

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.546 of 2023

Arising Out of PS. Case No.-103 Year-2017 Thana- GAIGHAT District- Muzaffarpur

Subodh Rai, Son of Late Asharfi Rai, R/o Mohammadpur Sura, P.S. -
Gaighat, Distt. - Muzaffarpur

... .. Appellant

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Patanjali Rishi, Advocate
For the Respondent/s : Mr. Bipin Kumar, Addl.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 13-05-2025

Heard Mr. Patanjali Rishi, learned counsel for the
appellant and Mr. Bipin Kumar, learned Additional Public
Prosecutor for the State.

2. This appeal has been preferred for setting aside the
judgment of conviction dated 27.04.2022 passed by the
learned Sessions Judge, Muzaffarpur (hereinafter referred to
as the 'learned trial court') in Sessions Trial No. 465 of
2017 arising out of Gaighat P.S. Case No. 103 of 2017
registered under Section 302 of Indian Penal Code (in short
'IPC').

3. By the judgment under appeal, the learned trial



court has convicted the appellant for the offence under Section 302 IPC and thereafter passed the order dated 06.05.2022 on the point of sentence whereby the appellant has been ordered to undergo imprisonment for life and to pay a fine of Rs. 10,000/- and in default, imprisonment of six months for the offence punishable under Section 302 of the IPC has been awarded.

Prosecution Case

4. The prosecution case is based on the written application dated 21.05.2017 (Ext.-2) submitted by one Rishi Kumar, who is the son of the appellant. In his written application, he alleged as under:-

“An altercation took place between the husband and wife in the morning hours. At that time, Subodh Rai became silent in front of all people and went towards the western side of his house where the *Dalan* was situated. He further alleged that Krishna Devi went in the said *Dalan* to feed the cattle and there Subodh Rai was sitting and on finding her alone, he assaulted her with brick, as a result of which, she died on the spot, accordingly, Gaighat P.S. Case No. 103 of 2017 was registered”.



5. On the basis of the said written information, a formal F.I.R. bearing Gaighat P.S. Case No. 103 of 2017 was registered under Section 302 IPC. Investigation followed and charge sheet was submitted against the sole accused. The learned Magistrate took cognizance of the offence under Section 302 IPC and committed the records to the court of Sessions.

6. The accused-appellant was explained the charges, he denied the same and claimed to be tried. Accordingly, the charges were framed against him under Section 302 IPC.

7. It appears from the records that the prosecution examined as many as eight witnesses and exhibited six documents which have been marked as Ext.-1 to Ext.-6.

8. The list of the witnesses and the exhibits marked on behalf of the prosecution are provided hereunder in a tabular form:-

List of Prosecution Witnesses

P.W.-1	Pawan Kumar Rai
P.W.-2	Ajay Kumar
P.W.-3	Braj Kishore Rai @ Saheb Rai
P.W.-4	Rishi Kumar (Informant)



P.W.-5	Arun Rai
P.W.-6	Dr. Mahmood Alam Ansari
P.W.-7	Ravindra Paswan (I.O.)
P.W.-8	Prem Kishore Yadav(another I.O.)

List of Exhibits

Exhibit ‘1’	Signature of Ajay Kumar on the inquest report
Exhibit ‘2’	Written application
Exhibit ‘3’	Postmortem report
Exhibit ‘4’	Inquest report
Exhibit ‘5’	Endorsement on the written application
Exhibit ‘6’	Formal F.I.R.

Findings of the Learned Trial Court

9. The learned trial court having analyzed the evidences on the record held the appellant guilty for the offence under Section 302 IPC and ordered him to undergo life imprisonment and to pay a fine of Rs. 10,000/-, as stated hereinabove.

Submissions on behalf of the appellant

10. Mr. Patanjali Rishi, learned counsel for the appellant submits that the impugned judgment and order are liable to be set aside and the matter is required to be



remitted to the learned trial court for a simple reason that the learned trial court despite having noticed that the appellant was unable to engage a lawyer in his defence, did not appoint an experienced lawyer from the Bar and the learned trial court did not appreciate that the principle of fair trial is embodied under Articles 21 and 22 of the Constitution of India, hence, it must be followed in the matter of administration of criminal law justice.

11. Learned counsel for the appellant submits that when the trial began and PW.-1 came for examination and the examination-in-chief of PW.-1 was recorded, the learned trial court noted in the deposition sheet that the accused has not engaged any lawyer to do *pairvi* on his behalf.

12. The learned court, however, recorded that the accused has neither engaged any lawyer for his *pairvi* nor he has requested for appointment of a lawyer to do his *pairvi*. The trial court further noted that the accused has taken a stand that he would himself cross-examine the witness. It is submitted that at this stage the learned trial court was required to remind itself of its duty to ensure that a free legal aid to be provided to the appellant and that



would only be in consonance with the mandate of Article 39A of the Constitution of India read with Section 304 of the Code of Criminal Procedure.

13. It is submitted that even though the appellant claimed that he will cross-examine the prosecution witnesses himself, the trial court was required to appreciate the competence of the appellant in defending himself. The appellant was not a law graduate and he did not know the niceties of law, hence, he could not have framed appropriate question which could have been put to the prosecution witnesses in course of cross-examination.

14. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in case of **Ramanand alias Nandlal Bharti v. State of Uttar Pradesh** reported in (2023)16 SCC 510.

Submissions on behalf of the State

15. Mr. Bipin Kumar, learned Additional Public Prosecutor for the State has taken a fair stand in course of the hearing. Learned Additional Public Prosecutor has submitted that it is clearly seen from the pattern of cross-examination by the appellant that he was not aware of the



law and the intricacies of requirement of law in course of the cross-examination.

16. In such circumstances, it is submitted that the learned trial court would have done it's best by appointing an experienced lawyer from the Bar to provide legal aid to the appellant.

Consideration

17. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the trial court records. We have noticed from the deposition of the prosecution witnesses that the appellant ventured to cross-examine them on his own and he could hardly frame any question in his defence so as to raise any doubt over the veracity of the prosecution evidence. This duty could have been performed only by a competent lawyer, who would have been well aware of the legal provisions. In the case of **Ramanand alias Nandlal Bharti v. State of Uttar Pradesh** reported in (2023) 16 SCC 510, the Hon'ble Supreme Court has observed in paragraphs '126' to '130' which are as under:-

126. 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 calibre of the counsel would not militate against the guarantee to a fair trial sanctioned by Articles 21 and 22, respectively, 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.

127. Article 39-A of the Constitution speaks about free legal aid which reads thus:

“39-A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

128. Section 304CrPC refers to legal aid to the accused at State expenses in certain cases which reads thus:

“304. Legal aid to accused at State expense in certain cases.—(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rule



providing for—

(a) the mode of selecting pleaders for defence under sub-section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fee payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before the Courts of Session.”

129. Under Section 9 of the Legal Services Authorities Act, 1987, the District Legal Services Authorities are constituted for every District in the State to exercise powers and perform functions conferred on, or assigned to, the District Authority under the said Act.

130. This Court in para 13 of the judgment in *Kishore Chand v. State of H.P.* [*Kishore Chand v. State of H.P.*⁴³], held thus : (SCC p. 297)

“13. Though Article 39-A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides Amicus Curiae to defend the indigent accused, he would be meted out with unequal defence if, as is common knowledge the youngster from the bar who has either a little experience or no experience is assigned to defend him. It is high time that Senior Counsel practising in the court concerned, volunteer to defend such indigent accused as a part of their professional duty. If these remedial steps are taken and an honest and objective investigation is done, it will enhance a sense of confidence of the public in the investigating agency.”

18. This Court finds that the learned Sessions Judge while conducting the present trial could not appreciate with sufficient

43 (1991) 1 SCC 286 : 1991 SCC (Cri) 172



seriousness be need to appoint an experienced counsel at the cost of the State to defend the appellant.

19. In paragraph ‘133’ of the judgment in the case of Ramanand (**supra**) the Hon’ble Supreme Court has reminded the learned trial courts across the country in the following words:-

“**133.** This case provides us an opportunity to remind the learned District and Sessions Judges across the country conducting Sessions trials, more particularly relating to serious offences involving severe sentences, to appoint experienced lawyers who had conducted such cases in the past. It is desirable that in such cases Senior Advocate practising in the trial court shall be requested to conduct the case himself or herself on behalf of the undefended accused or at least provide good guidance to the advocate who is appointed as Amicus Curiae or an advocate from the legal aid panel to defend the case of the accused persons. Then only the effective and meaningful legal aid would be said to have been provided to the accused.”

20. In the kind of submissions made before us and the fact that we have experienced on going through the pattern of cross-examination of the prosecution witnesses, we are of the considered opinion that the learned Sessions Judge has committed an error by not providing an experienced defence counsel to the appellant. We, therefore, set aside the impugned judgment and order.

21. The records are remitted back to the learned trial court for taking a fresh steps in accordance with law to procure the appearance of the prosecution witnesses and ensure that they



are cross-examined by a competent lawyer, who will be appointed by the court to defend the accused-appellant in course of trial. If required, an experienced lawyer from the panel of Legal Services Authority shall be made available to the appellant.

22. Learned counsel for the appellant has undertaken that the appellant shall provide full cooperation to the defence counsel, who will be appointed by the court.

23. This appeal is allowed to the extent indicated hereinabove.

24. Let a copy of this judgment together with the records of the trial court be sent down to the court of learned Sessions Judge, Muzaffarpur immediately.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Jagdish/lata/-

AFR/NAFR	
CAV DATE	
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