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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 24.09.2025*+ **CRL.A. 477/2007****SHEIKH HABIL**

.....Appellant

Through: Ms. Anu Narula, Advocate

versus

STATE

.....Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with Ms.
Puja Mann, Advocate and with
SI Shruti Saini, P.S. Karol
Bagh.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The present appeal raises a grave issue of law and administration of criminal justice system – whether a conviction for serious offences of kidnapping and rape can be sustained when the trial itself was conducted in disregard of the appellant's right to effective legal representation and fair opportunity of defence.

2. The appellant, by way of this appeal, is seeking setting aside of the judgment dated 19.09.2006 [hereafter '*impugned judgment*'] and order on sentence dated 22.09.2006, passed by the learned Additional Sessions Judge, Delhi [hereafter '*Trial Court*'] in Sessions Case No.



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06/2006, arising out of FIR No. 447/2005, registered at Police Station Karol Bagh, Delhi for commission of offences punishable under Sections 363/366/376 of the Indian Penal Code, 1860 [hereafter '*IPC*'].

3. The facts of the case are that the FIR was lodged on the complaint of Smt. 'RM', a resident of Green Park Extension, Delhi. She stated that she was employed as a house-maid at the said address, while her minor daughter 'SM' (the prosecutrix) was residing in the house of one Dr. Kamal Kapoor at Karol Bagh. Dr. Kapoor had admitted the prosecutrix to school, and she was living with him like a member of his family. At that time, construction work was being carried out at a neighbouring property, where the present appellant was engaged as a stone mason. He had also undertaken stone-laying work in Dr. Kapoor's house. During this period, the appellant had become acquainted with the prosecutrix and he would frequently converse with her in the absence of others, despite repeated objections and warnings from the complainant. It was alleged that on 14.09.2005, at around 8:00 p.m., when the prosecutrix could not be found in Dr. Kapoor's house, Dr. Kapoor had informed the complainant that the prosecutrix had left without informing anyone. On reaching there, the complainant had suspected the appellant of kidnapping her daughter. She accordingly had lodged a complaint, providing a description of the prosecutrix. Initially, the FIR was registered for offence under Section 363 of IPC.



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4. During the course of investigation, the prosecutrix and the accused were apprehended on 16.09.2005. The prosecutrix was medically examined and her statement under Section 164 Cr.P.C. was recorded. On completion of investigation, a chargesheet was filed against the appellant for offences under Sections 363, 366, and 376 IPC. On 25.01.2006, charges were accordingly framed against him.

5. During trial, the prosecution examined 15 witnesses, after which the statement of the accused under Section 313 of Cr.P.C. was recorded. The accused did not lead any defence evidence. Upon conclusion of trial, the learned Trial Court, *vide* the impugned judgment, convicted the appellant under Sections 363, 366, and 376 of IPC, and by the impugned order on sentence, awarded him rigorous imprisonment for seven years.

6. Assailing the impugned judgment, the learned counsel appearing on behalf of the appellant has contended that the learned Trial Court erred in failing to appreciate that the prosecution's version – that she went missing on 14.09.2005, the complaint was lodged only on 15.09.2005, and both the appellant and the prosecutrix were allegedly recovered on 16.09.2005 – is improbable, lacks credibility, and does not inspire confidence. It has been argued that the manner in which the recovery of the appellant and the prosecutrix is sought to be portrayed appears highly doubtful. The learned counsel has submitted that the Trial Court failed to properly appreciate the testimony of PW-8, who had categorically deposed



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that the prosecutrix was meeting the appellant voluntarily and had left the house after leaving behind a handwritten letter. It has been further argued that there is no plausible explanation for the failure to lodge the complaint on 14.09.2005 itself. It has been contended that the appellant, belonging to a poor strata of society, was financially incapable of engaging a private defence counsel and was therefore provided with the services of an Amicus Curiae. However, the learned Amicus Curiae failed to cross-examine the prosecution witnesses including crucial material witnesses, i.e. PW-2, PW-4 and PW-8. The learned Trial Court, despite being vested with adequate powers to put questions to such witnesses in order to elicit the truth, permitted prejudice to be caused to the appellant, who, being in judicial custody, was helpless and incapacitated to effectively defend himself. It has been further argued that the learned Trial Court failed to appreciate the material contradictions in the testimonies of the prosecution witnesses on vital aspects concerning the age of the prosecutrix, the benefit of which ought to have been extended to the appellant. The learned counsel for the appellant has further argued that the learned Trial Court gravely erred in failing to appreciate that the letter allegedly left behind by the prosecutrix before leaving the house of Dr. Kapoor constituted the most vital piece of evidence, and suppression and non-production of the said document necessarily attracts an adverse inference against the prosecution, the benefit of which ought to ensue to the appellant. Further, the learned Trial Court did not take into account that the Investigating Officer



concerned was not cross-examined on the aspect of the said letter, and consequently, the benefit of such omission must also go to the appellant. It has also been contended that proper appreciation of the statement of the prosecutrix recorded under Section 164 of Cr.P.C. makes it clear that there is no conclusive or incriminating evidence against the appellant herein. It has been lastly submitted that the appellant has already suffered the ordeal of a protracted trial and prolonged pendency of proceedings in the present appeal, and therefore, he is entitled to be acquitted of the charges.

7. The learned APP for the State, while not disputing the fact that the learned Amicus Curiae had failed to cross-examine the material witnesses and that the appellant was thereby deprived of effective legal aid, contends that the record nonetheless establishes that the prosecutrix was a minor at the time of the incident. It is further submitted that, even assuming that the prosecutrix had consented to the relationship, such consent would be of no legal consequence in the eyes of law. It has also been argued that on the basis of the material on record, it is clear that the prosecution has been able to establish the guilt of the accused beyond reasonable doubt.

8. This Court has **heard** arguments addressed by the learned counsel for the appellant and learned APP for the State, and has perused the material available on record.

9. In the present case, the appellant has been convicted for having kidnapped a minor from the residence of Dr. Kapoor (PW-8) where



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she used to reside and thereafter committing sexual assault upon her. The testimony of prosecutrix (PW-4) recorded before the learned Trial Court discloses that she was residing in the house of Dr. Kamal Kapoor, attending school from there, and had become acquainted with the accused, who was working in a neighbouring house. The accused had allegedly made false promises of love, and also told her that her mother did not care for her. As alleged, on 14.09.2005, the accused had forcibly taken her from Dr. Kapoor's house in a rickshaw on the pretext of marriage, and had assured her that he would treat her well. She had been taken first to his house and then to the house of his sister-in-law. During this period, the accused had threatened her on several occasions and forcibly raped her once.

10. *However*, it is significant to note that PW-8, Dr. Kamal B. Kapoor, in whose house the prosecutrix used to reside, had deposed before the learned Trial Court that on 14.09.2005, when he returned to his house, he did not find the prosecutrix there and instead discovered one letter lying on the table, written by the prosecutrix, which he subsequently handed over to the police. However, it is a matter of record that this letter, written and placed on the table by the prosecutrix while leaving the house, has not seen the light of day, as the same was never brought on record by the police nor placed before the learned Trial Court. The testimony of PW-8 further reveals that the present appellant used to meet the prosecutrix in school, since they were already acquainted with each other prior to the incident.



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11. This Court further notes that upon medical examination of the prosecutrix by Dr. Shivani Singh (PW-10), it was found that the hymen of the prosecutrix was old torn. PW-10 had specifically deposed before the learned Trial Court that during the course of medical examination, the prosecutrix herself had disclosed to her that she had been in a sexual relationship with the accused for the past six months.

12. Moreover, the impugned judgment itself records that in the statement of the prosecutrix under recorded Section 164 of Cr.P.C. before the learned Magistrate, she had mentioned that she had voluntarily accompanied the accused, as they had known each other for the last 6–7 months. She further stated that they had got married on 15.09.2005 in a mosque and thereafter lived together as husband and wife in the house of one of the friends of the accused. However, before the learned Trial Court, the prosecutrix resiled from her earlier version and had deposed that her statement under Section 164 of Cr.P.C. was given under fear of the accused; and that she was forcefully taken away by the accused and had been raped by him.

13. It also emerges from the evidence that there are material contradictions in the statements of the prosecution witnesses regarding the time and place of the apprehension of the accused and the prosecutrix by the police. The police officials, as well as the mother of the prosecutrix, deposed before the learned Trial Court that both the accused and the prosecutrix were apprehended on a road on



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16.09.2005. The prosecutrix (PW-4) deposed that she, along with the accused, was apprehended by the police at about 11:00 AM on 16.09.2005. On the other hand, PW-10, Dr. Shivani Singh, deposed that the prosecutrix herself had informed her that she had run away with the accused on 14.09.2005 at about 7:30 PM and that she was recovered by the police on 15.09.2005 at about 8:30 PM from the house of a friend of the accused at Shadipur Depot, Baljit Nagar. In addition to the above-mentioned inconsistencies, it is noteworthy that PW-8, Dr. Kapoor, deposed that he was informed about the prosecutrix being recovered during the night of 15/16.09.2005. These contradictions were also taken note of by the learned Trial Court in the impugned judgment; however, the learned Trial Court observed that there was no clarity on these aspects since the prosecution witnesses were not adequately cross-examined.

14. To sum up, some of the contradictions in the statements of the prosecution witnesses, as apparent from a perusal of the their testimonies as well as the impugned judgment, are listed as under:

- The prosecutrix's statement under Section 164 of Cr.P.C., wherein she had mentioned about her voluntary companionship and marriage with the accused, being materially different from her deposition in Court, where she has claimed that her statement given to the Magistrate was under fear.
- If indeed a letter had been written by the prosecutrix before leaving the house, as emerging from testimony of PW-8, the



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contents of such a letter assume significance, as they could have shed light on whether she had voluntarily left home, possibly to elope with the accused, which would have been consistent with her statement under Section 164 of Cr.P.C. and contrary to her testimony before the Trial Court.

- The history, as given by the prosecutrix herself to PW-10 (doctor), that she had been in a sexual relationship with the accused for six months, stands in contradiction with her deposition before the learned Trial Court, where she made no such admission and instead alleged forcible sexual assault.
- The time and place of apprehension of the prosecutrix and the accused, as mentioned by different prosecution witnesses, are inconsistent.

15. Though several contradictions are discernible in the depositions of the prosecution witnesses as noted above, this Court is constrained to note that these aspects were not put to test by way of cross-examination on behalf of the accused. Consequently, the prosecution witnesses were not confronted with these inconsistencies and the learned Trial Court, therefore, proceeded to either observe that there was no clarity on an issue, or rejected the argument of the accused by observing that the concerned prosecution witness had not been cross-examined on those aspects.

16. It is pertinent to note that during the course of hearing arguments in the present appeal, this Court, in its order dated



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26.06.2025, had recorded the submissions of the learned counsel and had specifically highlighted the issue concerning denial of effective legal aid to the appellant. The said order reads as under:

“1. Arguments have been *part-heard*.

2. The learned counsel appearing on behalf of the appellant draws this Court's attention to the fact that none of the prosecution witnesses in this case was cross-examined. The assistance, which as per the law is to be afforded to every accused, at no point of time, during the entire trial, was available to the present appellant. She further states that due to the aforesaid, there has been a great miscarriage of justice.

3. The learned APP for the State does concede the same, and states that legal aid was not made available to the present appellant and the learned amicus curiae, appointed in the present case, on few occasions, though appeared, did not cross-examine the witnesses and on some occasions, remained absent and therefore, the witnesses could not be examined, including the crucial witnesses, i.e., the prosecutrix, her mother and the Doctor concerned.”

17. In this backdrop, it is to be noted that as evident from the trial court record, the prosecution had examined 15 witnesses in the present case. However, out of them, only 2 witnesses – Ct. Anil (PW-5) and S.I. Ram Swaroop (PW-12), both being official witnesses – were cross-examined by the defence counsel. For the remaining 13 witnesses, after the conclusion of their examination-in-chief, the order sheets of the learned Trial Court simply records as under:

PW-1: Lady Const. Jai Siri

XXXXX By accused
Nil (opp) Given

* * *

PW-2: Ms. ‘RM’



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XXXXXX By accused
Nil. Opp. Given

* * *

PW-3: H.C Balwan Singh

XXXXXX by accused
Nil Opp. Given

* * *

PW-4: Statement of Km. 'SM'

XXXXXX By the accused
Nil. Opp. Given

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PW-6: Statement of ASI Rajkumar

XXXXXX by Ms. ___ Dewan, Amicus Curiae for accused
Nil. Opp. Given

* * *

PW-7: Statement of Ajay Kapoor

XXXXXX by Ms. ___ Dewan, Amicus Curiae for the accused
Nil. Opp. Given

* * *

PW-8: Statement of Dr. Kamal Bandhu Kapoor

XXXXXX by accused
Nil Opp. Given as Amicus Curiae, Ms. ___ Dewan is absent

* * *

PW-9: Statement of HC Anil Kumar

XXXXXX by accused

* * *

PW-10: Statement of Dr. Shivani Singh

XXXXXX by accused
Nil. Opp. Given

* * *

PW-11: Statement of Dr. Mona Lisa

XXXXXX by accused
Nil. Opp. Given

* * *

PW-13: Statement of Sh. Paramjeet Singh

XXXXXX by accused



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Nil. Opp. Given

* * *

PW-14: Statement of Dr. Atul Murari

XXXXX by Sh. ___ Sobti, proxy counsel for amicus curiae, ___
Diwan, for the accused

Nil. Opp. Given

* * *

PW-15: Statement of Naresh Kumar

XXXXX by Sh. ___ Sobti, Proxy Counsel for amicus curiae,
Ms. ___ Diwan for accused

Nil. Opp. Given

18. These order sheets, which were not mere typed pieces of paper but judicial records determining the very fate of the appellant/accused, reveal a disturbing state of affairs. They show that, except two official witnesses, no other prosecution witness was subjected to cross-examination on behalf of the accused including the victim and the complainant who are crucial witnesses, on whose testimony the entire edifice of the prosecution case was laid.

19. The Court cannot lose sight of a pertinent fact that among those who were not cross-examined were the material prosecution witnesses, i.e. the public witnesses whose testimonies were central to the case. These included PW-2, the mother of the prosecutrix and the complainant in the case; PW-4, the prosecutrix, whose evidence formed the bedrock of the prosecution's case; PW-8, Dr. Kamal Bandhu Kapoor, in whose house the prosecutrix was residing at the relevant time and where the accused also used to work in the neighbouring house; and PW-10, Dr. Shivani Singh, who had



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medically examined the prosecutrix, prepared the MLC, and deposed regarding the history narrated by the prosecutrix herself at the time of examination. These witnesses, in whose testimonies this Court has already pointed out significant contradictions in the preceding paragraphs, were discharged without being cross-examined.

20. A closer scrutiny of the order sheets further discloses that, at the initial stage, the accused was not even provided with legal representation. The accused, lodged in jail, remained unrepresented when the prosecution evidence had already begun. At the time of examination of PW-1, as well as PW-2 (the complainant and mother of the prosecutrix), the accused was not represented by any counsel, and yet the learned Trial Court had proceeded to examine and discharge these witnesses. Shockingly, while doing so, the learned Trial Court had itself noted that these witnesses had not been cross-examined by the accused, but overlooked the reason that the accused was unrepresented.

21. It was only after the examination of two witnesses being over, that the learned Trial Court had appointed one Sh. Yadav as Amicus Curiae for the accused. However, on the very next date when PW-3 was examined, Sh. Yadav was not present in Court, and accordingly, PW-3 was discharged without cross-examination. On the subsequent date also, the said Amicus Curiae did not appear, and the most crucial witness, the prosecutrix (PW-4), was examined and discharged without cross-examination.



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22. Subsequently, when PW-5 came to be examined, the learned Trial Court cancelled the appointment of Sh. Yadav and appointed one Ms. Dewan as Amicus Curiae for the accused. Ms. Dewan cross-examined PW-5, but did not cross-examine PW-6 or PW-7 on the next date of hearing.

23. The testimony of PW-8, Dr. Dr. Kamal Bandhu Kapoor, another material witness, was recorded on 12.07.2006. However, on that date, the learned Amicus Curiae remained absent, and the said witness was examined and discharged without cross-examination. Thereafter, PW-9 too was examined and discharged without cross-examination, again owing to the absence of the learned Amicus Curiae. Similarly, on the following date, PW-10 (the doctor who examined the prosecutrix), PW-11, and PW-13 were examined and discharged, all without cross-examination, as the learned Amicus Curiae was absent. On the next date of hearing, though a proxy counsel for the Amicus Curiae appeared, he too did not conduct cross-examination of PW-14 and PW-15, and they too were discharged without cross-examination.

24. ***Thus, the trial court record reveals that:*** initially, the accused was not provided effective legal aid or legal representation when two witnesses, including the complainant/mother of prosecutrix, were examined; thereafter, the first appointed Amicus Curiae absented himself on subsequent dates and failed to cross-examine the next two witnesses, including the prosecutrix; and subsequently, even after the



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appointment of another Amicus Curiae, out of the remaining 11 witnesses, only two were cross-examined by her, and for the others, the learned Amicus Curiae chose not to cross-examine them despite being present; and remained absent altogether or sent a proxy counsel who also did not cross-examine the witnesses while recording of evidence of seven prosecution witnesses.

25. The manner in which the trial of the present case was conducted leaves this Court deeply concerned. The record reveals that the appellant was subjected to proceedings where the basic safeguards of a criminal trial were overlooked. Several material witnesses were examined and discharged without the accused being given any real opportunity to cross-examine them, which goes against the very spirit of a fair trial. A criminal case is not decided by the mere formality of recording depositions but by testing the truth of those depositions through cross-examination. It is this process which ensures that justice is not only done but is seen to have been done. Unfortunately, that essential safeguard was almost entirely absent in the present case, and the trial was conducted in a casual manner.

26. While making such observations, this Court is mindful that it is well settled that the right of cross-examination is one of the most fundamental safeguards available to an accused in a criminal trial. Cross-examination is not a matter of procedural formality but is the most vital means by which the testimony of a witness is tested, its veracity examined, and its credibility assessed. In *Kartar Singh v.*



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State of Punjab: (1994) 3 SCC 569, a Constitution Bench of the Hon'ble Supreme Court eloquently explained the purpose and significance of cross-examination. The relevant observations are set out below:

“278. Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:-

- (1) To destroy or weaken the evidentiary value of the witness of his adversary;
- (2) To elicit facts in favour of the cross-examining lawyer's client from the mouth of the witness of the adversary party;
- (3) To show that the witness is unworthy of belief by impeaching the credit of the said witness;

And the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character.”

27. Further, the Constitution of India guarantees to every accused fundamental rights under Articles 21, 22, and 39A, which operate throughout the course of a criminal trial. Article 21 ensures that no person shall be deprived of life or personal liberty except according to procedure established by law, which must necessarily be just, fair, and reasonable. Article 22 protects the rights of an arrested person, including the right to consult and be defended by a legal practitioner of his choice. Article 39A, though placed in the Directive Principles of State Policy, creates an obligation on the State to secure equal



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justice and provide free legal aid to those unable to afford legal representation. Together, these provisions guarantee that the rights of an accused are not illusory, but are effectively protected in the course of a trial.

28. The Hon'ble Supreme Court has also time and again emphasized that the right to a fair trial is imbibed in the guarantee of life and personal liberty under Article 21, which guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. The phrase "procedure established by law" has been judicially interpreted to mean just, fair, and reasonable procedure. A trial where crucial witnesses, including the prosecutrix, her mother, and the doctor, are allowed to depose without cross-examination can hardly be described as fair or reasonable. In this Court's opinion, effective legal aid to an accused is a legal as well as constitutional mandate, intended to ensure that every trial is free, fair, and just.

29. It is evident that in the present case, no meaningful or effective legal aid was ever provided to the accused. In ***Khatiri (2) v. State of Bihar: (1981) 1 SCC 627***, the Hon'ble Supreme Court held that legal aid must not be reduced to a "mere paper promise." The Supreme Court had observed that it would defeat the very purpose of free legal aid if a poor or illiterate accused is expected to himself demand legal aid. Rather, it is the obligation of the Magistrate or the Sessions Judge, before whom the accused is produced, to inform him that he



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has a right to free legal services if he cannot afford to engage a lawyer. In *Zahira Habibulla Sheikh (5) v. State of Gujarat: (2006) 3 SCC 374* also, the Hon'ble Supreme Court had explained the concept of fair trial to an accused and noted that it was central to the administration of justice and the cardinality of protection of human rights.

30. In this background, it would also be apposite to take note of the following observations of the Hon'ble Supreme Court in case of *Mohd Hussain v. State (Govt. of NCT of Delhi): (2012) 2 SCC 584*:

“13. It will, thus, be seen that the trial court did not think it proper to appoint any counsel to defend the appellant/ accused, when the counsel engaged by him did not appear at the commencement of the trial nor at the time of recording of the evidence of the prosecution witnesses. **The accused did not have the aid of the counsel in any real sense, although, he was as much entitled to such aid during the period of trial.** The record indicates, as I have already noticed, that the appointment of learned counsel and her appearance during the last stages of the trial was rather proforma than active. **It cannot seriously be doubted at this late date that the right of cross-examination is included in the right of an accused in a criminal case, to confront the witnesses against him not only on facts but also to discredit the witness by showing that his testimony-in-chief was untrue and unbiased.**

16. In my view, every person, therefore, has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty. The object and purpose of providing competent legal aid to undefended and unrepresented accused persons are to see that the accused gets free and fair, just and reasonable trial of charge in a criminal case.

24. In the present case, not only the accused was denied the assistance of a counsel during the trial and such designation of



counsel, as was attempted at a late stage, was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard. The Court ought to have seen to it that in the proceedings before the court, the accused was dealt with justly and fairly by keeping in view the cardinal principles that the accused of a crime is entitled to a counsel which may be necessary for his defence, as well as to facts as to law. The same yardstick may not be applicable in respect of economic offences or where offences are not punishable with substantive sentence of imprisonment but punishable with fine only. The fact that the right involved is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our judicial proceedings. The necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of a counsel was a denial of due process of law. It is equally true that the absence of fair and proper trial would be violation of fundamental principles of judicial procedure on account of breach of mandatory provisions of Section 304 of Cr.P.C.

42. While holding the appellant guilty the trial court has not only relied upon the evidence of the witnesses who have been cross-examined but also relied upon the evidence of witnesses who were not cross-examined. The fate of the criminal trial depends upon the truthfulness or otherwise of the witnesses and, therefore, it is of paramount importance. To arrive at the truth, its veracity should be judged and for that purpose cross-examination is an acid test. It tests the truthfulness of the statement made by a witness on oath in examination-in-chief. Its purpose is to elicit facts and materials to establish that the evidence of witness is fit to be rejected. The appellant in the present case was denied this right only because he himself was not trained in law and not given the assistance of a lawyer to defend him. Poverty also came in his way to engage a counsel of his choice...

(Emphasis added)

31. Further, this Bench in case of *Sunil v. State: 2023 SCC OnLine Del 104*, while setting aside the judgment of conviction and



acquitting the appellant therein, in somewhat similar circumstances, observed that lawyers in criminal courts are not luxury but absolute necessity, and that the absence of cross-examination of the prosecution witnesses had resulted in gross miscarriage of justice. The pertinent observations made in the said judgment are extracted below:

“18. Despite there being catena of judgments emphasizing the need and importance of legal aid, no effective legal aid was provided to the accused persons in present case. Order sheets were written in most indifferent manner by the learned Trial Court. At most places, the name of the counsel is not mentioned in the order sheets. The name, presence or absence of the counsel was not mentioned in any of the evidence recorded. The problem does not end here. The present case was being tried for an offence of preparation of dacoity which attracts punishment upto 10 years. No legal aid was available to the accused almost throughout the trial, most glaringly, at the time of final arguments and recording of evidence. The Trial Court itself should have realized the duty cast on it to provide effective legal aid to an accused who is poor and marginalized and could not defend himself. The Courts are the guardians of a person's liberty and are duty bound by Constitution as well as their oath to ensure fair trial to an accused which is the constitutional goal set by the Indian Constitution itself.

19. Vast sums of money are disbursed to establish legal aid centres, and State Legal Services Authorities to help those who fail to hire the best lawyers due to their poverty. Lawyers are empanelled and paid to prosecute and defend those who are unable to hire lawyers to defend themselves. Needless to say, lawyers in criminal Courts are absolute necessity and not luxury.

22. In the present case, the absence of cross-examination has resulted in gross miscarriage of justice and the Court has to guard against such an eventuality. It is to be remembered that in India, the absence of fair and proper trial is not only violation of fundamental principles of judicial procedure and



constitutional mandate, but also violation of mandatory provisions of Section 304 Cr. P.C. The assistance of a legal counsel, in a meaningful way, was absent throughout the trial. Judiciary has a crucial role to play in ensuring enforcement of human rights and has to meet the great challenge towards making justice accessible in practical terms to the poor in the country.

23. It is important to understand the reality of disadvantage of an individual and ensure proactive steps to prevent injustice by providing effective legal aid in order to deliver equality in justice. The constitutional guarantees of free and fair trial should remain meaningful to the poor of the country and the judiciary has to remain vigilant to protect the interest of the disadvantaged groups also.

24. This is a classic case where all cannons of justice were kept aside while passing the impugned judgment as the accused was not provided legal aid which he was entitled to get under the Constitution of India as well as under Cr. P.C. The accused has faced trial for last 15 long years. At times, though the agony of a person undergoing trial is not mentioned on the paper while a Judge writes a judgment, the trial which has been prolonged beyond 15 years is an agony itself. The stress of facing a criminal trial is punishment unannounced in a case, as the present one.”

32. This Court, in the given circumstances, cannot remain oblivious to the fact that despite judicial precedents of the Hon’ble Supreme Court, emphasizing that the right to legal representation is a constitutional guarantee flowing from Articles 21 and 39A of the Constitution, the appellant in the present case remained undefended in any meaningful sense for almost the entirety of the trial. The absence of cross-examination of 13 out of 15 prosecution witnesses, including all the material witnesses, has rendered the trial only a mere formality rather than being a fair adjudicatory process for all the parties concerned.



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33. *To reiterate*, this Court is of the opinion that the trial court record clearly reflects that the learned Amicus Curiae appointed by the learned Trial Court either remained absent, sent proxy counsel, or chose not to cross-examine the prosecution witnesses. Such representation, if it can be called so, was only *pro forma* and cannot be said to have satisfied the mandate of Section 304 of Cr.P.C. also – which provides for legal aid to an accused on State expense – or the constitutional obligation of ensuring a fair trial. The consequences of these omissions are grave, for the conviction recorded by way of impugned judgment is not founded on tested evidence but on the unchallenged testimonies of the witnesses, apparently suffering from certain contradictions, the credibility of which could never be questioned by way of cross-examination.

34. Since apart from denial of effective legal aid, the prosecution case itself suffers from several unexplained discrepancies and contradictions, it would be wholly unsafe to sustain the conviction of the appellant, particularly when the trial itself was conducted in breach of the fundamental safeguards guaranteed to an accused under law.

35. Moreover, in the present case, remanding back the matter for retrial, owing to lack of effective legal representation, is also neither feasible nor appropriate. The FIR in this case was registered in the year 2005, the conviction was recorded in 2006, and the appeal has been pending before this Court since 2007. The appellant was



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sentenced to undergo seven years' rigorous imprisonment, out of which he has already undergone four years and nine months in custody, besides having earned remission of about one year and three months. Thus, the unexpired portion of the sentence remains only about eleven and a half months. At this stage, remanding back the matter and prolonging the ordeal of the appellant, who has already faced the agony of trial and appeal for nearly two decades, would be wholly unjust and unfair.

36. Therefore, in view of the above discussion, and keeping in mind the constitutional mandate of ensuring a fair trial, this Court is of the considered view that the conviction and sentence of the appellant cannot be sustained.

37. Accordingly, the impugned judgment of conviction and order on sentence are hereby set aside.

38. The appellant is acquitted of all charges. Bail bond, if any, stands cancelled; surety stands discharged.

39. Accordingly, the appeal is allowed in above terms.

40. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

SEPTEMBER 24, 2025/ns

T.D./T.S.