

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.8 of 2021

Arising Out of PS. Case No.-888 Year-2020 Thana- DEHRI TOWN District- Rohtas

The State of Bihar

... .. Petitioner/s

Versus

Balram Singh @ Baliram Singh @ Munna, Son of Late Shyam Narayan Singh, Resident of Village- Gangauli, Police Station- Dehri Town (Dalmiyan Nagar), District - Rohtas.

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 591 of 2021

Arising Out of PS. Case No.-888 Year-2020 Thana- DEHRI TOWN District- Rohtas

Balram Singh @ Baliram Singh @ Munna, S/o Late Shyam Narayan Singh, Resident of Village- Gangauli, P.S.- Dalmianagar (Dehri), District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In DEATH REFERENCE No. 8 of 2021)

For the Petitioner/s : Mr.Xxxxx

For the Respondent/s : Mr. Ajay Kumar Thakur, Amicus Curiae
Ms. Anukriti Jaipurkar, Amicus Curiae

(In CRIMINAL APPEAL (DB) No. 591 of 2021)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate

Mr. Bhaskar Shankar, Advocate

For the Respondent/s : Mr. Dr. Mayanand Jha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 09-05-2022

Heard Mr. Krishna Prasad Singh, learned senior counsel

appearing on behalf of the Appellant in Cr. Appeal (DB) No. 591

of 2021, as also Mr. Ajay Kumar Thakur and Ms. Anukriti

Jaipurkar, learned counsel, appointed as Amicus Curiae to assist



the Court in Death Reference No. 08 of 2021 and Mr. Dr. Mayanand Jha, learned APP for the State.

2. The present death reference and the connected Cr. Appeal arise out of the judgment of conviction and order of sentence dated 26.07.2021 and 30.07.2021 passed by learned Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO), Rohtas at Sasaram in POCSO Case No. 68 of 2020, arising out of Dalmianagar (Dehri) P.S. Case No. 888 of 2020 whereby and whereunder the appellant has been convicted under Sections 302, 201, 376-AB of the Indian Penal Code and Sections 5/6 of the POCSO Act, 2012 and sentenced to death to be hanged by neck till his last breath subject to confirmation of sentence by the High Court and also awarded fine of Rs.50,000/- under Section 302 of the Indian Penal Code. In case of default of payment of fine, the convict-appellant shall serve simple imprisonment for one year. The convict-appellant is further sentenced to undergo Rigorous Imprisonment for five years for the offence under 201 of the Indian Penal Code and fine of Rs.10,000/- and in default of payment of fine, simple imprisonment for one year and further awarded sentence to undergo imprisonment for life for the remainder of natural life with fine of Rs.50,000/- under Section 6 of the POCSO Act, 2012



and in default of payment of fine, Simple Imprisonment for one year. The learned trial court has not awarded any separate sentence for the charges under Section 376-AB of the Indian Penal Code. It is made clear that all the sentences shall run concurrently.

3. The prosecution case is based upon a written application filed by the grandmother of the victim to the SHO, Dalmianagar (Dehri) P.S. stating therein that when the informant (PW.-3) could not find her minor grand-daughter (X), aged about 10 years, at about 3.00 P.M. on 14.11.2020 (Depawali Festival Day) in the house, she started searching for her and also enquired from her co-villagers. At about 6.00 P.M. on the same day she got to know from co-villagers that her neighbour Balram Singh @ Baliram Singh @ Munna (appellant) was seen enticing her grand daughter with a calendar of Goddess Laxmi and Lord Ganesh and took her to his house. When the informant (P.W.-3) went to the house of Balram Singh @ Baliram Singh, she found the door locked, then she informed Dalimianagar police station. It is further alleged that co-villagers searched for appellant-convict Baliram Singh and caught him from Sahu Mohalla and brought to his house in the presence of Dalmianagar police. The lock of the house of appellant Baliram Singh was opened with the key by the police and the house was searched in front of every body. During



the search, the dead body of the victim was found kept in a wooden box in a semi naked condition. The dead body bore blood stained injury mark on her neck and on the private part of the victim. The appellant confessed his guilt of committing rape and murder of informant's grand daughter before every body.

The further case is that the police arrested the appellant Baliram Singh and prepared inquest report and took the body of the victim to Sadar Hospital, Sasaram for post-mortem examination.

4. On the basis of the aforesaid written application of the informant (P.W.-3), the First Information Report was drawn up and Dalmianagar (Dehri) P.S. Case No. 888 of 2020 dated 15.11.2020 has been registered for the offences punishable under Sections 376-A, 376-B, 302, 201 of the Indian Penal Code and Section 6 of the POCSO Act, 2012.

5. The seized articles were sent to the Forensic Science Laboratory, Patna vide Memo No. 888 dated 25.11.2020 and the report of the FSL under the signature of Assistant Director, Forensic Science Laboratory, Government of Bihar Patna vide No. 038666 and 038667 dated 29.12.2020 and 04.02.2021 have been submitted before the learned Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO), Rohtas at Sasaram.



6. On completion of investigation, the police submitted charge-sheet against the appellant-convict for the offences under Sections 376-AB, 302, 201 of the Indian Penal Code and Section 6 of the POCSO Act vide charge-sheet no. 585 of 2020 dated 30.11.2020.

7. The F.I.R. named accused (Baliram Singh) was sent up for trial for the offences under Sections 376- AB, 302, 201 of the Indian Penal Code and Section 6 of the POCSO Act and on receipt of the charge-sheet, cognizance was taken by the learned Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO), Rohtas at Sasaram vide order dated 08.12.2020 and copies of the police papers were furnished to the accused-appellant, which were duly received by him on 14.12.2020. On 05.01.2021, the learned Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO), Rohtas at Sasaram read over and explained the charges in Hindi to the accused-appellant under Sections 376- AB, 302, 201 of the Indian Penal Code and Section 6 of the POCSO Act; however, the accused-appellant did not plead guilty and claimed to be tried.

8. In order to establish the charges, the prosecution examined altogether 11 witnesses including the informant (P.W.3), who are as follows:



P.W.1 Raushan Kumar Gupta, P.W.2 Surendra Prasad Sinha, P.W.3 Shashikala Srivastava (informant), P.W.4 Pramod Kumar, P.W.5 Pappu Kumar, P.W.6 Arvind Kumar Srivastava, P.W.7 Vikash Kumar Srivastava, P.W. 8 Om Prakash Singh, P.W. 9 Dr. Shivendra Kumar Singh (one of the member of the Medical Board which conducted the post-mortem), P.W.10 Deo Raj Ray (Investigating officer of the case) and P.W.-11 Jitendra Kumar (Assistant Director, FSL, Patna).

9. After closer of the prosecution evidence, the statement of the accused-appellant was recorded under Section 313 of the Cr.P.C. and he denied the allegation of the prosecution and pleaded his innocence.

10. The learned trial court after hearing the parties and considering the materials on record held the appellant guilty for the offences under Sections 302, 201, 376- AB, of the Indian Penal Code and Sections 5/6 of the POCSO Act and accordingly the impugned judgment of conviction dated 26.07.2021 and order of sentence dated 30.07.2021 have been passed.

11. At the outset before addressing this Court on the merit of the case, learned Amicus Curiae, Mr. Ajay Kumar Thakur and Ms. Anukriti Jaipurkar submitted that in a criminal justice system, the primary object is to ensure fair trial of the accused.



Every trial begins with the presumption of innocence in favour of the accused and the provisions of the Criminal Procedure Code are so framed that a criminal trial should be governed by this essential presumption. They contended that the manner in which the trial was conducted, it is clear that there was no fairness in conducting trial and the interest of the appellant-convict was put to prejudice on several counts. The order-sheet of the trial court would make it evident that at the time of framing of charge, the accused-appellant was produced through video conference and in presence of the learned Public Prosecutor, the appellant was heard and charges were framed. At the stage of framing of the charge, the accused-appellant was not being represented by any counsel. The learned Amicus Curiae further contended that though the order-sheet reveals that on 18.12.2020, the accused-appellant had filed an application for appointment of an advocate on his behalf, no such appointment could be made and surprisingly charges have been framed on 05.01.2021 in absence of any counsel representing the accused-appellant. However, after framing of the charges, the learned Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO) vide its order dated 05.01.2021 directed the office to issue letter to the office of District Legal Services



Authority for appointment of a lawyer on behalf of the accused-appellant.

12. From the record, it transpired that on 18.12.2020 the accused-appellant was not produced before the court in person. The Jail authorities produced his custody warrant before the court on which a direction was issued to produce him through video conferencing on 23.12.2020 for hearing on the point of charge. It further transpired that in the light of the request made by the accused appellant on 05.01.2021 the trial court directed for writing a letter to the District Legal Services Authority pursuant to which Shri K. K. Yadav, who was appointed by the District Legal Services Authority, has first time appeared on 11.01.2021 and filed his Hazri on behalf of the accused-appellant. From the record/order-sheet it appears that at no point of time any paper/document relating to the case has been supplied to him. Further, on 11.01.2021 itself, the P.W. 1 (Raushan Kumar Gupta) was examined and the learned counsel appearing on behalf of the accused-appellant entered his appearance and on the same day his examination-in-chief and cross-examination has been done and the said witness has been discharged.

13. The order-sheet further reveals that on 12.01.2021 P.W. 2 (Surendra Prasad Sinha) was examined and on the same



day he was cross-examined and finally the said witness has been discharged.

On 15.01.2021 the examination-in-chief of P.W. 3 (informant) was done and on the same day she was cross-examined and has been discharged.

On 19.01.2021 examination-in-chief of P.W. 4 (Pramod Kumar) was done by the prosecution and on the same day he was cross-examined and has been discharged.

On 22.01.2021 P.W. 5 (Pappu Kumar) was examined by the prosecution and on the same day he was cross-examined and has been discharged.

On 27.01.2021 examination-in-chief of P.W. 6 (Arvind Kumar Shrivastava) was done by the prosecution and he was further cross-examined and discharged.

On 29.01.2021 examination-in-chief of P.W. 7 (Vikash Kumar Shrivastava) was done by the prosecution and he was further cross-examined and discharged.

On 03.02.2021 examination-in-chief of P.W. 8 (Om Prakash Singh) was done by the prosecution and he was further cross-examined and discharged.

On 06.02.2021 examination-in-chief of P.W. 9 (Dr. Shivendra Kumar Singh) was done by the prosecution and he was



cross-examined partly and his part cross-examination was done on 12.02.2021 and he has been discharged.

On 26.02.2021 examination-in-chief of P.W. 10 (Deo Raj Ray) was done by the prosecution and he was further cross-examined and discharged.

On 20.03.2021 examination-in-chief of P.W. 11 (Jitendra Kumar, the Assistant Director, FSL) was done by the prosecution and he was further cross-examined and discharged.

14. On 26.03.2021, the evidences on behalf of the prosecution has been closed. From the perusal of the order-sheet dated 06.04.2021 / 01.06.2021 it appears that the learned Public Prosecutor filed an application for appointment of another panel counsel of Legal Services Authority on behalf of the accused-appellant. Thereafter both the learned Public Prosecutor as well as the newly appointed counsel were heard and the learned Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO), Rohtas at Sasaram and finally passed the judgment of conviction and order of sentence respectively.

15. Mr. Ajay Kumar Thakur, learned Amicus Curiae submitted that it was the duty of the trial court to provide proper opportunity and the relevant papers to the lawyer, who was engaged on behalf of the accused-appellant, but he has neither



been provided sufficient time to have any examination or interaction with the accused-appellant nor even provided sufficient time to go through even the basic documents, which had been provided to the accused-appellant. It is further submitted that “provisions of Sections 227 and 228 of the Code contemplates framing of charge upon consideration of the record of the case and the documents submitted therein with and after “hearing the submissions of the accused and the prosecution in that behalf”, if the hearing for the purposes of these provisions is to be meaningful and not a just routine and fair, the right under the said provisions stood denied to the appellants. It is vehemently submitted that the trial court on its own ought to have adjourned the matter for some time so that the panel lawyer engaged by the District Legal Services Authority on behalf of the accused-appellant could have had the advantage of sufficient time to go through the basic papers, have interaction with the accused-appellant and prepare the matter, but in the present case even the charges have been framed in absence of any lawyer representing the cause of the accused-appellant and without providing any sufficient time and opportunity to the newly engaged counsel, the examination of prosecution witnesses started and, as such, the



accused-appellant has not been given proper opportunity to defend his case.

16. On the other hand Dr. Mayanand Jha, learned Additional Public Prosecutor appearing on behalf of the State contended that the right of the accused to appear in person before the Court has not been infringed in the present case. He was all along present before the learned Special Court throughout the trial. It is next submitted that the accused-appellant never made any objection nor raised any grievance at any point of time and as such at this belated stage the accused-appellant cannot be allowed to raise such submissions inasmuch as no prejudice has been caused to him.

17. In response of the aforesaid submissions made on behalf of the learned APP, learned Amicus Curiae submitted that there is nothing on the record to show that after appointment of a counsel for the appellant Shri K. K. Yadav was given sufficient time to prepare defence. The order-sheet seems to indicate that as soon as the counsel was appointed, examination of witnesses begun. The counsel, tried his best to cross-examine the witnesses to the extent it was possible for him to do in a very short time available to him. It is true that the record does not contain any note that the counsel appearing on behalf of accused-appellant



asked for more time to prepare the defence, but it is immaterial. The rule casts a duty on the court itself to grant sufficient time to the counsel for this purpose and the record should show that the rule was complied with by granting him time, which the court considered sufficient in the particular circumstances of the case.

18. Having heard the submissions made on behalf of the learned Amicus Curiae as well as learned APP for the State, as also after going through the materials available on record including the order-sheet of the trial court, it is evident that on 19.12.2020, the learned Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO), Rohtas at Sasaram has received application on behalf of the accused-appellant which was sent to him by the Superintendent, Divisional Jail, Sasaram through Memo No. 4350 dated 18.12.2020 for appointment of an advocate on his behalf through the District Legal Services Authority, but instead of taking any action or passing any order on the said application, the matter has been placed for framing of the charges on 05.01.2021 and the charges were framed and next date has been fixed on 11.01.2021 for prosecution evidence. Later on, on the said date i.e. 05.01.2021 itself the learned Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO) directed the office to issue letter for appointment of a panel



advocate of District Legal Service Authority on behalf of the accused-appellant. The newly appointed advocate first time appeared and filed his Hazri on behalf of the accused-appellant on 11.01.2021 and on the same day i.e. on 11.01.2021 the examination-in-chief of P.W.1 has been made and he was cross-examined by him and discharged. This similar feature has been done almost in all the dates on which the prosecution witnesses were examined.

19. Having gone through the order-sheet, this Court does not find any order, which reflects that at any point of time, the learned lawyer engaged on behalf of the accused-appellant has been provided any basic documents or sufficient time to had the advantage of any discussion or interaction with the accused-appellant. Mr. Ajay Kumar Thakur, learned Amicus Curiae, in support of his submission, has also relied upon three Judges Bench judgment of the Hon'ble Supreme Court rendered in the case of **Anokhilal Vs. State of Madhya Pradesh**, reported in **AIR 2020 SC 232**. In the case of Anokhilal (supra), a three Judges Bench of the Hon'ble Supreme Court overturned a conviction and death sentence ordered by the learned Trial Court for the reason that accused's right to legal aid was violated. In that case a lawyer was appointed by the Legal Services Authority on behalf of the



accused a day before hearing of the charges. On the date of hearing, the lawyer was not present, thereupon a new lawyer was appointed by the Legal Services Authority. However, on the same day charges were framed under Sections 302, 363, 366, 376(2)(f) and 377 of the Indian Penal Code and Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012. The Hon'ble Supreme Court having taken note of various judgments, confined the issue whether while granting free legal aid, the appellant was extended real and meaningful assistance or not; and laid down certain norms so that the infirmities, noticed in the said matter are not repeated.

20. In the case of **Anokhilal** (supra) after taking note of the earlier judgments on the point in issue, the Hon'ble Supreme Court while remanding the case back to the Trial Court for fresh consideration restated some principles on the right to free legal aid, in para-22, which reads as under:-

“Before we part, we must lay down certain norms so that the infirmities that we have noticed in the present matter are not repeated:

(i) In all cases where there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.



(ii) In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.

(iii) Whenever any leaned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

(iv) Any leaned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the conceded accused. Such interactions may prove to be helpful.”

21. This Court also find apt and appropriate to quote some of the observations made in the case of **Zahira Habibulla H. Sheikh and Anr vs State of Gujarat and Ors.**, reported in **AIR 2004 SC 3114**.

“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 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.

39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

40. The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.”

22. Recently, the Division Bench of this Court in the case of **Shambhu Nath Singh @ Shambhu Singh & Ors. Vs. State of Bihar**, reported in **2022 (1) PLJR 476**, the judgment of which has been authored by one of us (learned brother Justice Ashwani Kumar Singh) held that a trial primarily aimed at ascertaining truth has to be fair to all concerned, which includes



the accused, the victims and society at large. Each person has a right to be dealt with fairly in a criminal trial. The denial of a fair trial amounts to injustice not only to the accused but also to the victim and the society. An accused has a right to fair trial under our Constitution as also the international treaties and conventions, the right to get fair trial is considered as a basic human right. The denial of fair trial is like crucifixion of human rights.

23. The Division Bench has been pleased to observe that the right of fair trial in the spirit of right to life and personal liberty is paramount right enshrined under Article 21 of the Constitution and at no point of time the pursuit of expeditious disposal of the trial, the trial court can sacrifice the basic tenet of the criminal jurisprudence i.e. “the cause of justice”. Para. 23 to 26 of the judgment rendered by the Division Bench in the case of **Shambhunath Singh** (supra) are quoted herein below for proper appreciation of the issues involved in the present matter:

“23. In **Zahira Habibullah Sheikh and Another v. State of Gujarat and Others** since reported in [(2006) 3 SCC 374], the Hon’ble Supreme Court of India observed:

“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 it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere judicial calm. A fair trial means a trial in



which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated.”

24. Thus, the basic principle of the right to a fair trial is that the proceeding in any criminal case are to be conducted by a competent, independent and impartial court. In a criminal trial, as the State is the prosecuting party and the police are also an agency of the State, it is all the more important that the judiciary is free from all suspicion of extraneous influence and control direct or indirect. The whole burden of fair and impartial trial, thus, rests on the shoulders of the judiciary.

25. In a criminal trial, the burden of proving the guilt of the accused is upon the prosecution, as the trial begins with the presumption of innocence in favour of the accused. The requirement of fair trial is that the accused person is given adequate opportunity to defend himself. But, this opportunity will have no meaning if the accused person is not provided with the legal assistance during trial, if he is unable to engage a lawyer of his own choice. It is the duty of the State to provide a counsel to the accused in certain cases and a fundamental right of the accused to have free legal assistance at the cost of the State, if he is unable to engage a lawyer to defend his case. The failure to provide such assistance vitiates trial. The Court cannot turn a blind eye to the fact that the accused is not being defended by any counsel and proceed with the trial without ensuring the right of the accused to be defended by a lawyer.

26. **In Khatri and Others (IV) v. State of Bihar and Others** since reported in [(1981) 2 SCC 493], the Hon’ble Supreme Court held that the accused is entitled to free legal service not only at the stage of trial but also when



first produced before the Magistrate and also when remanded.”

24. In the aforesaid facts and circumstances and after going through the principles laid down by the Hon’ble Supreme Court in the case of **Anokhilal** (supra) as well as **Shambhu Nath Singh** (supra) we are in conformity with the submissions made by Mr. Ajay Kumar Thakur being ably assisted by Ms Anukriti Jaipuriyar appearing as Amicus Curiae in the present death reference case, we are, therefore, of a considered view in setting aside the judgment of conviction dated 26.07.2021 and order of sentence dated 30.07.2021 passed by Additional District & Sessions Judge-VII, Exclusive Special Court (POCSO), Rohtas at Sasaram in connection with POCSO Case No. 68 of 2020, arising out of Dalmianagar (Dehri) P.S. Case No. 888 of 2020 against the sole appellant and direct for a De-novo trial of the accused-appellant from the stage of framing of charge. The impugned judgment of conviction and order of sentence are set aside. The matter is remanded to the learned trial court with a specific direction that the learned Exclusive Special Court would provide the appellant a legal aid counsel in terms of the order passed by the Hon’ble Supreme Court in the case of **Anokhilal** (supra), if the appellant is unable to engage an advocate of his choice. The



learned trial court shall ensure that such legal aid counsel is provided to the appellant before framing of the charge till its conclusion.

25. Accordingly, the present death reference stands rejected and as such not confirmed. The Cr. Appeal is hereby allowed to the extent indicated hereinabove.

26. Since we are remanding the matter for fresh disposal, we clarify that we have not expressed any opinion regarding the merits of the case.

27. We record our deep sense of appreciation for the able assistance extended by Mr. Ajay Kumar Thakur, learned Amicus Curiae being ably assisted by Ms Anukriti Jaipuriyar, learned Amicus Curiae, the Patna High Court Legal Services Committee is hereby directed to pay Rupees Seven Thousand Five Hundred to Ms. Anukriti Jaipuriyar, learned Amicus Curiae as consolidated fee for the assistance made by her in the present appeal.

(Ashwani Kumar Singh, J)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.05.2022
Transmission Date	12.05.2022

