that the right of appeal against acquittal, being an exception to the rule, and introduced by way of proviso, should be interpreted strictly and narrowly, rather than expansively, to ensure that the accuseds acquittal - which is an affirmation of his or her badge of innocence - is not endangered. Mr. Krishnan Venugopal, learned Senior Counsel for another accused, also commended adoption of the reasoning in *Chattar Singh* (supra). According to him the proviso to Section 372, as far as it creates a right of appeal from an acquittal, is an exception to the general rule of the Cr.PC, according to which appeals from acquittals are to be admitted according to the discretion of the court based on settled law as to how leave to appeal is granted. Consequently, and in light of the fact that the proviso had a direct impact upon the right of the accused to the double presumption of innocence after acquittal, victim under Section 372 ought to be interpreted strictly.

16. In its written submissions, the seventh respondent has supported these submissions, arguing that a statutory provision providing for appeal against acquittal must be construed strictly because it encroaches upon protections

granted to an accused under our criminal justice system. It is also submitted that the right of the CRL.A.1415/2012 Page 9 accused that is at stake is the right to protection against double jeopardy. In addition, the said seventh respondent relies upon *J.V. Thakur v. State of Maharashtra*, (2009) 7 SCC104 and *Sukhdev Singh v. State of Haryana*, (2013) 2 SCC212 for the general proposition that criminal statutory provisions affecting the rights of the accused ought to be interpreted strictly.

17. This Court notes at the outset that the question of double jeopardy is irrelevant to the construction of the proviso to Section 372. Double jeopardy is the protection against a second trial after an acquittal, while the proviso guarantees a right to appeal. Appeal proceedings are not equivalent to a retrial. A.3 (c) 18. Contentions on behalf of the appellants: The accused's submissions are disputed by Mr. Kaushik Dey, learned counsel for the appellant. He argued that far from being construed strictly, the proviso to Section 372 is a beneficial legislation, and should be construed liberally. He relies upon the Supreme Court judgment in *Yudhistir v. Ashok Kumar*, 1987 (1) SCC204 for this proposition (a case about the interpretation of the Rent Act). He further argues that the word victim is identical in scope to the phrase aggrieved person, and both ought to be construed broadly. A.4 Analysis and Conclusions (a) Is proviso to Section 372 an exception 19. The issue as to the interpretation of the proviso to Section 372 is not a part of the reference; yet it is integral to the two questions referred and in the opinion of the court, requires to be addressed. This Court starts by noting that the victim's right to appeal has been framed in the language of a proviso to Section 372 of the Cr.PC. As held in *A.N. Sehgal v. Raje Ram Sheoram*, AIR 1991 SC1406 it is well-accepted that normally, a proviso carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

This, however, is subject to context. CRL.A.1415/2012 Page 10 The Supreme Court, in *S. Sundaram Pillai v. V. R. Pattabiraman*, AIR 1985 SC582 held that a proviso may be of four different types: in one set of circumstances, it may be embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself.

Emphasizing that undue importance should not be given on the appellation (explanation, proviso, saving clause, etc) and rather, the intent of the law maker should be given effect, the Supreme Court, in *State of Bombay v United Motors* AIR 1953 SC252 ruled that:

It may be that the description of a provision cannot be decisive of its true meaning or interpretation which must depend on the words used therein but, when two interpretations are sought to be put upon a provision, that which fits the description which the Legislature has chosen to apply to it, is, according to sound canons of constructions, to be adopted, provided of course, it is consistent with the language employed in preference to the one which attributes to the provision a different effect from what it should have according to its description by the Legislature.

This thought was brought home more recently in *State of Kerala v. B.Six Holiday Resorts (P) Ltd.* [(2010) 5 SCC186 where the Supreme Court held as follows: "32.A proviso may either qualify or except certain provisions from the main provision; or it can change the very concept of the intendment of the main provision by incorporating certain mandatory conditions to be fulfilled; or it can temporarily suspend the operation of the main provision. Ultimately the proviso has to be construed upon its terms. It is the intention of the legislature, therefore, which is paramount.

20. In the present context, given the text of Section 372 and the scheme of the Act, it is clear that the proviso establishes an independent right, and must be interpreted within that framework. Section 372 forbids appeals unless otherwise authorized by the Code, or by another law. The proviso, however, states that the victim shall have the right to appeal under certain circumstances. Given the rule enacted in Section 372, it cannot be said that the proviso to that provision carves out CRL.A.1415/2012 Page 11 an exception to the rule. According to the rule in Section 372, appeals must be in accordance with the Code; according to the proviso - which is itself part of the Code - victims have the right to appeal under certain circumstances. At various other places in the Cr.PC, appeal procedures are specified. For instance, Section 378 stipulates the procedure in case of appeals from acquittal, and Section 378(3) specifies that no appeal under Sub-

Section (1) or Sub-Section (2) shall be entertained except with leave of the High Court.

The proviso to Section 372 dispenses with the requirement of leave in case it is the victim who is appealing. From the scheme of the Act, therefore, it seems clear that the proviso is better understood to be one of the many provisions governing appeals under Chapter 29 of the Cr.PC. While Section 372 enacts that no appeal shall lie except as provided for by the Code, it refers to the various provisions of Chapter 29, including the proviso, each of which prescribe the requirements and procedures for appeals under different circumstances. The proviso, therefore, is not an exception to Section 372, but a stand-alone legal provision. A Division Bench of the Bombay High Court in *Balasaheb Rangnath Khade v. State of Maharashtra* (Crl. A. No.991 of 2011 with Crl. A. No.992 of 2011) arrived at the same conclusion, and this Court concurs with that view. A.4 (b) Scope of Proviso to Section 372 Cr. PC- victim

21. In the light of the above discussion, this Court proposes to proceed to interpret the scope of the proviso, and that of S. 2(wa), keeping in mind the fact that the proviso establishes an independent, substantive right of appeal in favour of the victim, in certain circumstances. This Court notes that Section 2(y) of the Cr.PC, stipulates that words and expressions used herein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that code.

CRL.A.1415/2012 Page 12 S. 2(wa) defines victim as 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.

As various High courts have noted the words loss and injury are not defined in the Cr.PC, but have been defined in the Indian Penal Code. Section 44 of the IPC defines injury as any harm whatever illegally caused to any person, in body, mind, reputation or property.

Loss is defined in terms of wrongful loss, and refers to loss by unlawful means of property to which the person losing it is legally entitled.

The use of the term whatever as qualifying the word harm, and the expansive nature of the terms body, mind, reputation or property, reveals that the Division Benches approach in limiting the scope of the term to the direct and most proximate result of the crime in terms only of physical injuries, is not entirely borne out by the statute. One cannot assume that the direct and most proximate result of a crime refers only to the physical harms resulting from the offence, as there can be direct and proximate emotional injuries that equally resulting from the crime. Undoubtedly there should be a relationship of proximity between the injury and the act constituting the offence. However, it does not follow that only physical injuries, and not mental injuries, are direct and proximate results of the crime. What is important to note is that proximity is not a hard-and-fast relationship, which can be determined by an antecedent rule. It has to be established in the context of the facts established in a given case. Consequently, we agree with the view of the Patna High Court, to the extent that it has to be ultimately left to the prudence of the Court to assess whether the appellant before it had actually suffered any loss or injury in the course of the crime complained of, or not, so as to be eligible to maintain his appeal in terms of the said proviso.

22. The seventh respondent contended that the Law Commissions 48th Report - which recommended retention of the private complainants right of appeal - used CRL.A.1415/2012 Page 13 the broader language of person aggrieved, while referring to the same set of concerns that triggered the 2008 Amendment Act. The Law Commission had observed that extreme cases of manifest injustice, where the government fails to act, and the party aggrieved has a strong feeling that the matter requires further consideration, should not, in our view, be left to the mercy of the government. To inspire and maintain confidence in the administration of justice, the limited right of appeal with leave given to the private party should be retained, and should embrace cases initiated on private complaint or otherwise at the instance of an aggrieved person.

It is therefore argued that the deliberate choice of the (narrower) term victim, as opposed to person aggrieved, warrants a restrictive reading.

23. The Court holds this submission to be insubstantial. The drafting history of the Amendment does not reveal why the word victim was preferred to person aggrieved, or whether the motivation for choosing the former was to narrow the class of people entitled to maintain an appeal, or even whether victim does, in the first place, have a narrower scope than person aggrieved.

The Law Commission reports also do not cast any light upon the issue. The 221st Law Commission Report, of 2009, recommended that Section 378 be amended to allow the person aggrieved to file an appeal with the leave of the Court. The reasons are similar to those provided in the Statement of Objects and Reasons for the 2008 amendment. It seems that the two phrases were used interchangeably. Without further evidence of Parliamentary intent, this Court is not persuaded that the use of the term victim in place of person aggrieved, by itself, reflects a conscious narrowing of maintainability by the legislature. On the other hand, a plain reading of S. 2(wa), reveals that victim is defined as one who suffers any loss or injury.

24. The Court further notes that this understanding of victim is consistent with the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was the basis of the 154th Law Commissions report. That Declaration stipulates that the term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim.

The term where appropriate indicates that the test is proximity-dependent, and is to apply on a case-to-case basis.

25. The European Union Council Framework Decision of 15 March 2001, on the standing of victims, defines victim to mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.

The 2001 Decision was replaced by a Directive in 2012, according to which victim was defined as a natural person who has suffered harm, including physical, mental

or emotional harm or economic loss which was directly caused by a criminal offence, as well as family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

Family members, in turn, were defined to include the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim.

26. Apart from the fact that the Directives extension to family members is based upon proximity, the crucial difference between the European Union Council Framework Decision and Directive on the one hand, and S. 2(wa) on the other, is the additional use of the word directly, to qualify harm and injury. The insertion of the word directly was seen by the High Court of England and Wales as an attempt to forge a consensus for minimum standards for victims rights across EU, and to achieve this by limit[ing]. causality.

(R (on the Application of Privacy International v. The Commissioner for HM Revenue & Customs [2014]. EWHC1475(Admin) (12 May 2014). This suggests that in ordinary legal discourse, injuries/harm may be direct or indirect, but in the absence of a specific word or phrase narrowing their scope down to only the direct, it is the context of the legislation that must determine the scope of victim, in the context of proximity of injury. CRL.A.1415/2012 Page 15 27. Similarly, the South Australia Victims of Crime Act, 2001 takes care to specifically distinguish immediate victims - i.e., a person who suffers physical injury as a result of the commission of an offence, psychological injury as a result of being directly involved in the circumstances of the offence, or - if the offence is committed against a person who dies - a member of the immediate family of the deceased - from a victim simpliciter, which includes any person who suffers harm as a result of the commission of the offence.

28. On the other hand, the Crime Victims Rights Act 18 U.S.C. 3771 (CVRA) conferred specific roles to crime victims in the criminal justice system. Similarly, the Criminal Code of Canada defines victim in Section 722 (4) which nuances out

the different possibilities in a manner somewhat similar to Section 2(wa). It inter alia visualizes that when the person suffering injury dies, ill or otherwise incapable of making a statement includes the spouse or common law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependent of that person. R v Emard - 1999 BCJ No.463 (BCSC) accepts that siblings can be victims. Canadian courts have ruled that even fiancs, friends, co-employees and even bystanders (R v W (R) OTR537(SC) can be termed victims. American and Canadian statutes have empowered victims in sentencing proceedings, to intervene and make submissions. The Court notes that the drafters of the 2008 amendment did not draw any distinction as in South Australia between immediate victims and a victim simpliciter. Consequently, victim can possibly also comprehend those who suffer proximate physical or emotional harm such as fiancs, live-in partners, etc.

29. To restate the correct position, there has to be a relationship between the injury and the person who suffered it, i.e. the "victim". Consequently, the injury (to the victim who suffers it) has to be proximate; it cannot be remote. At the same time, given the nature of what is "injury" (under Section 44, IPC) the enquiry of proximity would be fact dependent. Courts would assess such issues, based on CRL.A.1415/2012 Page 16 established principles, and balancing the facts on a case to case basis. To conclude the discussion, it is also emphasized that where the victim is unable (by reason of trauma, shock or other disability) to make a choice of preferring an appeal, those who are in a position to do so on her or his behalf (and who might also have suffered some proximate harm) - such as relatives, foster children, guardians, fianc or live-in partners etc., can maintain an appeal under the proviso to Section 372. A.4 (c) Correct interpretation of the term legal heirs

30. With the above observations concerning the term victim the Court now proposes to deal with the term legal heirs. There can be no doubt of the fact that legal heirs is a term of art, and must be given a legal meaning. It is also true that the concept of legal heirs is referenced to personal law. Insofar as the Court should look to personal law to construe the meaning of the term, this Court is in agreement with the Division Benchs judgment.

31. If injury denotes harm caused to one's mind, then a victim by this definition, must encompass not only the victim in the natural and ordinary sense of the term, but also those near and dear to him or her, because they experience harm to the mind or mental anguish by virtue of the harm to body, mind, reputation or property suffered by a loved one. Consequently, the spouse, parents, children, and siblings of a deceased victim of a crime must automatically also fall within the definition in Section 2(wa), for having suffered injury by reason of the act or omission of the accused. Thus, the means X and includes Y clause must be interpreted keeping this context in mind.

32. Chattar Singh (supra) found that it refers to the ordinary and natural meaning, and extends to include meanings that the term would not ordinarily cover, thereby excluding the father of the deceased victim from filing an appeal under Section 372 as legal heir of the victim, on the ground that he is a Class II, and not Class I heir. This Court is of the view that while Section 2(wa) includes legal heirs within CRL.A.1415/2012 Page 17 victim, the first part of the definition cannot be lost sight of. In other words, the first part i.e. victim 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 is already of wide enough import to include at least some legal heirs within its ambit. Therefore, victim by its natural and ordinary meaning, given the definition of injury in Section 44 of the IPC, must include those legal heirs that suffer harm to the mind, on account of the injury to a loved one. That the definition goes on to later include legal heirs cannot result in the legal heirs excluding those that actually fall within the definition of victim. This follows from the Supreme Court's interpretation of the means X and includes Y in *Jagir Singh v. State of Bihar* AIR 1976 SC997 as well as in *Black Diamond Beverages v. Commercial Tax Officer*, AIR 1997 SC3550. In *Jagir Singh*, the definition of owner, which was in the form of a means X and includes Y clause, was being interpreted:

The definition of the term "owner" is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a public carrier vehicle or any manager acting on behalf of the owner. The intention of the legislature to extend the meaning of the term by the definition given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner.

(emphasis added) 33. Likewise, in *Black Diamond Beverages* (supra), the Court held:

It is clear that the definition of 'sale price' in Section 2(d) uses the words 'means and 'includes'. The first part of the definition defines the meaning of the word 'sale price' and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which 'includes' certain other things in the definition. This is a well-settled principle of construction. *Craies on Statute Law* (7th Edn. 1.214) says: "An interpretation clause which extends the meaning of a word does not take away its ordinary meaning Lord Selborne said in *Robinson Vs. Barton Eccles Local Board* (1883)8 App.Case 798 (801) : "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be CRL.A.1415/2012 Page 18 properly applicable, but to enable the word as used in the Act ... to be applied to something to which it would not ordinarily be applicable". Therefore, the inclusive part of the definition cannot prevent the main provision from receiving its natural meaning. (emphasis added) 34. The latter part of the definition reads and the expression "victim" includes his or her guardian or legal heir. Having already made explicit that the term means the direct sufferer of the physical harm, as well as the direct sufferer of the emotional harm (near and dear ones of the victim simpliciter), the definitional clause goes on to also spell out that it includes the guardian or legal heir. This Court thus finds that what is sought to be included i.e. legal heirs cannot result in excluding those relatives or loved ones of the victim simpliciter who actually fall within the ambit of victim. The extended meaning sought to be given to victim by including legal heir, is towards including those legal heirs that would not otherwise fall within the actual meaning. However, legal heirs, by virtue of being included within the definition, cannot possibly exclude those heirs that already fall within the definition of the term victim by virtue of the first part of its definition.

35. Here, the Court notes that the laws of inheritance, which merely stipulate the priority of succession to the property of the deceased, could not possibly have been intended to be solely determinative of the entitlement to exercise the rights of the victim on his/her death, in the criminal trial process. A criminal offence results

in personal injury to the victim, which is in no way related to the estate of the victim; plainly then, the position in the order of succession, of any heir, is immaterial in deciding an heirs entitlement to assist in the prosecution/file an appeal against the trial courts judgment. This court is fortified in its conclusion by the decision of the Supreme Court in Corporation of the City of Nagpur v. Its Employees, AIR 1960 SC675 which was concerned with the enlarged meaning resulting from the means X and includes Y clause in Section 2(j) of the Industrial Disputes Act, 1947: CRL.A.1415/2012 Page 19 The inclusive definition is a well-recognized device to enlarge the meaning of the word defined, and, therefore, the word "industry" must be construed as comprehending not only such things as it signifies according to its natural import but also those things the definition declares that it should include: see Stroud's Judicial Dictionary, Vol. 2, p.

1416. So construed, every calling, service, employment of an employee or any business, trade or calling of an employer will be an industry. But such a wide meaning appears to overreach the objects for which the Act was passed. It is, therefore, necessary to limit its scope on permissible grounds, having regard to the aim, scope and the object of the whole Act. To arrive at the real meaning of the words, Lord Coke in Heydon's case [1584]. 3 Rep. 7 says that the following matters are to be considered:

(1) What was the law before the Act was passed;

(2) what was the mischief or defect for which the law had not provided;

(3) What remedy Parliament has appointed; and

(4) The reason of the remedy. The word "employers" in clause (a) and the word "employees" in clause (b) indicate that the fundamental basis for the application of the definition is the existence of that relationship. The cognate definitions of "industrial dispute", "employer", "employee", also support it. The long title of the Act as well as its preamble show that the Act was passed to make provision for the promotion of industries and peaceful and amicable settlement of disputes between employers and employees in an organized activity by conciliation and arbitration and for certain other purposes. If the preamble is read for certain other purposes.

If the preamble is read with the historical background for the passing of the Act, it is manifest that the Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflicts and to encourage co-operative effort in the service of the community. The history of labour legislation both in England and India also shows that it was aimed more to ameliorate the conditions of service of the labour in organized activities than to anything else. The Act was not intended to reach the personal services which do not depend upon the employment of a labour force.

36. The Court thus employed Heydons mischief rule, without which the term being interpreted would be susceptible to so wide and expansive a meaning (owing to the includes clause) that it would go beyond the objects for which the statute was enacted. Heydons rule finds application in several other cases as well; to name a few, *National Insurance Co. Ltd. v. Baljit Kaur*, AIR 2004 SC1340 was a case in which Heydons rule was employed on account of the need to interpret an amendment to a statute, while in *Bengal Immunity Co. Ltd. v. State of Bihar and Ors.* [1955]. 2 SCR603 and *Goodyear India Ltd. v. State of Haryana and Anr.* [1991]. 188 ITR402(SC), Heydons mischief rule was deployed over the literal rule of interpretation. This Court finds that Section 2(wa), in including all legal heirs within its ambit, likewise overreaches the avowed objects and reasons of the 2008 amendment to the Code.

37. It is also important to notice that heir or a legal heir is a term of wide ambit; according to the Seventh Edition of the Blacks Law Dictionary means a person who, under the laws of intestacy, is entitled to receive an intestate decedents property, esp. real property.

The position is alike in Indian law. For instance, *Angurbala Mullick v. Debabrata Mullick*, AIR 1951 SC293 held that heirs are not just issues, but extend to all persons entitled to the property of the deceased by the laws of inheritance. That the term legal heir cannot be read so widely, is evident from the Statement of Objects and Reasons of the 2008 Amendment Act, which states specifically that the 154 th Law Commission Reports recommendations on victimology were found

to be appropriate for incorporation into the Code through the amendment. Specifically, it also reads:

2. The need has also been felt to include measures for preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential, rich and powerful. At present, the victims are the worst sufferers in a crime and they don't have much role in the Court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system...

Parliamentary intent then, behind the amendment, was clearly to empower the victim with a right of participation, given the vagaries of judicial proceedings. Given the objects sought to be achieved by granting rights in the trial process to the victim, then the reason for this particular remedy is clear: it is to ensure that the victim, who has a personal interest in the correct and fair prosecution of the crime, also has a say in the direction in which the trial proceeds. Therefore, to read legal heir in its full width would far exceed the objects of the Act. CRL.A.1415/2012 Page 21 38. This Court is of the further opinion that the laws of intestacy merely dictate one's position in the set of lineal or other descendants, and the consequent priority to claim a share in the estate of the deceased. They bear no necessary relation to the kind of rights granted to the victim simpliciter (that can, consequently, be exercised by the legal heir). The first set of rights granted are in the area of compensation under Sections 357A-357C and the second set of rights are in the area of the victim's participation in the prosecution of the trial and appeal under Sections 24(8) and 372. As far as the right to claim compensation goes, it is noteworthy that Section 357A reads:

357A. Victim compensation scheme.-. (1) Every State Government in coordination 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) xxx. (3) xxx. (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)

xxx. (6) xxx."

Section 357A thus envisages that the victim or his dependents who have suffered loss or injury as a result of the crime are entitled to compensation rights. This means that the entitlement rests in the victim simpliciter, or his/her dependents, where the victim does not advance a claim. One need not go far to seek the reason for interpreting this provision as restricted to the victim simpliciter; the use of or renders victim disjunctive from the clause or his dependents who have suffered loss or injury, thus compelling the inference that the dependents right to advance compensation claims is alternative to that of that of the victim. See Fakir Mohd. (dead) by LRs. v. Sita Ram (2002 (1) SCC741 R.S. Naik v. A.R. Antuley (1984) 2 SCC183 Kamta Prasad Aggarwal v. Executive Officer, Ballabgarh, AIR 1974 SC685 Manmohan Das Shah v. Bishun Das AIR 1967 SC643 Therefore, if the term CRL.A.1415/2012 Page 22 victim were to be interpreted so expansively as to include all legal heirs, at least within the context of the claim to compensation, the list of lineal and other descendants that qualify as heirs would be far longer than the list of dependents who have suffered loss or injury as a result of the crime. Necessarily then, victim in Section 357A has to refer to victim simpliciter, failing which (on account of his/her death), the dependants of the deceased victim may make claims. To this extent then, it is clear that the laws of intestacy are of limited utility in defining the scope of the term legal heir as far as compensation rights are concerned. The expression dependent is of wide import and encompasses a large category of persons such as foster children, parties in live-in relationships and others who depended financially or emotionally on the victim of the crime. Likewise, all legal heirs, by the laws of intestacy, do not necessarily undergo emotional harm or experience injury, from the acts or omissions of the accused, and may have neither any motivation nor compulsion to participate in the trial process. This Court is thus unable to affirm that the laws of inheritance/intestacy can be solely determinative of which heirs are entitled to exercise the rights of a victim in the criminal trial process.

39. Moreover, practically, the term legal heir thus ought not to be interpreted by according disproportionate significance to the laws of intestacy that determine which heir would have a higher claim, in the hierarchy of heirs, to the property of

the deceased. To situate a victims heirs entitlement to pursue the victims prosecution/appeal rights solely within the laws of intestacy would be tantamount to missing the woods for the trees, as the heirs position in the priority of succession to the property of the deceased victim is not always determinative of the proximity of the heir to the victim, emotionally, in terms of injury. It is highly improbable, in the opinion of this Court, that the Parliamentary intent was to endow a heir with a greater entitlement to property (such as an estranged son of the victim), a greater entitlement to pursue the deceased victims rights, than an heir lower down in the priority, per the laws of intestacy, (such as the parents or sibling of the victim). CRL.A.1415/2012 Page 23 40. One must also note that a legal heir in civil law actions, can possibly pursue surviving causes of action on the death of the claimant, since the fruits of the litigation are those that enhance or diminish the estate of the deceased claimant, to which the legal heirs are ordinarily successors by right. It is difficult to carry that analogy as extending to legal heirs being the only legal representatives of surviving victims in criminal prosecutions, given that criminal prosecutions are first, by nature, personal actions, in that they cause injury to a person, and not necessarily his/her estate, and second, the right to pursue such action is surrendered by the victim to the State (by statutory compulsion, as a public policy measure), who prosecutes the crime on his/her behalf, as the offence is seen to be a crime against the State. The victims rights movement has resulted, only recently, in lending recognition to the victims personal role and voice- in an otherwise state-prosecuted trial process. Therefore, to stress excessively on the hyper-technical nuances of the laws of intestacy to locate the right of the victims heirs, akin to the inquiry in civil law actions, would be contrary to the logic of the criminal trial process itself.

41. While this Court agrees with the interpretation placed on the means and includes clause by the Division Bench, at the same time it also finds that the means X and includes Y clause in Section 2(wa) cannot be interpreted by resorting to *Namboodripad v. Union of India*, (2007) 4 SCC502 which *Chattar Singh* relies upon. *Namboodripad* (supra) appears to apply to this case on first blush, as the rule to be interpreted in that case also comprised a means X and includes Y clause, and read as follows:

Rule 62. The term emolument when used in this part means the emolument which the employee was receiving immediately before his retirement and includes: (a) pay as defined in Rule 12(23) in Part 1 of these Rules and/or pay of the appointment under Rule 9 or Rule 31 of the Kerala State and Subordinate Service Rules. (b) the dearness pay the employee was actually in receipt of.

CRL.A.1415/2012 Page 24 Interpreting this, the Supreme Court held that since pay would fall within the ordinary and natural meaning of the term emolument, the fact that it was specifically mentioned in the includes clause would indicate that the clause was meant to be exhaustive and not inclusive:

15. It is no doubt true that generally when the word 'include' is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word 'includes' is also used to connote a specific meaning, that is, as 'means and includes' or 'comprises' or 'consists of'.

16. Justice G. P. Singh in his treatise 'Principles of Statutory Interpretation', (Tenth Edition, 2006), has noticed that where a word defined is declared to 'include' such and such, the definition is prima facie extensive, but the word 'include' when used while defining a word or expression, may also be construed as equivalent to 'mean and include' in which event, it will afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to the word or expression, [vide pages 173 and 175 referring to and relying on the decisions of this Court in *The Municipal Council, Raipur v. State of Madhya Pradesh* 1970 CriLJ1656, *South Gujarat Roofing Tile Manufacturers Association v. State of Gujarat* [1977].1SCR878, *Hindustan Aluminum Corporation v. State of Uttar Pradesh* 1983(13)ELT1656(SC), and *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* [1987].2SCR1. It is, therefore, evident that the word 'includes' can be used in interpretation clauses either generally in order to enlarge the meaning of any word or phrase occurring in the body of a Statute, or in the normal standard sense, to mean 'comprises' or 'consists of' or 'means and includes', depending on the context.

17. If the words 'and includes' were intended to rope in certain items which would not be part of the meaning, but for the definition, then Rule 62 would have

specified only 'dearness pay' as the item to be included but not 'pay'. If pay, dearness allowance and other allowances were already included in 'emolument' with reference to its general or normal meaning, as contended by appellant, there was no reason to specifically again include 'pay' in Rule 62. Inclusion of 'pay' and 'dearness pay' and noninclusion of 'dearness allowance or other allowances' in the definition of 'emolument' is significant. The definition in Rule 62 is intended to clarify that only pay and dearness pay would be considered as 'emolument' for purposes of calculating pension. The words 'and includes' have been used in Rule 62, as meaning 'comprises' or 'consists of'. CRL.A.1415/2012 Page 25 [emphasis added].

42. In *Namboodripad (supra)*, the Court relied on and upheld *South Gujarat Roofing Tiles Manufacturing Association v. State of Gujarat*, (1976) 4 SCC601 a case in which the clause requiring interpretation was an includes clause, despite the fact that the impugned Rule 62 was in the form means X and includes Y. The question in *South Gujarat (supra)* was whether Mangalore Pattern Roofing Tiles were to be considered as falling within Entry 22. For this, the Court was called upon to decide whether Entry 22 was an inclusive list, thus admitting of inclusion of Mangalore Pattern Roofing Tiles within the entry, or an exhaustive list. Entry 22 read:

Employment in potteries Industry. Explanation:-For the purpose of this entry potteries industry includes the manufacture of the following articles of pottery, namely:(a) Crockery (b) Sanitary appliances and fittings (c) Refractories (d) Jars (e) Electrical accessories (f) Hospital ware (g) Textile accessories (h) Toys (i) Glazed Tiles 43. The Supreme Court answered this question in the following words:

3. .Referring to the well-known use of the word 'include' in interpretation clauses to extend the meaning of words and phrases occurring in the body of the statute, Mr. Patel submits that the Explanation, when it says that potteries industry 'includes' the nine named objects, what is meant is that it includes not only these objects but other articles of pottery as well. It is true that 'includes' is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to

include things that would not properly fall within its ordinary connotation. We may refer to the often-quoted observation of Lord Watson in *Dilworth v. Commissioner of Stamps* (1899) A.C. 105, that when the word 'include' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute "these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include". Thus where 'includes' has an extending force it adds to the word or phrase a meaning which does not naturally belong to it. It is difficult to agree that 'includes' as used in the Explanation to entry 22 has that extending force. The Explanation says that for the purpose of entry 22, potteries industry includes the manufacture of the nine "articles of pottery" specified in the Explanation. If the objects specified are also "articles of pottery", then these objects are already comprised in the expression "potteries industry". It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way. It seems to us that the word 'includes' has been used here in the sense of 'means', this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of entry 22. The use of the word 'includes' in the restrictive sense is not unknown. The observation of Lord Watson in *Dilworth v. Commissioner of Stamps* (1899) A.C.105, which is usually referred to on the use of 'include' as a word of extension, is followed by these lines : "But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". It must therefore be held that the manufacture of Mangalore pattern roofing tiles is outside the purview of entry 22.

[emphasis added].

44. Thus, the Court reasoned here that since potteries industry was already wide enough to include within its ambit, the manufacture of all possible items of pottery, the explanation could not possibly widen the ambit of the term. Likewise, the Court found that the explanation could not have been intended to be introduced out of abundant caution, for the reason that while there could be some doubt as to whether refractories or electrical/textile accessories could qualify as potteries CRL.A.1415/2012 Page 27 industry, there could be no doubt as to the well-recognised and obvious articles of pottery, like crockery and glazed tiles, falling within the terms ambit (see para 4). Therefore, the conclusion drawn in South Gujarat Roofing Tiles was that the includes is to be interpreted exhaustively i.e. as comprises or means and includes, so as to limit the meaning of the term being defined to only those items following the term includes. It is noteworthy that this conclusion was made possible since the Explanation in this case was not in the form means X and includes Y but instead comprised only an includes clause.

45. In *Namboodripad* (supra), however, the Court appears to have unwittingly ignored the fact that Rule 62 begins with The term emolument means .

Since emolument was defined as means X and includes Y, it would be contrary to the logic of *South Gujarat*(supra) , to interpret includes Y as comprises Y or as means and includes Y, as that would result in the term emolument being limited to only mean Y. That would result in X (what emolument was to mean) being completely negated by Y (what the definition of emolument was to also include). Therefore, this Court expresses its doubts regarding whether the include can be interpreted to mean comprises or means and includes, in clauses of the form means X and includes Y, as that would result in Y completely overriding X. In terms of Rule 62, the wide definition of emolument, i.e. the emolument which the employee was receiving immediately before his retirement is completely overridden, to instead only comprise pay and dearness pay. This Court is circumspect in affirming that parliamentary intent could possibly have been the negation of X by Y. This being the case, this Court finds that the means X and includes Y clause in Section 2(wa) cannot be interpreted by resorting to *Namboodripad* (supra) or *South Gujarat* (supra). A combined reading of *South Gujarat* (supra) and *Dilworth* (supra) makes it clear that subject to context, means

X and includes Y does not necessarily imply that Y is an extension of what would otherwise not come within the meaning of X, but can instead imply that Y simply clarifies the scope of X, and that X and Y together are exhaustive. CRL.A.1415/2012 Page 28 46. This Court finds support for its view that legal heir must be so interpreted from the standpoint that statutes are not enacted in a vacuum; and that consequently, longstanding principles of law, that form the legal context for interpretation, are not displaced by the mere use of general words in a statute. This was recognized in *Pierson v. Secretary of State for the Home Department*, (1997) 3 All ER577 604 (HL) and in several other decisions like *R v. Secretary of State for the Home Department, ex parte Simms*, (1999) 3 All ER as well as *B v. Director of Public Prosecution*, (2000) 1 All ER833 844, 845 (HL) (Lord Steyn). In Lord Steyn's judgment in the *B v. Director of Public Prosecution*, he held:

In *Ex parte Simms* Lord Hoffmann explained the principle as follows (at 341F-G): "But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual."

This passage admirably captures, if I may so, the rationale of the principle of legality. In successive editions of his classic work Professor Sir Rupert Cross cited as the paradigm of the principle the "'presumption' that mens rea is required in the case of statutory crimes": *Statutory Interpretation* 3 ed. (1995), p.

166. Sir Rupert explained that such presumptions are of general application and are not dependent on finding an ambiguity in the text. He said they "not only supplement the text, they also operate at a higher level as expressions of fundamental principles governing both civil liberties and the relations between Parliament, the executive and the courts. They operate as constitutional principles which are not easily displaced by a statutory text": *ibid*. In other words, in the absence of express words or a truly necessary implication, Parliament must be

presumed to legislate on the assumption that the principle of legality will supplement the text. This is the theoretical framework against which section 1(1) must be interpreted.

47. Even the judgments relied on in *Chattar Singh* to support its conclusions, indicate that heirs is to be construed within the context. In *Angurbala Mullick v. CRL.A.1415/2012* Page 29 *Debrata Mullick*, AIR 1951 SC293 as cited above, for example, the Supreme Court observed that:

so far as the main provision is concerned there is nothing in the language or in the context to suggest that the word "heirs" has not been used in its ordinary or natural sense.

N. Krishnammal v. R. Ekambaram, AIR 1979 SC1298 defined legal heirs in the context of a will, where - naturally - the precise law of succession has to be followed. The other cases cited by the Division Bench - *M/s Bay Berry Apartments v. Shobha*, C.A. No.8814 of 2003, was also in the context of a will. In other words, when the term heirs is used in the context of succession, then there can be hardly any quibble over the fact that the term must be understood in the context of succession law, including preferential rights. This gives rise to the important question: what is the context under which Sections 2(wa) and the proviso to Section 372 were introduced in the Cr.PC.

48. The longstanding principles of law that form the underlying context for Section 2(wa) and 372 are captured in the decision of the Constitution Bench in *P.S.R. Sadhanantham v. Arunachalam and Anr.*, (1980) 3 SCC141 on the standing of a private person (other than a complainant under Section 190(1)(a) to appeal against an acquittal. The question that faced the Court was whether a private citizen (the brother of the deceased victim) could appeal by way of special leave, under Article 136 of the Constitution of India, against an order of acquittal (of the petitioner in that case). The Supreme Court granted leave, allowed the appeal, and restored the conviction and sentence of the Trial Court. The convicted petitioner thus approached the Supreme Court invoking its writ jurisdiction, contending that the Supreme Courts order was a nullity as it lacked jurisdiction. R.S. Pathak, J noted in his concurring judgment:

24. In India also, the criminal law envisages the State as the prosecutor. Under the Cr PC, the machinery of the State is set in motion on information received by the police or on a complaint filed by a private person before a Magistrate. If the case proceeds to trial and the accused CRL.A.1415/2012 Page 30 is acquitted, the right to appeal against the acquittal is closely circumscribed. Under the Code of Criminal Procedure, 1895 the State was entitled to appeal to the High Court, and the complainant could do so only if granted special leave to appeal by the High Court. The right of appeal was not given to other interested persons. Under the CrPC1973 Section 378 the right of appeal vested in the State has now been made subject to leave being granted to the State by the High Court. The complainant continues to be subject to the prerequisite condition that he must obtain special leave to appeal. The fetters so imposed on the right to appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court. The Law Commission of India gave anxious thought to this matter, and while noting that the Code recognised a few exceptions by way of permitting a person aggrieved to initiate proceedings in certain cases and permitting the complainant to appeal against an acquittal with special leave of the High Court, expressed itself against the general desirability to encourage appeals against acquittal. It referred to the common law jurisprudence obtaining in England and other countries where a limited right of appeal against acquittal was vested in the State and where the emphasis rested on the need to decide a point of law of general importance in the interests of the general administration and proper development of the criminal law. But simultaneously the Law Commission also noted that if the right to appeal against acquittal was retained and extended to a complainant the law should logically cover also cases not instituted on complaint. xxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxx 25. Having regard to the fundamental nature of a criminal proceeding to which reference has been made, it is now appropriate to examine the considerations which the Court should keep in mind when entertaining a petition for special leave to appeal by a private party against an order of acquittal. From what has been said, it is plain that 'access to the jurisdiction under Article 136 cannot be permitted to a private party who seeks to employ the judicial process for the satisfaction of private revenge or

personal vendetta. Nor can it be permitted as an instrument of coercion where a civil action would lie. In every case, the Court is bound to consider what is the interest which brings the petitioner to court and whether the interest of the public community will benefit by the grant of special leave. 'In a jurisprudence which elevates the right to life and liberty to a fundamental priority, it is incumbent upon the court to closely scrutinise the motives and urges of those who seek to employ its process against the life or liberty of another.' In this enquiry, the Court would perhaps prefer to be satisfied whether or not the State has good reason for not coming forward itself to petition for special leave. We think that the Court should entertain a special leave petition filed by a private party, other than the complainant, in those cases only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petitioning for special leave for reasons which do not bear on the public interest but are prompted by private influence want of bona fide and other extraneous considerations. We would restrict accordingly the right of a private party, other than the complainant, to petition for special leave against an order of acquittal. It is perhaps desirable to keep in mind that what follows from the grant of special leave is an appeal, and the jurisdiction must, therefore, be invoked by a petitioner possessing a locus standi recognised in law.

49. As evident from the above analysis, the strengthened presumption of innocence in favour of the accused after acquittal was sought to be protected by not only subjecting the appellate remedy to the leave of the Court, but also restricting this remedy to only the hands of the State and the complainant, in complaint cases. Thus, the standing of a private third party to approach the Supreme Court for special leave to appeal under Article 136, against an order of acquittal, was restricted by the Constitution Bench to only those cases where there is a public interest that can countervail the fundamental right to life and liberty of the accused. This Court is thus conscious that it must strive to strike the balance between the reinforced presumption of innocence of an accused after acquittal, and the newly enacted, unqualified right of a victim to appeal against the acquittal.

50. The object of the Act being the prevention of distortions of the criminal justice system, it is clear that the state interest is to prevent the subversion of justices in

Cases where the State chooses not to appeal an acquittal. This does not mean, of course, that the appeal procedure is open to anyone and everyone. The interest of preventing distortions and ensuring justice must be balanced - as has been pointed out - against the longstanding principles of criminal procedure that form the underlying legal context, such as the right of the accused to a fair trial, and the double presumption of innocence. This is the rationale for the class of persons who CRL.A.1415/2012 Page 32 are competent to maintain an appeal has been restricted to victims, and their guardians and legal heirs. This aim of this limitation is to establish a threshold of proximity, which is used to achieve the balance between competing interests. In this vein, while this Court appreciates the submissions of learned counsel that the proviso to Section 372 is in the nature of an exception (to the rule of no appeal against acquittal), and ought to be interpreted restrictively, keeping in mind the rights of the accused to a fair trial, and the presumption of double innocence, the Court may usefully advert to the following observations of the Supreme Court in *NHRC v. State of Gujarat*, (2004) 8 SCC610. It needs to be emphasized that the rights of the accused have to be protected. At the same time the rights of the victims have to be protected and the rights of the victims cannot be marginalized. Accused persons are entitled to a fair trial where their guilt or innocence can be determined. But from the victims' perception the perpetrator of a crime should be punished. They stand poised equally in the scales of justice.

(emphasis supplied) The Court holds that developing a case-by-case proximity test for the meaning of victim, and an understanding of legal heirs that tracks the relevant personal law, but is not limited to only those legal heirs entitled to succeed to property, achieves an adequate balance between the two interests. So long as the existence of a legal relationship is established between the (deceased) victim and the one who seeks to appeal under proviso to Section 372, sufficient locus standi has to be conceded.

51. This Court finds that it must be conscious of the fact that by the amendment, a new enabling provision- permitting an appeal against an order of acquittal was introduced by Parliament. This insertion was unparalleled in the annals of penal statutes; the prevailing thinking had been to allow acquittals to be considered as

judicial affirmations of "badges of innocence" which the law decreed by the initial presumption of innocence till proved otherwise. The anxiety of Parliament to confine the right of appeal to a restricted category of cases is evident from the CRL.A.1415/2012 Page 33 subject-object predicate, i.e. the nexus between the "victim" and "injury" is apparent from the fact that appeals are admitted to only those injured by the crime or offence ("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"), where "injury" is defined by Section 44 of the IPC, as discussed earlier. In this first sense, the class of persons, i.e. victims being those suffering loss or injury, is clear enough; only the actual victim, wherever available, directly affected by the crime or offence ("act or omission") attributable to the offender ("accused person") are conferred the right to appeal. The second part of the definition (the "pull in" if one may use that expression) is the associative part, in that, by way of the the expression "includes", Parliament sought to bring in those persons and individuals who are not per se victims of the crime, but associated with her (or him). This was necessary because if the victim were no longer alive (because of the crime itself, such as murder, homicide, etc.), and the victim who suffered harm to the mind, as a loved one of the victim simpliciter, was also unavailable to exercise the right to participate in the trial, then such persons would be considered as suffering "loss" as well as injury, and thus would be deemed victims. It is merely in this associative sense that such persons are entitled to appeal against an acquittal, and, therefore, the legal heirs cannot possibly exclude victims who have suffered injury that is direct and proximate harm to the mind. The structure of the definition in Section 2 (wa), shows that Parliament's primary concern was to enable only victims who suffered injury, be it physical or emotional (in its most direct and proximate sense, as opposed to those who were merely inconvenienced or whose injury or loss was remote), the participative rights within the criminal trial process, only in absence of whom, the legal heirs would be allowed.

52. As has been discussed above, Section 2(wa), in its definition of victim, uses the phrase means x and includes y. While Chattar Singh reasoned that includes y extends the ordinary meaning of the [means]. X, to cover things that would not otherwise be covered by an everyday meaning of X, it interpreted the two parts of

CRL.A.1415/2012 Page 34 the definition to include non-overlapping and mutually exclusive categories:

injury being limited to the most direct and proximate sufferer of physical harm, and legal heirs covering the heirs entitled to succeed in personal law. A broader meaning of the word victim, encompassing sufferers of emotional harm, would have necessitated an overlap between the two categories, since it is possible that a legal heir would also be a victim, in the sense of having suffered a proximate mental injury as a result of the crime. This Court, therefore, does not agree with the decision in *Chattar Singh* that a Class II heir can be excluded by a Class I heir, as a Class II heir may well have suffered injury that is emotional/mental, thus bringing him/her within the definition of victim itself. To permit such a victim to be excluded by a Class I heir would amount to letting those included within the definition, exclude those falling within the ordinary and natural meaning of the word defined. The Court therefore cannot agree with the analysis in *Chattar Singh* that treats the hierarchy of legal heirs in personal law as solely determinative of who may qualify as a victim simpliciter, in the absence of which, a victim by inclusion. Subject to this, we are in agreement with the submissions of the learned Amicus, and with the judgment of the Punjab & Haryana High Court, that the meaning of legal heirs refers to all heirs designated as such by the relevant personal law, irrespective of whether or not they are excluded by the lines of succession at any given time.

53. To summarize, the conclusions from the above discussion are: (i) victim in Section 2(wa), by virtue of being defined as a person who has suffered any loss or injury must include a person who has suffered harm caused to the mind, given that Section 2(y) of the Code of Criminal Procedure incorporates the definition of injury in Section 44 of the IPC into the Code. (ii) The means X and includes Y clause in Section 2 (wa) cannot be interpreted so as to result in the included meaning Y excluding the actual meaning X of the term being defined; thus legal heirs who are included within the definition of the term victim cannot exclude those who CRL.A.1415/2012 Page 35 actually fall within the definition of victim by virtue of emotional harm suffered, such as the father or siblings of a deceased victim or other categories of persons (based on proximity) noted previously. (iii) The laws of inheritance, which decide one's legal heirs, are not intended to be solely

determinative of the entitlement to exercise the rights of the victim, in the criminal trial/appeal, on his/her death, application of Heydons mischief rule, given that the object of the 2008 Amendment Act was to ensure the involvement of the victim, who has a presumably personal interest in the fair and efficient prosecution of the trial/appeal. Resultantly, it is impermissible for an appellate court to shut out an appeal by a legal heir based only on her/his not being an immediate heir, or being lower down in hierarchy vis--vis entitlement to the crime victims estate.

54. As a concluding remark on the specter of uncertainty (of defending multiple appeals) which would possibly hover over, and weigh down those acquitted of offences goes, this Court is in agreement with the view of the Punjab and Haryana High Court that all such victims or legal heirs appeals would be heard together, and the issue can be resolved by proper docket management. The court is reminded of the view in *Pakala Narayana Swamy v. Emperor* AIR 1939 PC47 that in truth when the meaning of words is plain, it is not the duty of the Courts to busy themselves with supposed intentions - and one may add in the context, imagined difficulties. Re: Point No.2 55. In *Thirumalai Chemicals Ltd. v. Union of India*, (2011) 6 SCC739 the Supreme Court clearly held that the right of appeal being a substantive right always acts prospectively. It is trite law that every statute prospective unless it is expressly or by necessary implication made to have retrospective operation.

This is a consistent position of law, and has been affirmed by the Supreme Court in CRL.A.1415/2012 Page 36 numerous cases, such as *Hitendra Vishnu Thakur v. State of Maharashtra*, AIR 1994 SC2623 *Kailash v. Nanhku and Ors.* (2005) 4 SCC480 and *H.P. State Electricity Regulatory Commission v. H.P. SEB*, (2014) 5 SCC219 56. This has also been the view of most of the High Courts, with respect to this question. The Punjab and Haryana High Court, in *Tata Steel v. Atma Tube Projects*, (2014)1PLR1, CRM-790-MA-2010, held that:

Since right to appeal is a substantive right and it cannot be inferred by implication unless the Statute expressly provides so, the only inescapable conclusion would be to hold that the right to appeal given to a 'victim' under proviso to Section 372 of the Code is prospective and has become enforceable w.e.f. December 31, 2009

only. A 'victim' is entitled to prefer appeal in respect of any type of order referred to in the proviso to Section 372 if such order has been passed on or after December 31, 2009 irrespective of the date of registration of FIR or the date of occurrence etc. To be more specific, it is clarified that it is the date of passing of the order to be appealed from and not any other fact situation, which shall determine the right to appeal of a 'victim'.

57. Similarly, in Parmeshwar (supra), the Patna High Court clearly held:

the said proviso contains both substantive part, creating right in the victim to prefer an appeal, and procedural part, by identifying the forum for filing such an appeal. It is not in dispute that the substantive part of law operates prospectively it has to be concluded that the right of victim, to prefer an appeal in terms of said proviso to Section 372, became available to the victim(s) of all cases in which orders were passed by any criminal court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation, on or after 31st of December, 2009. In other words, date of judgment of a criminal court has to be necessarily treated as the relevant date for applying the test of maintainability of appeal by the victim under three contingencies laid down under the proviso to Section 372 of the Code, irrespective of the date of occurrence, institution of the case, cognizance or commitment.

58. In light of the settled position of law discussed above, we are in respectful agreement with all these judgments. The second question is answered accordingly. CRL.A.1415/2012 Page 37 59. This Court records its appreciation of and gratitude to Mr. Dayan Krishnan, learned senior counsel who assisted it in the proceedings with his usual clarity of thought and industry. It also records its appreciation of the efforts of Mr. Krishnan Venugopal and Mr. Mohit Mathur, learned senior counsel; Mr. P.K. Dey, Mr. Javed Ahmad and Mr. Shishir Mathur, learned counsel who appeared in the matter.

60. The restrictive interpretation of victim and legal heir in Chattar Singh (supra), is, in the light of the preceding discussion, overruled. The reference is answered in the above terms. The Registry is directed to place the appeal before the concerned Roster Bench, subject to the orders of Honble the Chief Justice, on 6th

July, 2015. S. RAVINDRA BHAT (JUDGE) PRADEEP NANDRAJOG (JUDGE)
GITA MITTAL (JUDGE) MAY28 2015 CRL.A.1415/2012 Page 38

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