

Supreme Court of India

Suk Das & Anr vs Union Territory Of Arunachal ... on 10 March, 1986

Equivalent citations: 1986 AIR 991, 1986 SCR (1) 590

Author: P Bhagwati

Bench: Bhagwati, P.N. (Cj)

PETITIONER:

SUK DAS & ANR.

Vs.

RESPONDENT:

UNION TERRITORY OF ARUNACHAL PRADESH

DATE OF JUDGMENT 10/03/1986

BENCH:

BHAGWATI, P.N. (CJ)

BENCH:

BHAGWATI, P.N. (CJ)

MADON, D.P.

OZA, G.L. (J)

CITATION:

1986 AIR 991                      1986 SCR (1) 590

1986 SCC (2) 401                1986 SCALE (1) 368

CITATOR INFO :

D                      1988 SC1531 (183)

ACT:

Constitution of India, Art.21 - Accused on account of poverty unable to afford legal representation - Duty of court to inform him that he can have a lawyer at State expense Effect of not providing legal representation to the accused at State cost - Whether vitiates trial.

HEADNOTE:

The appellant and five other accused were charged in the Court of Addl. Deputy Commissioner for an offence under section 506 read with section 34 of the Indian Penal Code on the allegation that they threatened an Assistant Engineer of the Central Public Works Department with a view to compelling him to cancel the transfer orders of the accused which had been passed by him. The appellant was not represented by any lawyer since he was admittedly unable to afford legal representation on account of his poverty and the result was that he could not cross-examine some of the witnesses of the prosecution. At the end of the trial, four of the accused were acquitted but the appellant and another accused were convicted of the aforesaid offence and he was

sentenced to undergo simple imprisonment for a period of two years.

The appellant thereupon preferred an appeal before the High Court contending that he was not provided free legal aid for his defence and the trial was, therefore, vitiated. The High Court upheld the conviction of the appellant on the ground that no application for legal aid was made by him before the Addl. Deputy Commissioner and therefore, it could not be said that failure to provide legal assistance vitiated the trial.

Allowing the appeal,

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HELD : (1) The conviction and sentence recorded against the appellant is set aside and the order dismissing the

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appellant from service passed on the basis of his conviction by the learned Additional Deputy Commissioer must also be quashed. [597 C]

(2)(i) It is settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. Of course, it must be recognised that there may be cases involving offences, such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal service may not be provided by the State. [594 G-H]

Hussainara khatoon's case, [1979] 3 S.C.R. 532 & M.H. Hoskot V. State of Maharashtra [1978] 3 S.C.C. 544 followed

(2)(ii) The right to free legal service is a constitutional right of every accused person who is unable to engage a lawyer and secure legal service on account of reasons, such as, poverty, indigence or incumunicado 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 the justice so require, provided, of course, the accused person does not object to the provision of such lawyer. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. [594 D-F; 595 G]

Khatrri & Ors. v. State of Bihar & ors., [1981] 2 S.C.R. 408 referred to.

In the instant case, the Additional Deputy Commissioner did not inform the appellant that he was entitled to free legal assistance nor did he enquire from the appellant whether he wanted a lawyer to be provided to him at State cost. The result was that the appellant remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was clearly a violation of the

fundamental right of the appellant under Article 21 and the trial must accordingly be held to be vitiated on account of a fatal constitutional

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infirmity, and the conviction and sentence recorded against the appellant must be set aside. [596 H; 597 A-B]

[In the facts and circumstances of the case, the Court directed that the appellant shall be reinstated in service, but he shall not be entitled to claim any back wages and no fresh trial shall be held against him.] [597 F-G]

#### JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.725 of 1985.

From the Judgment and Order dated 9.8.84 of the Gauhati High Court in Crl. Revision No. 205 of 1979.

Vijay Hansaria and S.K. Jain for the Appellant. Abdul Khader, G. Chandra and Ms. A. Subhashini for the Respondent.

The Judgment of the Court was delivered by BHAGWATI, C.J. This appeal by special leave raises a question of considerable importance relating to the administration of criminal justice in the country. The question is whether an accused who on account of his poverty is unable to afford legal representation for himself in a trial involving possibility of imprisonment imperilling his personal liberty, is entitled to free legal aid at State cost and whether it is obligatory on him to make an application for free legal assistance or the Magistrate or the Sessions Judge trying him is bound to inform him that he is entitled to free legal aid and inquire from him whether he wishes to have a lawyer provided to him at State cost: if he is not so informed and in consequence he does not apply for free legal assistance and as a result he is not represented by any lawyer in the trial and is convicted, is the conviction vitiated and liable to be set aside? This question is extremely important because we have almost 50% population which is living below the poverty line and around 70% is illiterate and large sections of people just do not know that if they are unable to afford legal representation in a criminal trial, they are entitled to free legal assistance provided to them at State cost.

The facts giving rise to this appeal are not material because the question posed for our consideration is a pure question of law. But even so the broad facts may be briefly set out since they provide the back-drop against which the question of law arises for consideration.

The appellants and five other accused were charged in the court of the Additional Deputy Commissioner, Dibang Valley, Anini, Arunachal Pradesh for an offence under section 506 read with Section 34 of the Indian Penal Code on the allegation that the appellants and the other five accused threatened Shri H.S. Kohli, Assistant Engineer, Central Public Works Department, Anini with a view to compelling him to cancel the transfer orders of the accused which had been passed by him. The

case was tried as a warrant case and at the trial 8 witness, on behalf of the prosecution, were examined. The appellant was not represented by any lawyer since he was admittedly unable to afford legal representation on account of his poverty and the result was that he could not cross-examine the witnesses of the prosecution. The appellants wished to examine 7 witnesses in defence but out of them two could not be examined since they were staying far away and moreover, in the opinion of the court, they were not material witnesses. The remaining 5 witnesses were examined by the appellants without any legal assistance. The result was that at the end of the trial four of the other accused were acquitted but the appellant and another accused were convicted of the offence under Section 506 of the Indian Penal Code and they were sentenced to undergo simple imprisonment for a period of two years.

The appellant thereupon preferred an appeal before the Gauhati High Court. There were several contentions urged in support of the appeal but it is not necessary to refer to them, since there is one contention which in our opinion goes to the root of the matter and has invalidating effect on the conviction and sentence recorded against the appellant. That contention is that the appellant were not provided free legal aid for his defence and the trial was therefore vitiated. This self-same contention was also advanced before the High Court in the appeal preferred by the appellant but the High Court took the view that, though it was undoubtedly the right of the appellant to be provided free legal assistance, the appellant did not make any request to the learned Additional Deputy Commissioner praying for legal aid and since no application for legal aid was made by him, "it could not be said in the facts and circumstances of the case that failure to provide legal assistance vitiated the trial". The High Court in the circumstances confirmed the conviction of the appellant but in view of the fact that he was already in jail for a period of nearly 8 months, the High Court held that the ends of justice would be met if the sentence on the appellant was reduced to that already undergone by him. The appellant was accordingly ordered to be, set at liberty forthwith but since the order of conviction passed against him was sustained by the High Court, he preferred the present appeal with special leave obtained from this Court.

It is now well established as a result of the decision of this Court in Hussainara Khatoon's case [1979] 3 S.C.R. 532 that "the right to free legal service is ..... clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held to be 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". This Court pointed out that it is an essential ingredient of reasonable, fair and just procedure to prisoner who is to seek his liberation through the court's process that he should have legal service available to him. The same view was taken by a Bench of this Court earlier in *M.H. Hoskot v. State of Maharashtra*, [1978] 3 S.C.C. 544. It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. Of course, it must be recognised that there may be cases involving offences, such as economic offences or offences against law prohibiting prostitution or child abuse and the

like, where social justice may require that free legal service may not be provided by the State. There can in the circumstances be no doubt that the appellant was entitled to a free legal assistance at State cost when he was placed in peril of their personal liberty by reason of being accused of an offence which is proved would clearly entail imprisonment for a term of two years.

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% 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 advise in time and thier 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 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. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor finds themselves can be alleviating to some extent by creating legal awareness amongst the poor. That is why it has always been recognised as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would in these circumstances make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. This is the reason why in *Khatri & Ors. v. State of Bihar & Ors.*, [1981] 2 S.C.R. 408, we ruled that the Magistrate or the Sessions Judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. We deplored that in that case where the accused were blinded prisoners the Judicial Magistrate failed to discharge obligation and contented themselves by merely observing that no legal representation had been asked for by the blinded prisoners and hence none was provided. We accordingly directed "the Magistrates and Sessions Judges in the country to inform every accused who appear before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State" unless he is not willing to take advantage of the free legal services provided by the State. We also gave a general direction to every State in the country "..... to make provision for grant of free legal service to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situations," the only qualification being that the offence charged against an accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and that the needs of social justice require that he should be given free legal representations. It is quite possible that since the trial was held before the learned Additional Deputy Commissioner prior to the declaration of the law by this Court in *Khatri & Ors. v. State of*

Bihar (supra), the learned Additional Deputy Commissioner did not inform the appellant that if he was not in a position to engage a lawyer on account of lack of material resources he was entitled to free legal assistance at State cost nor asked him whether he would like to have free legal aid. But it is surprising that despite this declaration of the law in *Khatris & Ors. v. State of Bihar & Ors.* (supra) on 19th December 1980 when the decision was rendered in that case, the High Court persisted in taking the view that since the appellant did not make an application for free legal assistance, no unconstitutionality was involved in not providing him legal representation at State cost. It is obvious that in the present case the learned Additional Deputy Commissioner did not inform the appellant that he was entitled to free legal assistance nor did he inquire from the appellant whether he wanted a lawyer to be provided to them at State cost. The result was that the appel-

lant remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was clearly a violation of the fundamental right of the appellant under Article 21 and the trial must accordingly be held to be vitiated on account of a fatal constitutional infirmity, and the conviction and sentence recorded against the appellant must be set aside.

The appellant contended that if the conviction and sentence recorded against him is set aside, the order dismissing the appellant from service passed on the basis of his conviction by the learned Additional Deputy Commissioner must also be quashed and he must be reinstated in service with back wages. Now it is true that the appellant was dismissed from service without holding an inquiry on account of his being convicted for a criminal offence and since the conviction of the appellant is being set aside by us, the order of dismissal must also fall and the appellant must be reinstated in service with back wages. But the result of our quashing the conviction of the appellants would be that the appellant would have to be tried again in accordance with law after providing free legal assistance to him at State cost and that would mean that the appellant would continue to be exposed to the risk of conviction and imprisonment and the possibility cannot be ruled out that the offence charged may ultimately be proved against him and he might land-up in jail and also lose their service. We therefore felt that it would not only meet the ends of justice but also be in the interest of the appellant that no fresh trial should be held against him and he should be reinstated in service but without back wages. We accordingly direct that the appellant shall be reinstated in service but he shall not be entitled to claim any back wages and no fresh trial shall be held against him. The appeal will stand disposed of in these terms.

M.L.A.

Appeal allowed.