Ashok vs The State Of Uttar Pradesh on 2 December, 2024

Author: Abhay S. Oka

Bench: Abhay S. Oka

2024 INSC 919

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 771 OF 2024

ASHOK …APPELLANT

VERSUS

STATE OF UTTAR PRADESH …RESPONDENT

JUDGMENT

ABHAY S. OKA, J.

FACTUAL ASPECT

1. This is a very unfortunate case. The victim of the offence was ten years old at the time of the incident. On 27th May 2009, around 9.00 a.m., she and her first cousin, PW-2, had gone to a pasture to graze her goats. The age of PW-2 was seven years at that time. As the victim was thirsty, she went near a tubewell cabin. The appellant- accused was working as an operator of the tubewell appointed by the owner of the tubewell. The victim requested the appellant to provide drinking water. The allegation of the prosecution is that, with evil intentions, the appellant took her inside the cabin. He committed rape on her and, after that, murdered her. According to the prosecution's case, PW-2 saw the appellant forcibly taking the victim inside the cabin and raping her. By 11.00 a.m., PW-2 returned to PW-1, the victim's father. PW-1 was the uncle of PW-2. After PW-2 narrated the story to PW-1, he went to the tubewell cabin to find the victim and found the dead body of the victim hidden in a haystack in that cabin. On being questioned by PW-1, the appellant fled from the spot and thereafter, PW-1 registered the First Information Report.

2. The Trial Court, by judgment and order dated 24th December 2012, convicted the appellant for the offences punishable under Sections 376, 302 and 201 of the Indian Penal Code (for short, 'the IPC'). The Trial Court also convicted the appellant under the provisions of Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the SCST Act'). The Trial Court imposed capital punishment.

3. The High Court heard the reference under Section 366 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') with an appeal preferred by the appellant. Though the High Court confirmed the conviction, the death penalty was set aside and the appellant was sentenced to undergo life imprisonment for the remainder of his natural life subject to the exercise of powers of grant of remission or grant of clemency by the constitutional functionaries.

4. The present appeal is against the judgments mentioned above. By order dated 20th May 2022, this Court granted bail to the appellant after noting that he had undergone actual incarceration for about 13 years. We may note here that earlier, learned counsel Shri M Shoeb Alam was appointed as amicus curiae to espouse the cause of the appellant. After his designation as a senior advocate, he continued to assist this Court. Shri Talha Abdul Rahman, Advocate-on-Record, was appointed amicus curiae to assist the learned senior counsel. SUBMISSIONS

5. The learned senior counsel appearing for the appellant has taken us through the evidence of the prosecution witnesses. Inviting our attention to evidence of PW-1, Heera Lal, the father of the victim, he pointed out that the version of the witness in his examination-in-chief is based on what was reported to him by PW-2, the minor witness. But, if we compare the depositions of PW-2 with the examination-in-chief of PW-1, there is a significant variance between the version of PW-2 as stated by PW-1 and what PW-2 stated in his examination-in-chief. He pointed out that in the cross-examination, PW-1 has tried to improve upon his version by trying to depose consistently with the version of PW-2. Inviting our attention to the proceedings before the Trial Court, he submitted that when the examination-in-chief of the PW-1 was recorded, the appellant-accused was not represented by any advocate. Therefore, the cross-examination was adjourned to enable the appellant to engage an advocate. An advocate was appointed to espouse his cause after the examination-in-chief of PW-1 was recorded. The appellant was not represented by any advocate at the time of the framing of the charge.

6. Coming to the depositions of PW-2, the learned senior counsel for the appellant urged that considering the difference between the version of PW-1 in his examination- in-chief and cross-examination, the possibility of PW-2 being tutored cannot be ruled out. He submitted that evidence of PW-2 was recorded two and half years after the incident, and on the date of the recording of evidence, his age was ten years. Possibly, he was tutored. He pointed out that the evidence of PW-2 was not of sterling quality and, therefore, cannot be the sole basis for the conviction, especially when evidence regarding recovery is doubtful.

7. The learned senior counsel appearing for the appellant as amicus curiae pointed out that the alleged recovery of the victim's slippers and underwear, at the instance of the appellant, is highly doubtful as the place and time of recovery have not been mentioned in the recovery memo. The

prosecution did not examine the two witnesses to the recovery memo. He pointed out that the prosecution made no attempt to prove that blood stains on the undergarments of the appellant were that of the blood of the victim. No analysis was made.

8. More importantly, he submitted that the incriminating circumstances brought on record in the evidence against the appellant were not put to him in his examination under Section 313 of the CrPC. Therefore, the appellant's right of defence was seriously prejudiced. He relied upon a decision of this Court in the case of Raj Kumar v. State (NCT of Delhi)1.

9. Shri K. Parameshwar, the learned senior counsel appearing for the State, supported the impugned judgments. However, he has assisted us on the issue of legal aid to the accused.

CONSIDERATION OF SUBMISSIONS 1 2023 SCC OnLine SC 609

10. In the examination-in-chief, PW-1 stated that PW-2 witnessed the commission of rape and murder of the victim. According to the witness, PW-2 told him that as the door of the room was open while he was standing outside, he saw the act of commission of rape and murder. He deposed that after the PW-2 told him about the incident, he rushed along with two or three other persons to the spot. He found that the appellant was present there, and he questioned the appellant. Thereafter, the appellant fled. He tried to search for the victim. He found the dead body of the victim under the haystack in the room. It is pertinent to note that PW-2 had informed PW-1 that the appellant was the offender. Though two to three persons accompanied PW-1, he did not attempt to apprehend the accused and take him to the police. The conduct of PW-1 of not apprehending the appellant, though he was present, is unnatural.

11. Examination-in-chief of PW-1 was recorded by learned Trial Judge on 11th May 2011. At the end of the examination-in-chief, the learned Trial Judge recorded that the case was adjourned at the oral request of the appellant to engage a counsel. Before the cross- examination was recorded on 2nd July 2011, an advocate was appointed to espouse the appellant's cause. The cross- examination of PW-1 was recorded on 2nd July 2011 and 24th September 2011. The witness reiterated that he had narrated the facts stated to him by PW-2.

12. As far as PW-2 is concerned, he was 10 years old when his deposition was recorded. Many preliminary questions were put to the witness by the learned Trial Judge. After satisfying himself that the witness was able to understand the questions and give a reply to the same, an oath was administered to him. His version in the examination-in-chief is that the appellant gave drinking water to him and the victim. After drinking the water, when they tried to leave, the appellant caught the victim from behind, took off her undergarments, and the victim started screaming. He did not depose that he had seen the commission of rape and murder by the appellant. To this extent, the version of PW-2, as told to PW-1, is entirely different. PW-1 claims that PW-2 reported to him that he had seen the appellant committing rape and murder from outside the cabin. PW-8, the investigating officer, stated that he had recorded the Statement of PW-2 on 18th June 2009. Thus, there was a delay of 21 days in recording his statement, though the FIR recorded that this witness had seen the appellant committing the crime. There is some dispute about whether the witness's

statement recorded under Section 161 of CrPC was produced with the charge sheet. The learned senior counsel appointed as amicus pointed out that it is not on the record of the Trial Court. In the list of witnesses mentioned in the charge sheet, the name of PW-2 has not been included. Therefore, for all the reasons discussed above, the evidence of PW-2, the only eyewitness, cannot be held to be of sterling quality. It is unsafe to base conviction only on his testimony. Even otherwise, taking his testimony as correct, the evidence of the PW-2 can, at the highest, be the evidence of the last seen together.

13. Therefore, it is necessary to consider the other circumstantial evidence. In this case, the recovery of the victim's slipper and underwear is alleged at the appellant's instance. We have perused the recovery memo signed by the circle officer and two independent witnesses. The prosecution did not examine the two independent witnesses. Though the date of recovery is mentioned in the memo, the time and, most importantly, the place of recovery are not mentioned. Therefore, it cannot be said that pursuant to the statement made by the appellant, in accordance with Section 27 of the Indian Evidence Act, 1972 (for short, 'the Evidence Act'), the articles were found at the place stated by the appellant. Hence, the prosecution failed to prove that the recovery was from a particular place. Thus, evidence of recovery will have to be kept out of consideration. The recovery of the articles at the instance of the appellant is a very important circumstance in the chain of circumstances. It is not proved. Hence, the appellant's guilt beyond reasonable doubt has not been established.

EXAMINATION OF THE APPELLANT UNDER SECTION 313 OF CR.P.C

14. Now, we come to the appellant's statement, recorded per Section 313 of the CrPC. Only three questions were put to the appellant. In the first question, the names of ten prosecution witnesses were incorporated, and the only question asked to the appellant was what he had to say about the testimony of ten prosecution witnesses. In the second question, all the documents produced by the prosecution were referred, and a question was asked, what the appellant has to say about the documents. In the third question, it was put to the appellant that knowing the fact that the victim belongs to a scheduled caste, he caused her death after raping her and concealed her dead body, and he was asked for his reaction to the same. What PW-1 and PW-2 deposed against the appellant was not put to the appellant. The contents of the incriminating documents were not put to the appellant.

15. In the case of Raj Kumar1, in paragraph 17, this Court has summarised the law laid down by this Court from time to time on Section 313 of the CrPC. Paragraph 17 reads thus:

> "17. The law consistently laid down by this Court can be summarized as under:
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> (i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;
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> (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect.

However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him;

and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered." This Court based its decision on several decisions, including the decision in the case of Shivaji Sahabrao Bobade v. State of Maharashtra2. This Court relied upon what was held in paragraph 16 of the said case. Paragraph 16 of the said case reads thus:

"16. ..... It is trite law, nevertheless fundamental, that the 2 (1973) 2 SCC 793 prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, CrPC, the omission has not been shown to have caused prejudice to the accused. In the present case, however, the High Court, though not the trial court has relied upon the presence of blood on the pants of the blood group of the deceased. We have not been shown what explanation the accused could have offered to this chemical finding particularly when we remember that his

answer to the question regarding the human blood on the blade of the knife was “I do not know”. Counsel for the appellants could not make out any intelligent explanation and the “blood” testimony takes the crime closer to the accused. However, we are not inclined to rely over much on this evidentiary circumstance, although we should emphasise how this inadvertance of the trial court had led to a relevant fact being argued as unavailable to the prosecution. Great care is expected of Sessions Judges who try grave cases to collect every incriminating circumstance and put it to the accused even though at the end of a long trial the Judge may be a little fagged out.” (emphasis added) In a given case, the witnesses may have deposed in a language not known to the accused. In such a case, if the material circumstances appearing in evidence are not put to the accused and explained to the accused, in a language understood by him, it will cause prejudice to the accused.

16. In the present case, there is no doubt that material circumstances appearing in evidence against the appellant have not been put to him. The version of the main prosecution witnesses PWs-1 and 2 was not put to him. The stage of the accused leading defence evidence arises only after his statement is recorded under Section 313 of the CrPC. Unless all material circumstances appearing against him in evidence are put to the accused, he cannot decide whether he wants to lead any defence evidence. In this case, even the date and place of the crime allegedly committed by the appellant were not put to the appellant. What was reportedly seen by PW-2 was not put to the appellant in his examination. Therefore, the appellant was prejudiced. Even assuming that failure to put material to the appellant in his examination is an irregularity, the question is whether it can be cured by remanding the case to the Trial Court.

17. The date of occurrence is of 27th May 2009. Thus, the incident is fifteen and a half years old. After such a long gap of fifteen and half years, it will be unjust if the appellant is now told to explain the circumstances and material specifically appearing against him in the evidence. Moreover, the appellant had been incarcerated for about twelve years and nine months before he was released on bail. Therefore, considering the long passage of time, there is no option but to hold that the defect cannot be cured at this stage. Even assuming that the evidence of PW-2 can be believed, the appellant is entitled to acquittal on the ground of the failure to put incriminating material to him in his examination under Section 313 of the CrPC. We are surprised to note that both the Trial Court and High Court have overlooked non- compliance with the requirements of Section 313 of the CrPC. Shockingly, the Trial Court imposed the death penalty in a case which ought to have resulted in acquittal. Imposing capital punishment in such a case shocks the conscience of this Court.

ROLE OF THE PUBLIC PROSECUTOR

18. Under sub-Section (5) of Section 313 of CrPC (sub- Section (5) of Section 351 of Bharatiya Nagarik Suraksha Sanhita, 2023), the Court is entitled to secure the assistance of the public prosecutor and the advocate representing the accused to prepare the questions to be put in the examination under Section 313. A Public Prosecutor has to play an active role in ensuring that every trial is conducted in a fair manner and in accordance with the law. Hence, it is the Public Prosecutor's duty to invite the Court's attention to the requirement of putting all incriminating material to the accused. Therefore, the Public Prosecutor is under an obligation to remain present when the examination of the accused is made to assist the Court.

FAILURE TO PROVIDE LEGAL AID TO THE ACCUSED

19. After having perused the record of the case, we found a very disturbing feature. It is about the failure of the State to provide timely legal aid to the appellant. The other issue is about the quality of legal aid. Apart from provisions of Article 21 and Article 39A of the Constitution of India, the law on the issue of the right to legal aid has been evolved by this Court through its landmark decisions. This Court's first well-known decision is in the case of Hussainara Khatoon (IV) v. Home Secy., State of Bihar3. In Paragraph 7, this Court held thus:

> "7. We may also refer to Article 39-A the fundamental constitutional directive which reads as follows:
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> "39-A. Equal justice and free legal aid.— The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities." (emphasis added) This article also emphasises that free legal service is an unalienable element of "reasonable, fair and just" procedure for without it a person suffering from (1980) 1 SCC 98 economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of "reasonable, fair and just", procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.

We would, therefore, direct that on the next remand dates, when the undertrial prisoners, charged with bailable offences, are produced before the Magistrates, the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail, provided that no objection is raised to such lawyer on behalf of such undertrial prisoners and if any application for bail is made, the Magistrates should dispose of the same in accordance with the broad outlines set out by us in our judgment dated February 12, 1979. The State Government will report to the High Court of Patna its compliance with this direction within a period of six weeks from today." (emphasis added) The second decision is in the case of M.H. Hoskot v. State of Maharashtra4. In paragraphs 14 and 25 of the decision, this Court held thus:

> "14. The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature, moulded by

> Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law. Free legal services to the needy is part of the English criminal justice system. And the American jurist, Prof. Vance of Yale, sounded sense for India too when he said:
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> [Justice and Reform, Earl Johnson, Jr. p. 11] (1978) 3 SCC 544 "What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the courts are open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee?" " (emphasis added) "25. If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Article 142, read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual "for doing complete justice". This is a necessary incident of the right of appeal conferred by the Code and allowed by Article 136 of the Constitution. The inference is inevitable that this is a State's duty and not Government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case.

In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court." (emphasis added) This issue was again dealt with by a Bench of three Judges in the case of Anokhilal v. State of M.P.5. In this decision, this Court revisited the law on this aspect. In paragraph 11, this Court relied upon the decision in the case of Hussainara Khatoon (IV)3. In paragraph 20, this Court summarised the principles laid down from time to time. Paragraph 20 reads thus:

> "20. The following principles, therefore, emerge from the decisions referred to hereinabove:
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> (2019) 20 SCC 196

20.1. Article 39-A inserted by the 42nd Amendment to the Constitution, effected in the year 1977, provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The statutory regime put in place including the enactment of the Legal Services Authorities Act, 1987 is designed to achieve the mandate of Article 39-A. 20.2. It has been well accepted that right to free legal services is an essential ingredient of

"reasonable, fair and just" procedure for a person accused of an offence and it must be held implicit in the right guaranteed by Article 21. The extract from the decision of this Court in Best Bakery case [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] (as quoted in the decision in Mohd.

Hussain [Mohd. Hussain v. State (NCT of Delhi), (2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139]) emphasises that the object of criminal trial is to search for the truth and the trial is not a bout over technicalities and must be conducted in such manner as will protect the innocent and punish the guilty.

20.3. Even before insertion of Article 39- A in the Constitution, the decision of this Court in Bashira [Bashira v. State of U.P., (1969) 1 SCR 32 : AIR 1968 SC 1313 :

> 1968 Cri LJ 1495] put the matter beyond any doubt and held that the time granted to the Amicus Curiae in that matter to prepare for the defence was completely insufficient and that the award of sentence of death resulted in deprivation of the life of the accused and was in breach of the procedure established by law.
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> 20.4. The portion quoted in Bashira [Bashira v. State of U.P., (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495] from the judgment of the Andhra Pradesh High Court authored [Alla Nageswara Rao, In re, 1954 SCC OnLine AP 115 : AIR 1957 AP 505] by Subba Rao, J., the then Chief Justice of the High Court, stated with clarity that mere formal compliance of the rule under which sufficient time had to be given to the counsel to prepare for the defence would not carry out the object underlying the rule. It was further stated that the opportunity must be real where the counsel is given sufficient and adequate time to prepare.
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> 20.5. In Bashira [Bashira v. State of U.P., (1969) 1 SCR 32 : AIR 1968 SC 1313 :
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> 1968 Cri LJ 1495] as well as in Ambadas [Ambadas Laxman Shinde v. State of Maharashtra, (2018) 18 SCC 788 : (2019) 3 SCC (Cri) 452 : (2018) 14 Scale 730] , making substantial progress in the matter on the very day after a counsel was engaged as Amicus Curiae, was not accepted by this Court as compliance with "sufficient opportunity" to the counsel." (emphasis added) In paragraph 31, norms were laid down by this Court, which read thus:
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> "31. Before we part, we must lay down certain norms so that the infirmities that we have noticed in the present matter are not repeated:
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> 31.1. In all cases where there is a possibility of life sentence or death sentence, learned advocates who have put in minimum of 10 years' practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused. 31.2. In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be

> appointed as Amicus Curiae.
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> 31.3. Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter.

There cannot be any hard-and-fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

31.4. Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the accused concerned. Such interactions may prove to be helpful as was noticed in Imtiyaz Ramzan Khan [Imtiyaz Ramzan Khan v. State of Maharashtra, (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721] .” (emphasis added)

20. Thus, the right to get legal aid is a fundamental right of the accused, guaranteed by Article 21 of the Constitution. Even under Section 303 of the CrPC, every accused has a right to be defended by a pleader of his choice. Section 304 provides for the grant of legal aid to an accused free of costs. When an accused has either not engaged an advocate or does not have sufficient means to engage an advocate, it is the trial court's duty to inform the accused of his right to obtain free legal aid, which is a right covered by Article 21 of the Constitution of India. Sub-Section (1) of Section 304 reads thus:

> “304. Legal aid to accused at State expense in certain cases.—(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State. (2) .....
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> .....” (emphasis added) Sections 340 and 341 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, ‘BNSS’) are the Sections which correspond to Sections 303 and 304 of the CrPC. Thus, under Section 304 of the CrPC, it is the duty of the Court to ensure that a legal aid lawyer is appointed to espouse the cause of the accused.

21. Now, we come back to the facts of the case. From the proceedings of the Trial Court, it appears that when the charges were framed on 8th September 2010, and when the plea was recorded, the appellant was not represented by any advocate. Proceedings of 26th February 2011 record that though three witnesses of the prosecution were present, the appellant was not represented by any advocate. Therefore, assurance of the appellant has been recorded that he would call his counsel on the next date. On 11th May 2011, the examination-in-chief of PW-1 was recorded. In the proceedings, the court recorded that the appellant had not engaged any advocate on that day, and he was not desirous of taking legal aid. However, on 8th June 2011, an advocate was appointed to espouse his cause. We find that on 20th July 2012, 4th October 2012, 1st November 2012, 7th November 2012, 9th November 2012 and 23rd November 2012, the advocate appointed as amicus curiae for the appellant was absent. Applications were required to be made by him to recall certain witnesses as the cross-examination was closed due to his absence. Thus, the evidence of more than one prosecution witness was recorded in the absence of the legal aid advocate. On 7th November

2012, another advocate was appointed to espouse the appellant's cause. We find that a third advocate conducted the cross-examination of PW-8.

22. At the stage of framing the charge, the appellant was not represented by an advocate. From 8th June 2011, the appellant never declined legal aid. We are surprised to note that the examination-in-chief of PW-1 was allowed to be recorded without giving legal aid counsel to the appellant, who was not represented by an advocate. If the examination-in-chief of a prosecution witness is recorded in the absence of the advocate for the accused, a very valuable right of objecting to the questions asked in examination-in-chief is taken away. The accused is also deprived of the right to object to leading questions. It will not be appropriate to comment on the capabilities of the two legal aid lawyers appointed in this case as they are not parties before us. But suffice it to say that the cross- examination of the witnesses was not up to the mark. Some of the crucial questions that normally would have been put in the cross-examination have not been asked. CONCLUDING PART

23. Our conclusions and directions regarding the role of the Public Prosecutor and appointment of legal aid lawyers are as follows:

a. It is the duty of the Court to ensure that proper legal aid is provided to an accused;
b. When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;

c. Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused; d. It is the duty of the Public Prosecutor to assist the Trial Court in recording the statement of the accused under Section 313 of the CrPC. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused; e. An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;

f. At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the Trial Court must ensure that a legal aid advocate is appointed to represent the accused;

g. As held in the case of Anokhilal5, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as amicus curiae or as a legal aid advocate. Even in the cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the newly appointed legal aid advocates to work with senior members of the Bar in a requisite number of trials; h. The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the court regularly and punctually when the cases entrusted to them are fixed;

i. It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice;

j. In the cases where the offences are of a very serious nature and complicated legal and factual issues are involved, the Court, instead of appointing an empanelled legal aid advocate, may appoint a senior member of the Bar who has a vast experience of conducting trials to espouse the cause of the accused so that the accused gets best possible legal assistance; k. The right of the accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Article 21;

l. If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must be effective. Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated.

24. For the reasons recorded earlier, the appeal is allowed. The impugned judgments and orders are set aside, and the appellant is acquitted of offences alleged against him. The bail bonds of the appellant stand cancelled.

25. A copy of this judgment shall be forwarded to all State Legal Services Authorities to enable the authorities to take necessary measures.

26. We record our appreciation for the able assistance rendered to the Court by the learned senior counsel Shri M.Shoeb Alam, appointed to espouse the cause of the appellant. We must also record that the learned senior counsel, Shri K.Parameshwar, appearing for the respondent, has fairly assisted the Court.

.....J. (Abhay S. Oka) .....J. (Ahsanuddin Amanullah) .....J. (Augustine George Masih) New Delhi;

December 02, 2024