

Sovaran Singh Prajapati vs The State Of Uttar Pradesh on 4 February, 2025

Author: Sanjay Karol

Bench: Sanjay Karol, Vikram Nath

2025 INSC 225

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.259-260 OF 2019

SOVARAN SINGH PRAJAPATI

... AP

VERSUS

THE STATE OF UTTAR PRADESH

... RE

ORDER

SANJAY KAROL, J

1. These appeals arise out of judgment and order dated 1 st October 2018 passed by the High Court of Judicature at Allahabad in Capital Case No.2611 of 2017 and Reference No.05 of 2017. The impugned judgment of the High Court confirmed the judgment of conviction dated 28th February 2017, and the sentence of capital punishment imposed vide judgment dated 1st March 2017 upon the appellant by the Additional Sessions Judge, Mainpuri in Sessions Trial No.377/2014, titled State v. Sovaran Singh, under Sections 302 and 201 of Indian Penal Code 18601. FACTS AND PREVIOUS PROCEEDINGS

2. Brief Facts, as allegedly set out by the prosecution, are that in the intervening night of 29th - 30th of June 2014, the appellant returned home in an inebriated state, also carrying two bottles of liquor which he then consumed along with his father. Sometime later, a quarrel ensued between them which led to the appellant slapping his father, who was, as a result, injured in his ear. Thereafter, he demanded money from his wife Mamta to procure more liquor which she denied. As such he trashed, abused and eventually killed her. He also killed his daughter Sapna who was twelve years old. Resultantly, FIR No.128 of 2014 was registered under Section 302 IPC at P.S. Karhal, District

Mainpuri. With the completion of the investigation, challan was presented in the Trial Court and the appellant herein was put to trial.

3. Post-Mortem conducted by Dr. Rajesh Kumar Mishra (PW-3), found the following injuries on both the deceased persons, as recorded by the High Court in the impugned judgment:

“4. P.W. 3 Dr. Rajesh Kumar Mishra conducted post-mortem on dead body of Mamta on 30.6.2014 at 4.25 PM. On external examination, Doctor found her slim and weak with 146 cm height and 39.700 Kg in weight. Rigor mortis found present in lower segment of body; eyes were half closed, mouth open, nail in-tact and bleeding from nose and ear was noticed. P.W. 3 found following ante mortem injuries on her person:

for short ‘IPC 1860’ "1. Abrasion 3 cm x 2 cm on right side forehead, 1 cm above eye brow, blackening present

2. Abrasion 3 cm x 4 cm just below right eye, blackening present.

3. Abrasion 5 cm x 4 cm on left side of left eye, blackening present. 4. Blood through nose and both ears.

5. Abrasion 6 cm x 3 cm on right side of neck, 1 cm below right mandible.

6. Abrasion 3 cm x 2 cm over anterior aspect of right shoulder, blackening present.

7. Abrasion 5 cm x 3 cm on right side of chest, 5 cm below left nipple.

8. Lacerated wound 5 cm x 3 cm on left side of vagina, exposing uterus and bladder."

5. On internal examination, right eye was black; lips were swollen and black in colour; tongue inside mouth; ecchymosis present in neck muscles; hyoid left corner fractured; weight of right lung 340 gm (Pale) and left 320 gm; both chambers of heart empty; blood present in peritoneal cavity; stomach contained about 150 gm semi digested food matter; small intestine contained semi digested food particles and large intestine contained faecal matter and gases; liver was lacerated 5 cm and pale; spleen weighed 150 gm and pale; kidneys-pale, right kidney weighed 150 gm and left 130 gm, urinary bladder and urethra were ruptured. In the opinion of Doctor, about one day has passed since the death. Cause of death was due to acute haemorrhagic shock as a result of ante mortem injuries, causing internal bleeding. Postmortem report prepared by P.W. 3 is Ex. Ka. 2.

6. The same Doctor, P.W. 3 examined dead body of deceased Sapna at about 04:40 PM on 30.06.2014. According to him, deceased was aged about 12 years, 22.400 kg in weight. Rigor mortis was present; eyes and mouth closed and lips swollen. He found

following ante mortem injuries on her person.

- “1. Face and fore head swollen, right black eye.
2. Abrasion 6 cm x 4 cm on right side of face, 2 cm anterior to right ear.
3. Lips swollen and teeth mark laceration in inner side of lips.
4. Abrasion 5 cm x 3 cm on left side of face anterior to left eye.
5. Abrasion 1 cm x 1 cm on anterior aspect of left fore arm, 3 cm above wrist joint, bluish.
6. Abrasion 1 cm x 1 cm on posterior aspect of base of index finger (II Metacarpo-phalangeal joint), bluish.
7. Lateral fold of vagina wide open, mens (menstrual) and labia swollen, vagina congested and lacerated, particularly some sticky wheatish substance present, slide prepared.
8. Abrasion 2 cm x 1 cm on anterior lateral aspect of right knee, bluish coloured.”
7. On internal examination, brain was found congested with 1.100 kg in weight and haematoma was present; bleeding found from nose and left ear; right lung weighed 300 gm and was congested and left lung weighed 250 gm; left side heart was empty and right side was full;

stomach contained 200 gm semi solid food content, mucous normal, no foul smell; small intestine contained semi digested food material and large intestine had faecal matter and gases and liver was congested. In the opinion of doctor, death had occurred due to head injury/ante- mortem injuries. P.W. 3 had prepared post-mortem report Ex. Ka-3.”

4. The Trial Court considered the arguments of both the parties and eventually held that the prosecution had proved its case beyond reasonable doubt and as such, convicted the appellant of having committed a double murder. On the point of sentence, the matter was put up the following day, i.e., on 1st March 2017 and, having considered a host of judicial pronouncements, evaluating the aggravating and mitigating circumstances, the sentence of death by hanging was imposed qua Section 302 IPC and seven-year imprisonment for the offence punishable under Section 201 IPC.

5. On appeal, the High Court confirmed the sentence of death imposed by the Trial Court, accounting for all the attending aggravating and mitigating circumstances.

6. We have heard learned counsel for the parties, Mr. Rajiv Shakhder, learned Senior Counsel for the appellant and Mr. Divyesh Pratap Singh for the State. At the outset, it was clarified by the

learned Senior counsel that under assail was the finding of conviction as also the sentence. In taking us through the record, numerous lapses have been pointed out, which go to the root of the matter, calling into question credibly, the justiciability of the conviction as well as the sentence imposed on the appellant.

Purpose of Trial

7. It is important to restate the purpose of trial. A trial, of course, is a fact-finding exercise wherein both parties, i.e., the prosecution and defence, after investigation by the competent authorities, present their versions of events and the role and duty of the Court to determine the truth. While undertaking such determination, the Court is not only to look at the evidence at hand but also ensure that all consideration balances the demand for justice and the rights of the accused. The American Jurisprudence 2nd Ed. 2007, in the following terms, captures the purpose of a trial:

“The purpose of trial is to determine the validity of the allegations. The objective is to secure a fair and impartial administration of justice between the parties to the litigation and not the achievement of a hearing wholly free from errors. Once a civil action has been instituted and issue is joined upon the pleadings, there must be a trial on the issue before a judgment may be rendered. Trial is not a contest between lawyers but a presentation of facts to which the law may be applied to resolve the issues between the parties and to determine their rights. It is also not a sport; it is an inquiry into the truth, in which the general public has an interest.”

8. The statutory mechanism regarding a trial before a Court of Session is provided in the Code of Criminal Procedure, 1973, under Chapter XVIII. The process and mode of taking and recording evidence have been provided for in Chapter XXIII. Chapter XXIV details the general provisions qua inquiries and Abbreviated as Cr. P.C. trials. Herein, also provided is, the duty of the Court, in certain cases, to provide the person standing trial before it, with legal aid at the expense of the State. Also relevant here is Chapter XXVIII, which lays down the procedure for submission of a death sentence awarded by a Court of Session to the High Court for confirmation.

9. This case raises questions of compliance with various basic requirements of a fairly conducted trial, in accordance with well-established prepositions of law. Fair Trial - A Guarantee under Article 21 of the Constitution of India

10. Fair and impartial administration of justice is a treasured right protected by various enactments of law including, first and foremost, the Constitution, which under Article 21 guarantees the Right to Fair Trial. In numerous pronouncements, this Court has underscored the same.

10.1 A Three-Judge Bench of this Court in *Vinubhai Haribhai Malaviya v. State of Gujarat*³, held as under:

“17. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in *Maneka Gandhi v. Union of India*

[Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , be “right, just and fair and not arbitrary, fanciful or oppressive” (see para 7 therein). Equally, in Commr. of Police v. Delhi High Court [Commr. of Police v. Delhi High Court, (1996) 6 SCC 323 : 1996 SCC (Cri) 1325] , it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see para 16 therein).

18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that (2019) 17 SCC 1 those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.” (Emphasis supplied) 10.2 In the well-known ‘Best Bakery Case’ titled *Zahira Habibulla H. Sheikh v. State of Gujarat*⁴, the Court, detailing various aspects of fair trial, observed as under:

“35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as *persona non grata*. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice — often referred to as the duty to vindicate and uphold the “majesty of the law”. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.

36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected (2004) 4 SCC 158 effectively when a citizen

has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz.

whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

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38. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.” (Emphasis supplied) 10.3 In *Sidhartha Vashisht v. State (NCT of Delhi)*⁵, this Court observed :

“197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our (2010) 6 SCC 1 jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.” (Emphasis supplied) 10.4 Observations in *J. Jayalalithaa v. State of Karnataka*⁶, are important for our purposes. The relevant extracts are :

“28. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the “majesty of the law” and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

29. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm.

Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution. “No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the *raison d'être* in prescribing the time frame” for conclusion of the trial.

30. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of (2014) 2 SCC 401 our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by the rule of law. Denial of fair trial is crucifixion of human rights...” (Emphasis supplied) 10.5 This Court in *Asha Ranjan v. State of Bihar*⁷, written by Dipak Misra J., (as his Lordship then was) referring to *State of Haryana v. Ram Meher*⁸, summarized the conclusions drawn in the latter, as under :

“51. ... Simultaneously, the concept of fair trial cannot be allowed to such an extent so that the systemic order of conducting a trial in accordance with Criminal Procedure Code or other enactments get mortgaged to the whims and fancies of the defence or the prosecution. The command of the Code cannot be thrown to the winds. In such situation, as has been laid down in many an authority, the courts have significantly an eminent role. A plea of fair trial cannot be acquiesced to create an organic disorder in the system. It cannot be acceded to manure a fertile mind to usher in the nemesis of the concept of trial as such. The Court further observed that there should not be any inference that the fair trial should not be kept on its own pedestal as it ought to remain but as far as its applicability is concerned, the party invoking it has to establish with the support of established principles. The process of the court cannot

be abused in the name of fair trial at the drop of a hat, as that would lead to miscarriage of justice.” (Emphasis supplied) 10.6 From a studied analysis of the above decisions, the following principles as to the meaning and import of fair trial, can be illustratively deduced :

- (1) Fair and Just investigation is the starting point of the fair trial process.
- (2) This process is a triangulation of the rights of the accused, the victim and the community that acts through the state and prosecuting agencies.
- (2017) 4 SCC 397 (2016) 8 SCC 762 (3) Process of investigation and trial must be completed with promptitude.
- (4) The trial Judge has to play an active role in the search for truth, which a trial, undoubtedly has to be.
- (5) Bias of all nature, against the accused, the victim, the witnesses; or the cause of/at trial, has to be eliminated. (6) The process of fair trial is to be done to maintain public confidence & uphold the majesty of law.
- (7) The atmosphere in which a trial is to be conducted in a fair manner has to be in an atmosphere of ‘judicial calm’. (8) Unfair prolongation of trial is an affront to the ideal of fair trial.
- (9) The ideal of fair trial has protection in the Constitution and in the international legal framework, as a basic human right.
- (10) The centripetal purpose of fair trial is to ensure that injustice is avoided as far as possible, but equally ‘fair trial’ is not leveraged to a point which would hinder the established procedure of Cr.P.C. In other words, the command of the Code cannot be ignored at the behest of the prosecution or defence, in the name of fair trial.

11. As is evident from the principles enunciated above, to secure a fair trial, is not a solitary responsibility. The Judge; the investigator; the investigating agency; and the counsel for either side, each have their own responsibility.

12. An inspection of the records of this case, reveals that on many points each of the constituents responsible for a fair trial have in some way or another abdicated their responsibility. Some of the points that we noticed:

- (a) At the time of examination of the star witness of the prosecution (PW-2), counsel of the defence was absent.

(b) The statement of the accused under Section 313 of Cr.P.C. was improperly recorded without all scenarios and circumstances being put to him.

(c) The initial charge under Section 302 IPC against the appellant was framed on 22nd December 2014 and then, an additional charge was framed under Section 201 IPC on 27th August 2016. The delay of a year and a half in adding a charge against the appellant is entirely unexplained.

(d) The Legal Aid Counsel provided to the appellant was not only appointed at a belated stage but also changed more than once during the course of trial.

(e) The application under Section 311 Cr.P.C., while true, is a power which has to be exercised judiciously, was rejected summarily and without assigning any reason.

(f) On 21st February 2017, the defence counsel was changed and, yet, on the same day, the defence evidence was closed on account of non-

production of witness.

(g) The accused being a person of considerably less means, did not have access to an independent counsel/counsel of his own choice. As such, he was entirely dependent on the counsel appointed for him by the Court. The assistance given by such counsel on account of being not present and changes/substitutions is rendered doubtful.

13. At this juncture, we deem it appropriate to refer to certain orders, recorded by the Trial Court in its daily status report, are as under:

Order dated 1st September 2015 reads as under:

“01.09.2015- Case called out. Accused Sobran Singh present from jail in judiciary custody. Statement of PW-1 Rajnesh Kumar recorded. But Accused Council not appeared for cross examination. The opportunity of cross examinations is closed at 3.35 P.M. fix 17.09.2015 for remaining evidence. Summon witnesses.

(A.S.J./F.T.C.)” (Emphasis supplied) Order dated 8th June 2016 is extracted below :

“08.06.2016- Case called out. Accused Sobran Singh present from jail in judicial custody. Evidence of Pw-2 Km. Poonam recorded. But Accused council not appeared for cross examination. Accused filed 18- B application for providing Government Counsel and Sri Veer Pal Singh Rathor appointed as Amicus Curie in this case as per list in the office. He be informed accordingly. Fixed 24.06.2016 for cross examination on PW-2. Advocate be informed accordingly.

(A.S.J./F.T.C.)” (Emphasis supplied) Order dated 10th June 2016 is extracted below :
“10.06.2016- Put up today. Accused counsel filled application 19-B for striking off the name from the list of Amicus Curie and to appoint any other Advocate. According to the order passed on the application ‘File taken up today on application of Ld. Amicus Curie appointed on 08.06.2016. As he has shown his inability to conduct the case, Sri Naresh Chand Dixit is appointed as Amicus Curie as per list. He be informed accordingly.

(A.S.J./F.T.C.)” Order dated 25th July 2016 is extracted below :

“25.7.2016- Case called out. Accused Sobran Singh present from jail in judicial custody. A.D.G.C. (Criminal) moved application No. 25 A for framing charge under Section 201 I.P.C against the accused. Fixed 29.07.2016 for hearing of 25-A. (A.S.J./F.T.C.)” Order dated 27th August 2016 is extracted below :

“27.8.2016- Case called out. Accused Sobran Singh present from jail in judicial custody. charge framed against the accused Under Section 201 I.P.C. Charge Read over and explained before the accused. Accused denied the charge and claimed for trial. Fixed 03.09.2016 for remaining evidence. summon witnesses.

(ASJ 1st)” Order dated 1st February 2017 is extracted below :

“01.02.2017- Case called out. Accused Sobran Singh present from jail in judicial custody. Statement of witness S.I. Sri Om Veer Singh has been recorded as PW-6. Cross Examination of witness has been done by Defence counsel. Application No. 32-B filled by the defence counsel for summoning PW-1 and PW-2 for cross examination. Objected by A.D.G.C. And endorsed that no prosecution evidences to be recorded. Strongly opposed by defence counsel. Fixed 04.02.2017 for statement Under Section 313 Cr.P.C. And hearing of 32-B application.

(A.S.J. 1st)” Order dated 4th February 2017 is extracted below :

“04.02.2017- Case called out. Accused Sobran Singh present from jail in judicial custody. Statement of accused Sobran Singh has been recorded under Section 313 Cr.P.C. Fixed on 08.02.2017 for defence argument.

(A.S.J. 1st)” Order dated 18th February 2017 is extracted below :

“18.02.2017- Case called out accused present in J.C. But not present. Counsel present heard on application 32-B brief order is passed on the application. After lunch at 02:30 P.M. an application for time to adduce defence witness 35-B moved by defence counsel. Order passed on the application as “Vide order of even date today, application u/s 311 moved by Ld. counsel has been rejected. He sought time to adduce arguments which was granted. After which, he has moved application for

providing defence evidence. if the Ld. Counsel produce the witness on the date fixed he will be examined failing which matter will be posted for Judgment after hearing the argument of prosecution.” (A.S.J. 1st)” Order dated 21st February 2017 is extracted below:

“21.02.2017- Case called out. Accused person is present in Judicial Custody. An application 36-B moved by the Ld. counsel for accused as per order passed on the application “Application is rejected. As opportunity has already been given” At 12:00 P.M. present Sri Dalveer Yadav newly appoint counsel for the accused. He states that no witness no present. D.E. Closed as on last date it was ordered that if Ld. produces the witness on the date fixed he will be examined failing which argument will be recorded.

Argument of prosecution recorded. Part argument of defence also recorded. Put up after lunch for remaining argument of Ld. defence counsel.

03:00 P.M. Present Ld. Counsel for defence. Arguments concluded. Put up for Judgment on 28.02.2017 for judgment.” Order dated 28th February 2017 is extracted below :

“28.02.20189- Case called out. Accused in presented in Judicial Custody from the evidence on record, I found that the prosecution has proved the case against the accused beyond reasonable doubt both u/s 302 IPC and 201 IPC.

Accused has guilty and putup on 01.03.2017 for the point of sentence.

(A.S.J. 1st)” Order dated 1st March 2017 is extracted below :

“01.03.2017- Case called out. Accused person present in Judicial custody order passed on separate sheet 37-A. Order Convict Sobran Singh sentence to death for offence punishable u/s 302 IPC accordingly the convict be hanged by neck till he is death. Fine of Rs. 20,000/- to the convict is also imposed in default of payment of fine, the convict shall undergo rigorous imprisonment for a period of two months.

Convict Sobran Singh is further sentenced to seven years rigorous imprisonment and fine of Rs. 5,000/- u/s 201 IPC in default of payment It should be 2017 but is mentioned as 2018 in the Convenience Compilation of fine rigorous imprisonment for two month to the convict. Out of the realized Rs. 20,000/- will be paid to the family of the deceased.

A copy of this order be sent to the Secretary, Legal Service Authority, Mainpuri for deciding the quantum of compensation to be awarded under the scheme refereed to in sub-section 1 of section 357- A Cr.P.C.

(A.S.J. 1st)”

14. In this context, it is essential to delve into the responsibilities cast on each unit.

(a) Duty of the Trial Court

15. On numerous occasions, this Court has highlighted the duty of a Trial Court to be an active participant to seek out the truth in a given set of circumstances ensuring that a balance is struck between the role and responsibility of prosecution as also the rights of the accused. It would be helpful to refer to certain pronouncements:

15.1 This Court in *Pooja Pal v. Union of India*¹⁰, observed :

“54...It was remarked as well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community...” 15.2 Reference may once again be made to the *Best Bakery Case* (supra), where in regard to the role of a Court, it was held :

(2016) 3 SCC 135 “55. The courts, at the expense of repetition we may state, exist for doing justice to the persons who are affected. The trial/first appellate courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself.” (Emphasis supplied)

15.3 In *Bablu Kumar v. State of Bihar*¹¹, this Court observed :

“22. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the court, it can irrefragably be stated that the court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. The law does not countenance a “mock trial”. It is a serious concern of society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty-bound to see that neither the prosecution nor the

defence takes unnecessary adjournments and take the trial under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses.” (Emphasis supplied) (2015) 8 SCC 787

16. In the present facts, the Court ought to have been the first one to observe and halt proceedings, given that counsel for the defence was absent on crucial occasions such as the examination-in-chief and cross-examination of PW-1; statement of PW-2 also was recorded in the absence of counsel for the accused; no adequate opportunity was given to produce and examine defence witnesses; and the examination of the accused under Section 313 was improper, inadequate and incomplete. The course of action adopted by the Court was mechanical and in complete ignorance of the rights of the accused and the overarching purpose of a trial. It is true that the Court had provided an opportunity for the defence to produce a witness but at the same time a condition was put that if on the said date the witness is not produced, the opportunity would be closed. This approach is in ignorance of the ground realities of production of a witness, and to the detriment of the accused. The Court cannot be said to have done its part.

17. We must also observe that in this case, the daily status of the Trial Court extracted supra, reveals that that the Court appointed both an Amicus Curiae and a legal aid counsel for the accused. There is no quarrel on that point. The same is permissible. [See: *Lalu Prasad v. State of Jharkhand*¹² and *Shaik Mukhtar & Anr. v. The State of Andhra Pradesh now State of Telangana*¹³] However, we are constrained to record that the appointment of the Amicus Curiae in a manner of this magnitude is in ignorance thereof for the case papers are silent as to the standing (2013) 8 SCC 593 Criminal Appeal No. 1753 of 2019 of the said person appointed to such a position. What was the role played by him? Was he appointed to assist the Court or was he appointed to aid the representation of the accused? Such matters should be clearly indicated to enable the Appellate Court to gain a full view of the matter including being able to ascertain compliance of essential aspects such as continuous and qualitative legal assistance to the accused.

(b) Duty of the Appellate Court

18. In the context of the duty of the Court, we must also look to the role played by the Court when sitting in appellate and/or confirmation jurisdiction. It has long been held that a Court in first appellate jurisdiction, has to appreciate the evidence on record, after duly summoning the record of the Courts below, and then arrive at its own finding, irrespective of the order under challenge before it being of conviction or acquittal. [See: *Wilayat Khan v. State of U.P.*¹⁴; *Atley v. State of U.P.*¹⁵; *Harijana Thirupala v. Public Prosecutor*¹⁶; and *Ravasaheb v. State of Karnataka*¹⁷]

19. When particularly concerned with cases of Capital Punishment, naturally, since a person's life hangs in the balance, the High Court's responsibility is accordingly enhanced/heightened. It "must carefully examine all relevant and material circumstances before upholding the conviction and confirming the 1951 SCC 898 AIR 1955 SC 807 (2002) 6 SCC 470 (2023) 5 SCC 391 sentence of death." [See: Masalti v. State of U.P.¹⁸; Charan Singh & Ors. v. State of Punjab¹⁹; and Arjun Marik & Ors. v. State of Bihar²⁰]

(b) Duty of Prosecutor

20. In a criminal trial, unless the law otherwise requires, the onus of proof never shifts. It is always on the prosecution. The job of the prosecution is to drive home the guilt of the accused beyond reasonable doubt, but at the same time, the prosecutor cannot forget that his first and foremost duty is, that of an officer of the Court. The prosecuting agency carries the role, primarily, till the time the matter enters the Court. They have a responsibility to examine all possible angles, collect all relevant evidence and then produce the same before the Court for determination of guilt or lack thereof. The following extracts of judgments underscore the indispensable role of the prosecutor.

20.1 In Bablu Kumar (supra), it was held that :

"The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a light manner. The court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non- application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial." (Emphasis supplied) AIR 1965 SC 202 (1975) 3 SCC 39 1994 Supp (2) SCC 372 20.2 Recently, a Three-Judge Bench of this Court in Ashok v. State of Uttar Pradesh²¹ issued directions regarding the role of public prosecutors and appointments of counsel through legal aid processes, this Court held :

"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;

c. 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;

d. 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;

2024 SCC OnLine SC 3580 g. As held in the case of Anokhil⁵, 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.” (Emphasis supplied) 20.3 In *Shiv Kumar v. Hukam Chand*²², a Three-Judge Bench of this Court, having taken note of various judgments returned by some High Courts, made the following observations:

“13. ... A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor.

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14. An early decision of a Full Bench of the Allahabad High Court in *Queen-Empress v. Durga* [ILR (1894-96) 16 All 84 : 1894 AWN 7] has pinpointed the role of a Public Prosecutor as follows:

“It is the duty of a Public Prosecutor to conduct the case for the Crown fairly. His object should be, not to obtain an unrighteous conviction, but, as representing the Crown, to see that justice is vindicated; and, in exercising his discretion as to the witnesses whom he should or should not call, he should bear that in mind. In our opinion, a Public Prosecutor should not refuse to call or put into the witness box for cross-examination a truthful witness returned in the calendar as a witness for the Crown, merely because the evidence of such witness might in some respects be favourable to the defence. If a Public Prosecutor is of opinion that a witness is a false witness or is likely to give false testimony if put into the witness box, he is not bound,

in our opinion, to call that witness or to tender him for cross-examination.”

16. As we are in complete agreement with the observation of a Division Bench of the High Court of Andhra Pradesh in *Medichetty* (1999) 7 SCC 467 *Ramakistiah v. State of A.P.* [AIR 1959 AP 659 : 1959 Cri LJ 1404] we deem it fit to extract the said observation:

“A prosecution, to use a familiar phrase, ought not to be a persecution. The principle that the Public Prosecutor should be scrupulously fair to the accused and present his case with detachment and without evincing any anxiety to secure a conviction, is based upon high policy and as such courts should be astute to suffer no inroad upon its integrity. Otherwise there will be no guarantee that the trial will be as fair to the accused as a criminal trial ought to be. The State and the Public Prosecutor acting for it are only supposed to be putting all the facts of the case before the Court to obtain its decision thereon and not to obtain a conviction by any means fair or foul. Therefore, it is right and proper that courts should be zealous to see that the prosecution of an offender is not handed over completely to a professional gentleman instructed by a private party.” ” 20.4 In *Harendra Rai v. State of Bihar*²³, this Court, speaking through one of us, (Vikram Nath J.) took notice of the observations made by the Law Commission of India in regard to the prosecutors, as follows :

“123. Insofar as the Public Prosecutors are concerned, a lot of comments have been made, not only by this Court but also by the Law Commission, highlighting the role and importance of a Public Prosecutor. We may quote with profit the role of the Prosecutors as stated in the 197th Law Commission of India Report on Public Prosecutors' Appointments (2006) :

“...‘The Prosecutor has a duty to the State, to the accused and to the court. The Prosecutor is at all times a minister of justice, though seldom so described. It is not the duty of the prosecuting counsel to secure a conviction, nor should any prosecutor even feel pride or satisfaction in the mere fact of success.’” (Emphasis in original)

124. In 154th Law Commission of India Report it was reported as follows :

(2023) 13 SCC 563 “15. ...‘8. ... Prosecutors are really ministers of Justice whose job is none other than assisting the State in the administration of justice. They are not representatives of any party. Their job is to assist the court by placing before the court all relevant aspects of the case. They are not there to see the innocent go to the gallows; they are also not there to see the culprits escape conviction.’” 20.5 In *Anees v. State (NCT of Delhi)*²⁴, a Three-Judge Bench recently observed as follows :

“67. ...The relations between the Public Prosecution Service and the judiciary are the very cornerstone of the criminal justice system. The public prosecutors who are responsible for conducting prosecutions and may appeal against the court decisions,

are one of judges' natural counterparts in the trial proceedings and also in the broader context of management of the system of criminal law.”

21. The prosecutor in the present case, in our view, seemed to have missed his duty as an officer of the Court. Change of counsel; belated appointment of Amicus Curiae/defence counsel; closure of opportunity to cross-examine; recording of evidence in the absence of defence counsel are all factors that the prosecutor, in their solemn duty ought to have objected to and brought to the notice of the Court, as contravening the principle of a fair trial. The relevant orders in this regard stand extracted as part of Para 13 of this opinion.

22. In earlier paragraphs of this order, we have pointed out factors which call into question the sanctity of the sentence imposed upon the appellant. Most of these shortfalls impact the constitutional and statutory rights guaranteed to the accused standing trial.

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(c) Rights of the Accused

23. As noticed supra, the Indian Criminal Justice System places the accused person at a comparative disadvantage which is more so exacerbated when the person is economically or socially less fortunate as in the present case. This Court through various judicial pronouncements has underscored and strengthened the rights of a person accused of committing a crime in order to ensure that the constitutional guarantee of Justice sees the light of the day. Some of those pronouncements in addition to those already discussed supra, are below:

23.1 In *State of Punjab v. Baldev Singh*²⁵, this Court held :

“45. Prosecution cannot be permitted to take advantage of its own wrong. Conducting a fair trial for those who are accused of a criminal offence is the cornerstone of our democratic society. A conviction resulting from an unfair trial is contrary to our concept of justice. Conducting a fair trial is both for the benefit of the society as well as for an accused and cannot be abandoned. While considering the aspect of fair trial, the nature of the evidence obtained and the nature of the safeguard violated are both relevant factors...” (Emphasis supplied) 23.2 In *Chaluvewgoda & Ors. v. State*²⁶, this Court discussed extensively the right of representation by counsel. The relevant paragraphs are reproduced with profit as under :

“18. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for an accused is presumed to be innocent until proved to be otherwise in a fairly conducted trial. This right would include that he be defended by a competent counsel. The provision of an amicus curiae for an accused, in case the accused is unable to engage an advocate to conduct his defence, is to ensure the goal of a fair trial which is a guarantee provided in the Constitution. We may (1999) 6 SCC 172 (2012) 13 SCC

538 recall the often quoted passage of Potter Stewart “Fairness is what justice really is”.

19. The right to be represented by a lawyer must not be an empty formality. It must not be a sham or an eyewash. The appointment of an amicus curiae for the defence of an accused person must be in true letter and spirit, with due regard to the effective opportunity of hearing that is to be afforded to every accused person before being condemned. The due process of law incorporated in our constitutional system demands that a person not only be given an opportunity of being heard before being condemned, but also that such opportunity be fair, just and reasonable.

20. It is appropriate to recall *Powell v. Alabama* [77 L Ed 158 : 287 US 45 (1932)] , in which nine Black men were accused of raping two White women, and were charged with the same. Since the accused were from a different State, they did not have legal assistance, so the trial Judge, in a very vague manner, appointed all the members of the Alabama Bar to defend the accused. However, when the actual trial was underway, none of the lawyers defended the accused, but only offered to provide assistance to the defence lawyer. Satisfied by this, the trial Judge allowed the trial to proceed in the absence of an effective legal assistance for the accused, and the trial resulted in a conviction with the death sentence accorded on the accused. The US Supreme Court took strong exception to the procedure adopted by the trial court. The Court held: (L Ed p. 162 : US p. 53) “It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice. Not only was that not done here, but such designation of counsel as was attempted was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard.”

21. The Court, speaking through Sutherland, J. further held: (*Powell* case [77 L Ed 158 : 287 US 45 (1932)] , L Ed p. 165 : US p. 58) “...The defendants, young, ignorant, illiterate, surrounded by hostile sentiment, haled back and forth under guard of soldiers, charged with an atrocious crime regarded with especial horror in the community where they were to be tried, were thus put in peril of their lives within a few moments after counsel for the first time charged with any degree of responsibility began to represent them.

It is not enough to assume that counsel thus precipitated into the case thought there was no defence, and exercised their best judgment in proceeding to trial without preparation.”

22. In *Gideon v. Wainwright* [9 L Ed 2d 799 : 372 US 335 (1963)] the US Supreme Court, approving the above observations, laid down following principles: (L Ed p. 805) “... In returning to these old precedents, sounder we believe than the new, we but restore constitutional principles established to achieve a fair system of justice. Not only these precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to

prepare and present their defences. That Government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trial in some countries, but it is in ours.” ” (Emphasis supplied) 23.3 In *Brijesh Kumar v. State of U.P.*²⁷, this Court underlined the importance of legal representation and particularly for those economically or socially less fortunate. It was observed :

“3. The right to legal representation sits at the core of not only the right to life and liberty conferred by Article 21 of the Constitution, but at the very foundation of the entirety of our justice system, be it civil or criminal. For this right to be meaningful, it is imperative that it does not make distinctions between the rich and the poor, the haves and have-nots. The right to legal representation, as necessitated by the demands of justice and equity, must be unfazed by the economic class or financial resources of the accused.

4. To this end was enacted the Legal Services Authorities Act, 1987 (hereinafter “the 1987 Act”), setting for itself the following object and purpose:

(2021) 19 SCC 177 “... to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.”

5. Having secured for itself the above hallowed purpose, the Act has created a nationwide network of Legal Services Authorities (at the National, State, district and taluk level) for framing policies for legal aid and services, as well as a network of Legal Services Committees (within the Supreme Court, the High Court and the taluk level) for the on-ground implementation of the legal services programme at various levels.

6. In further recognition of the need to fill a dire gap in access to justice for the poor, it has also become a well-settled position that, that where an accused comes before the Court without legal representation, the Court is duty-bound to either appoint an Amicus Curiae or refer him to the appropriate Legal Services Committee who shall then appoint an advocate to represent the accused (*Rakesh v. State of M.P.* [*Rakesh v. State of M.P.*, (2011) 12 SCC 513 : (2012) 1 SCC (Cri) 613] and *Sk. Mukthar v. State of A.P.* [*Sk.*

Mukthar v. State of A.P., (2020) 19 SCC 178 : (2021) 3 SCC (Cri) 795]).” 23.4 *Krishna Iyer, J.* in *M.H. Hoskot v. State of Maharashtra*²⁸, said :

“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.

15. Gideon's trumpet has been heard across the Atlantic. Black, J.

there observed: [Processual Justice to the People, (May 1973) p. 69 (372 US at 344 : 9 L Ed 2d at 805)] “Not only those precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided (1978) 3 SCC 544 for him. This seems to us to be an obvious truth. Governments, both State and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defences. That Government hires lawyers to prosecute and defendants who have the money hires lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him.” (Emphasis supplied) 23.5 In Suk Das v. Union Territory of Arunachal Pradesh²⁹, this Court held as under :

“6. But the question is whether this fundamental right could lawfully be denied to the appellant if he did not apply for free legal aid. Is the exercise of this fundamental right conditioned upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being afforded to him? Now it is common knowledge that about 70 per cent of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis-oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant : they cannot even

help themselves. The law ceases to be their protector because they do not know that (1986) 2 SCC 401 they are entitled to the protection of the law and they can avail of the legal service programme for putting an end to their exploitation and winning their rights...” (Emphasis supplied) 23.6 A recent judgment in *Suhas Chakma v. Union of India*³⁰, highlighted the legal aid defence counsel system, observing that the objective of the scheme is to provide quality legal aid to all those in need. Herein, reference was also made to *Ramanand @ Nandlal Bharti v. State of U.P.*³¹, while discussing the quality of legal aid and in para 120, it was held :

“120. It is by far now well-settled for a legal proposition that it is the duty of the court to see and ensure that an accused put on a criminal trial is effectively represented by a defence counsel, and in the event on account of indigence, poverty or illiteracy or any other disabling factor, he is not able to engage a counsel of his choice, it becomes the duty of the court to provide him appropriate and meaningful legal aid at the State expense. What is meant by the duty of the State to ensure a fair defence to an accused is not the employment of a defence counsel for namesake. It has to be the provision of a counsel who defends the accused diligently to the best of his abilities. While the quality of the defence or the caliber of the counsel would not militate against the guarantee to a fair trial sanctioned by Articles 21 and 22 resp of the Constitution, a threshold level of competence and due diligence in the discharge of his duties as a defence counsel would certainly be the constitutional guaranteed expectation. The presence of counsel on record means effective, genuine and faithful presence and not a mere farcical, sham or a virtual presence that is illusory, if not fraudulent.” (Emphasis supplied) 23.7 In *Anokhilal v. State of M.P.*³², a Three-Judge Bench of this Court summarized certain principles regarding the grant of free legal aid, and the 2024 SCC OnLine SC 3031 2022 SCC OnLine SC 1396 (2019) 20 SCC 196 same being ‘real and meaningful’, while setting aside a judgment of conviction, noticing the absence thereof. [See: Paragraphs 31 to 31.4]

24. Having considered the rights and guarantees in favour of the accused, we now examine the record. One of the primary issues that revealed itself is inadequate representation by counsel for the appellant. On various crucial dates, such as the committal of proceedings to the concerned Trial Court (compliance of Section 209 Cr.P.C.) and the examination-in-chief of the primary witness of the prosecution, i.e., PW-2, the appellant was not represented or adequately so.

25. What is apparent, therefore, is that the statements of PW-1 and PW-2, i.e., the complainant and star witness respectively of the prosecution, were recorded in the absence of counsel for the accused. Opportunity for cross-examination also stood closed qua PW-1 which, in our view, cannot be countenanced. If a trial is conducted in such a manner, the argument of prejudice will be available to the accused.

Presence of the accused’s counsel at the time of recording of the statement is necessary. [See: *Ekene Godwin v. State of T.N.*³³]

26. This Court has, in *Kartar Singh v. State of Punjab*³⁴ also spoken of the purpose of cross-examination, they are: a) to call into question, credibly the evidentiary value of the witness; b) to bring out such facts, that may favour the cross-examining lawyer's client; and c) to establish the said witness, is unworthy of belief, and that his credit stands impeached.

2024 SCC OnLine SC 337 (1994) 3 SCC 569

27. In the same vein, the effect of counsel not being present in Court on crucial dates, and its effect on the sanctity of the entire exercise of prosecution has to be considered. The matter begins before the Trial Court on 20th October 2014. Save the two occasions, i.e., on 1st September 2015 and 8th June 2016, nowhere does the record state that counsel for the accused was absent³⁵ and on the latter date, an Amicus Curie was appointed. On 21st February 2017, a different/new lawyer was appointed as counsel for the accused, and on the same day, the matter was put up for judgment.

28. This frequent change in counsel as also the matter being reserved for judgment on the very day that a new counsel for the accused is brought on record, leads us to question the assistance given to the appellant by such lawyers. Was his case effectively argued? Were all the possible gaps in the prosecution case sufficiently explored and exploited to his advantage? Were the prosecution witnesses ably cross-examined leading to the creation of a reasonable doubt, wherever possible? All these questions arise in our mind, considering the situation of the defence counsel. To us, the imposition of the death penalty here appears fraught with danger and should not be sustained. We are supported in holding such an apprehension by the fact that this Court has recognized that sufficient time should be given to counsel to prepare the case and conduct the same on behalf of his client. Although, it is true that there can be no formulae for what may be considered Whereas on other dates his presence was recorded. sufficient, the same has to be determined in the facts and circumstances of the case. [See: *Bashira v. State of U.P.*³⁶] As has already been noticed, there was a change of counsel recorded in the daily status of the Trial Court, arguments were closed on the very same day and the matter was reserved for judgment. What is the efficiency of the newly appointed counsel's assistance to the appellant? This question stares in the face of the conclusion of capital punishment arrived at by the Court, more so when there was a frequent change of counsel during trial, losing out the continuity of thought process.

Rights under Section 311 and 313 Cr.P.C.

29. Additionally, we may note the manner in which the application to recall under Section 311 was filed and the statement of the accused in Section 313 Cr.P.C. was refused and recorded respectively, is rendered questionable in the sum total of circumstance. Both rights under these Sections are important for a trial to reach a just conclusion. This principle has been repeatedly emphasized by this Court through various judgments.

30. On Section 311 and the rejection of the application, we may refer to the observations of this Court in the *Zahira Habibullah Sheikh (5) v. State of Gujarat*³⁷. It was said :

“26... The section is manifestly in two parts. Whereas the word used in the first part is “may”, the second part uses “shall”. In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or 1968 SCC OnLine SC 84 (2006) 3 SCC 374 proceeding under the Code (a) to summon anyone as a witness, or

(b) to examine any person present in the court, or (c) to recall and re-

examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

28. As indicated above, the section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation : it is, that the court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court...

29. The object of Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by the court gives evidence against the complainant, he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the

provisions of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant. These aspects were highlighted in *Jamatraj Kewalji Govani v. State of Maharashtra* [(1967) 3 SCR 415 : AIR 1968 SC 178 : 1968 Cri LJ 231] .” (Emphasis supplied) [See also: *Jamatraj Kewalji Govani v. State of Maharashtra*³⁸; *Rajendra Prasad v. Narcotic Cell*³⁹; *Vijay Kumar v. State of U.P.*⁴⁰; *Natasha Singh v. CBI*⁴¹; *Rajaram Prasad Yadav v. State of Bihar*⁴²; *State v. N. Seenivasagan*⁴³; and *Satbir Singh v. State of Haryana*⁴⁴] 30.1 A perusal and consideration of the aforesaid decisions reveal the following principles as governing the application of Section 311 Cr.P.C. :

(a) The Section is divided into two parts, the first being directory with the use of the word ‘may’ and the latter being mandatory with the use of the word ‘shall’.

(b) The power of the Court is couched in the widest terms possible with no express limitation thereon.

1967 SCC OnLine SC 19 (1999) 6 SCC 110 (2011) 8 SCC 136 (2013) 5 SCC 741 (2013) 14 SCC 461 (2021) 14 SCC 1 2023 SCC OnLine 1086

(c) The exercise of such power is not only the prerogative but also the duty of the Court, in connection with a witness who may be considered absolutely necessary, in the interest of justice.

(d) This power is to be used both for the benefit of the prosecution and the defence. To summon a witness because it serves the case of one of the parties and not the other, would be improper.

(e) This power can be exercised at any stage of proceedings, i.e. enquiry, trial or any other.

(f) Power is to be exercised judiciously since wider the power, greater the requirement of the application of a judicial mind.

(g) If a witness so-called under this power, gives evidence against the complainant, the latter should be given an opportunity to cross- examination. This power arises not under Section 311 but under the Indian Evidence Act, 1872.

(h) A witness cannot be recalled by the use of this power to simply fill up a lacuna in the case of the prosecution.

31. The order rejecting the application to recall witnesses, dated 18 th February 2017 reads as below:

“18.02.2017- Case called out Accused present in J.C. But not present. Counsel heard on application 32-B brief order is passed on the application. After lunch on 2.30 P.M. an application for time to adduce defence witness 35-B moved by defence counsel. Order passed on the application “Vide order of even date, application u/s 311 moved

by Ld counsel has been rejected. He sought time to adduce arguments which was granted. After which, he has moved application for providing defence evidence. If the Ld. Counsel produce the witness on the date fixed he will be examined failing which matter will be posted for Judgment after hearing argument of the prosecution.” (A.S.J. 1st)” Such a summary rejection, in our view, is unjustified. The object and purpose of this power of wide amplitude resting with the Trial Court has been detailed in *Zahira Habibullah Sheikh (5) (supra)*. Given that the counsel for the accused had been changed, an additional charge has been added against the accused and that it had taken over two years to record the evidence of the witnesses, taking the sum total of circumstances, such an application should have been allowed.

32. Let us now consider, the examination of the accused under Section 313. In a recent judgment titled *Raj Kumar v. State (NCT of Delhi)*⁴⁵, this Court summarised the principles regarding Section 313 Cr.P.C., while also observing that if prejudice is caused to the appellant in non-observance of these principles, the trial would vitiate. [See: *Shivaji Sahabrao Bobade v. State of Maharashtra*⁴⁶] The principles are reproduced below for ready reference:

“17. The law consistently laid down by this Court can be summarized as under :

(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;

(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;

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(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;

(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; and

(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.” (Emphasis supplied) 32.1 The statement recorded under Section 313 of the accused is as below :

“Name - Sovaran Singh Father's Name - Babura, Age - 35 Occupation - Labourer R/o - Rooppur Thana - Karhal District - Mainpuri Question 1 - It is well known that you have married Mamta, the plaintiff in this case.

What do you have to say about this?

Answer - That is correct.

Question 2 - The prosecution says that on the day of the incident, dated 30.06.14, at about 11-12 in the night, you killed your daughter by holding her by the legs, lifting her, throwing her on the ground and keeping your foot on her neck. What do they call this? Answer - That is incorrect.

Question 3 - The prosecution says that on 30.06.14 at about 11-12 in the night, you killed your wife Smt. Mamta by hitting her with bricks, stones and bamboo and you scraped the blood from the ground and threw it somewhere, what do you have to say about this? Answer - That is incorrect.

Question 4 - It is noteworthy that the complainant Mr. Rajnesh Kumar gave the report of the incident as Exhibit-1 to the police station, according to which an FIR was lodged which is Exhibit-6, which was disclosed in GD which is Exhibit-7, what do you have to say about this?

Answer - Has given false testimony.

Question 5 - Prosecution says that after registration of the case in the police station, the investigation was taken over by the investigating officer and on reaching the spot of incident, on the indication of the plaintiff, he made a map of the spot, which is Exhibit-10 and Exhibit-

11. And under the supervision of the investigating officer, a Panchnama of the deceased Smt. Mamta was prepared and all the police records were prepared, which are Exhibit-1 and Exhibit-18.

He also prepared the Panchnama of the deceased Kumari Sapna and prepared police records, which are Exhibit-19 and Exhibit-23. What do you have to say in this regard?

Answer - I don't want to say anything.

Question 6 - Prosecution says that the investigator prepared the report on the spot by taking soil, soil and blood stains from the crime scene, which is Exhibit-9. What do you have to say about this?

Answer - I don't want to say anything.

Question 7 - You heard the statements of witnesses PW1 Rajnesh Kumar, plaintiff, PW2 Kumari Poonam. Why do the witnesses testify against you?

Answer - It is false testimony only.

Question 8 - You heard the statements of witnesses PW1 Rajnesh Kumar, plaintiff, PW4 Kumar Ramveer Singh, PW5 Inspector Balveer Singh, investigating officer, PW6 Omveer Singh. Why do the witnesses testify?

Answer - Due to animosity.

Question 9 - The prosecution is true that you got the murder weapon, a lathi (bamboo), recovered on your indication by the investigating officer, the report of which was prepared by the investigating officer on the spot, which is Exhibit-12. What do you have to say about this? Answer - This is incorrect.

Question 10 - Prosecution Evidence that IO submitted a charge sheet against you Ex. 13 based on the availability of enough evidence. What do you have to say about it?

Answer - The wrong Charge-sheet has been submitted.

Question 11 - Do you want to say anymore?

Answer - I don't want to say anything.

Question 12 - Why is the case registered against you? Answer - Due to animosity.

Question 13 - Any clarifications you would like to give? Answer - Yes.” 32.2 The factors summarised in Raj Kumar (supra) were clearly not followed. All the incriminating circumstances were not put to the accused. General, sweeping questions were employed, which were only denied by him. Here, the role of the prosecutor also requires to be highlighted. It is incumbent upon them to aid the Court in preparing questions to be put to the accused. It has also been held in Shivaji Sahabrao Bobade (supra) that prejudice can be caused, if the statements are not properly recorded. We find there to be adequate possibility that the appellant has been prejudiced.

Obligations under International Law

33. The Indian Constitution enjoins a responsibility upon all persons to foster respect for international law.⁴⁷ The Universal Declaration of Human Rights 1948, which is considered the foremost document in International Human Rights Law, records guarantees for fairness in criminal

procedure on two occasions, i.e., Articles 10 and 11. They read :

“Article 10 See: Article 51(c) the Constitution of India Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.” 33.1 Article 14 of the International Covenant on Civil and Political Rights, 1966, which was ratified by India in 1979, guarantees equality to all persons before the law. It is extracted as below⁴⁸ :

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

International Covenant on Civil and Political Rights, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.” 33.2 The International Criminal Court, which has been created by the Rome Statute to investigate and where warranted, try “individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression.”⁴⁹ Article 67 <https://www.icc-cpi.int/about/the-court> thereof guarantees, in proceedings before it, the rights of an accused in the following terms :

“Article 67 Rights of the accused In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
- (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
- (c) To be tried without undue delay;
- (d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
- (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;
- (g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (h) To make an unsworn oral or written statement in his or her defence; and
- (i) Not to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal.

3. In addition to any other disclosure provided for in this Statute, the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence. In case of doubt as to the application of this paragraph, the Court shall decide." What rights of an accused being codified in the Rome Statute signifies is that even when it comes to the gravest and most heinous crimes committed against humanity as a whole, a person accused of having so committed such offences is also entitled to basic protection under the law. In our facts, ending someone's life is, in fact, one of the gravest crimes that a person may commit, and so even here the accused is entitled to the protection of law ensuring that the process that condemns him as 'convicted of an offence', is free of procedural irregularities and blemishes which may call into question the credibility of the conclusion arrived at by such a process.

The sole purpose of reproduction of the above articles is to restate and emphasize the commitment to international law. All prosecutions and conclusions of either guilt or innocence must give due importance and primacy to these obligations along with constitutional and statutory guarantees as discussed supra.

34. Before parting with these matters, we may observe the casual manner in which the prosecution and the trial proceeded. Record reveals set for examination of witnesses was 13th January, 2015 whereafter, on 15 occasions till 14th August 2015, the accused was present from judicial custody the matter was adjourned as witnesses were not present. No explanation can be found for this lackadaisical approach of the prosecution. In fact, till 1st June 2015, the matter was adjourned on 33 occasions and only once on 1st September 2015 was one witness examined. Over a trial period of 2.3 years, the matter was posted on 74 occasions and surprisingly, for a variety of reasons including the majority thereof being non-production of witnesses, was adjourned on 52 occasions approximately. In a matter of this nature, it cannot be stressed enough that the examination of witnesses and smooth conduct of trial is essential which obviously, was given a go-by.

35. In view of the above discussion, the judgments of the Trial Court convicting the appellant of the charged offence and awarding capital punishment and confirmation thereof by the High Court, with particulars as mentioned in Para 1 cannot be sustained and, as such, is set aside. The Appeals are accordingly allowed. The matters are remanded to the Trial Court and restored on the respective docket. The Trial Court shall proceed afresh from the stage of framing of charge. Trial is expedited. It shall proceed, to the extent possible on a day-to-day basis. Parties shall appear before the Trial Court on 18th March 2025 and fully cooperate during trial. It is requested that the matter be heard and judgment delivered within a period of one year.

36. In conclusion, we may observe the importance of compliance with the principles of law and procedural rigours, since now, due to such clear non-compliance all parties to the dispute shall have to go through the process of trial once more and relive the horrific offence committed against the two deceased persons, namely, Smt. Mamta and Kumari Sapna. Courts must give due regard to such aspects and not be swayed by the emotions that the offence may evoke.

37. The Registry is directed to communicate this order to the Registrar General, High Court of Judicature at Allahabad who shall ensure its swift passage to the concerned court.

Pending application(s) if any, are disposed of.

.....J. (VIKRAM NATH)J. (SANJAY KAROL)J.
(SANDEEP MEHTA) February 4, 2025;

New Delhi.