Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs.62-63 OF 2014

ANOKHILAL …Appellant

VERSUS

STATE OF MADHYA PRADESH …Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. These appeals by special leave challenge the final judgment and order dated 27.06.2013 passed by the High Court[1] in Criminal Reference No.4 of 2013 and Criminal Appeal No.748 of 2013.

2. The relevant facts for the purposes of these appeals, in brief, are as under:

1 The High Court of Madhya Pradesh at Jabalpur

(A) On 30.01.2013 a missing report was lodged by one Ramlal that his daughter (hereinafter referred to as 'the victim') aged about nine years was missing since 6 pm and that the appellant, his neighbour had sent the victim to get a *bidi* from a *kirana* shop but the victim never returned back. Pursuant to this reporting, FIR No.38 of 2013 was registered on 30.01.2013 with Police Station Chaigaon Makhan, Khandwa for offences under Sections 363, 366 of the Indian Penal Code.1860 ('IPC', for short) against the appellant.

(B) The body of the victim was found in an open field on 01.02.2013.

(C) The appellant was arrested on 04.02.2013, and after completion of investigation charge-sheet was filed on 13.02.2013 in the concerned court and the case was committed to Sessions Court on 18.2.2013. The case was posted for 19.02.2013 to consider whether charges be framed or not.

(D) It appears that since no Advocate had entered appearance on behalf of the appellant, on 18.02.2013 a learned Advocate was appointed by the Legal Aid Services Authority to represent the appellant on 19.02.2013. That learned Advocate, however, did not

appear on 19.02.2013 when the case was taken up, and as such another learned Advocate came to be appointed through Legal Aid Services to represent the appellant. Such appointment was done on 19.02.2013 and on the same day the charges were framed against the appellant for the offences punishable under Sections 302, 363, 366, 376(2)(f) and 377 IPC and under Sections 4, 5 and 6 of Protection of Children from Sexual Offences Act, 2012.

(E) In the next seven days i.e. by 26.2.2013, all thirteen prosecution witnesses were examined.

(F) Thereafter, the case was dealt with on 27.2.2013, 28.2.2013, 1.3.2013, 2.3.2013 and 4.3.2013 and the orders passed by the Trial Court were :-

> "**(i) 27.02.2013**
>
> State through Shri B.L. Mandloi P.P.
>
> Accused Anokhilal present from judicial custody. Shri D.S. Chauhan advocate present on his behalf.
>
> The prosecution filed application together with letter of District Prosecution Officer and with copy of warrant etc documents. Copies are supplied. The defense has no objection in taking above documents on record, hence considering the reasons of as explained for delay the application is liable to be accepted and above documents are taken on record.

The prosecution stated that it does not want to produce any other oral evidence it has been requested that DNA report and FSL report will be placed on record as and when they are received, which is immediately to be received, not any other oral evidence are to be adduced and besides placing on record above report, rest of evidence was declared to be ended.

It would be just and proper to examine accused under Section 313 Cr.P.C. for evidence available. Hence, accused examined under Section 313 Cr.P.C. On entering in defense, the accused stated that he does not want to adduce any evidence in defense. Not any written statement under Section 232 (2) Cr.P.C. has been filed.

Put up on 28.02.2013 for placing on record DNA report etc and final arguments.

Sd/- (illegible)
Sessions Judge and Special Judge
Under Protection of Children from Sexual Offences Act,
Khandwa

(ii) <u>28.02.2013</u>

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan advocate present on his behalf.

An application was filed on behalf of prosecution with FSL reports. Copies supplied. Heard arguments.

Since there is no effective objection regarding allowing above application and taking on record above FSL report and even otherwise these may be helpful in providing justice, hence reports are taken on record.

Above reports may be acceptable under Section 293 Cr.P.C., on this basis it was requested to mark exhibit on above reports. Defense has not raised any objection in this regard, hence with consent of both the parties above reports presented by Regional Forensic Science Laboratory Jhumarghat Rau Indore (M.P.) are marked as ext. C-1, C-2 and C-3.

The prosecution has not yet received DNA report, the same will be placed on record as and when it is received, saying such like earlier it was stated that any other evidence is not to be produced, hence hearing final arguments in case started, which remained incomplete.

Put up on 01.03.2013 for placing on record DNA report and rest final arguments.

Sd/-
Sessions Judge Khandwa

(iii) <u>01.03.2013</u>

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan advocate present on his behalf.
The prosecution has not received DNA report, same will be placed on record on receipt.

Hearing of rest of final arguments started which remained incomplete.

Put up on 02.03.2013 for placing on record DNA report and rest of final arguments.

Sd/-
Sessions Judge
Khandwa

(iv) <u>02.03.2013</u>

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan advocate present on his behalf.

The accused is being tried under Section 9 of Protection of Children from Sexual Offences Act, 2012 and according to Provisions of Section 5 (f) of above Act, the situation of previous conviction for the sexual offence under Section 377 IPC is also clear and above fact has found mention in charge No.8 framed in earlier with intention that despite being previously convicted for sexual offence under Section 377 IPC but in above charge date time and place etc is not mentioned regarding conviction according to provisions of Section 211 (7) Cr.P.C. Hence, as is provided under Section 211 (7) Cr.P.C. the Court before passing order of conviction may add statement of fact, date and place of conviction, hence in this regard both the parties were heard. In earlier the copy of judgment of previous conviction was not filed due to which date, place etc were not mentioned in charge and during examination under Section 313 Cr.P.C. in question No.14 in this regard by giving reference of copy of judgment together with date, time and place etc conviction was passed and appeal was filed or not in this regard clear questions were asked, hence it also does not reflect that any prejudice has been caused to accused nevertheless to avoid technical fault, according to provisions of Section 211 (7) Cr.P.C. charge was modified and amended charge was read over and explained to accused and his plea was recorded.

Giving opportunity of additional evidence/cross examination to both parties regarding amended charge would be just and proper, in this regard both the parties were intimated.

Prosecution today by placing on record certain additional documents articles etc. led additional

evidence and application under Section 311 Cr.P.C. has been filed. Besides this, he stated not to adduce any other additional evidence in regard to amendment in charge. On the other hand defense also in this regard stated not to conduct cross examine any witness already examined and also stated not to furnish any additional evidence or evidence in defense.

The prosecution presented articles relating to case in sealed condition and an application with documents was filed under Section 311 Cr.P.C. Copy supplied. Arguments heard.

It is proposed to file received DNA report and correspondent of FSL/DNA and in above regard also request has been made to re-examine Investigating Officer K.K. Mishra (PW-13) and Head Constable Harikaran PW-12 and accordingly, permission has been sought.

It has been stated that concerned document and report since were received in delay and it was filed as earliest and by virtue of this correspondence relating to above are being filed now. It is mentioned that DNA report was received on 01.03.2013 itself hence considering the reason so disclosed during arguments defense has not raised any effective objection hence, application stands allowed and concerned documents are taken on record and witness K.K. Mishra PW-13 and Hari Karan PW-12 are permitted to be re-examined.

It has been stated by the public prosecutor that above witnesses are present today, hence, above both the witnesses were additionally examined with consent of defense and they were discharged after re-examination. Prosecution stated not to adduce any other evidence as such closed its evidence.

The packet of article so filed is in sealed condition, which was opened in presence of both the parties. After evidence let same be deposited in malkhana by duly sealing with memo of property.

In regard to additional evidence so adduced accused was re-examined under Section 313 Cr.P.C. and again on entering in defense, the accused stated not to adduce any evidence in defense nor any written statement was filed under Section 232(2) Cr.P.C. and as such defense closed its evidence. Put up again for final arguments.

Sd/-
Sessions Judge and Special Judge
Under Protection of Children from Sexual Offences Act, Khandwa

Again

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, Advocate present on his behalf.

Heard final arguments. Put up on 04.03.2013 for judgment.

Sd/-
Sessions Judge and Special Judge
Under Protection of Children from Sexual Offences Act, khandwa

(v) 4.3.2013

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, advocate present on his behalf.
The judgment pronounced and signed separately in open court, according to which accused was convicted under Section 363, 366, 377, 376(2)(f) and Section 302 IPC read with Section 6 of Protection of Children from Sexual Offences Act, 2012.

Arguments were heard on the question of sentence. It was informed to both the parties that if they wish, they may adduce evidence regarding order of sentence.
It was stated by the prosecution that due to framing charge under Section 211(7) Cr.P.C. regarding previous conviction of accused, it has already adduced evidence at evidence stage regarding previous conviction of accused and his previous criminal conduct, hence now he does not want to adduce evidence regarding conviction.
On the other hand, learned counsel for the defense Shri D.S. Chauhan he has stated that during whole trial not any member of family of accused has appeared and in regard to his conduct in jail the prosecution itself has already adduced certificate etc. hence he stated not to adduce any evidence regarding order of sentence, nevertheless both the parties were informed that if they wish to adduce any evidence in this regard, then they may do so. By giving above information to both the parties, detailed arguments were heard regarding order of sentence.
Put up again after some time for order of sentence.

Sd/-
Sessions Judge and special Judge
Under Protection of Children from Sexual Offences Act, Khandwa

Again

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan, Advocate present on his behalf.

Both the parties again stated not to adduce any evidence regarding order of sentence, hence order of sentence was pronounced separately in open court according to which accused is convicted and sentenced as follows regarding charges:

No.	Offence U/s	Sentence of rigorous imprisonment	Fine	In default of payment of fine, additional sentence of rigorous imprisonment
1.	302 IPC	Death Sentence	-	-
2.	363 IPC	Seven years	1000/-	One month
3.	366 IPC	Seven years	1000/-	One month
4.	377 IPC	Seven years	1000/-	One month
5.	376(2) IPC	Life imprisonment	1000/-	One month

Due to being similar act, no separate sentence is being awarded for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012.

By preparing warrant of conviction in this regard let accused be sent to jail.

The accused has been sentenced to death also and in above regard according to Section 366 Cr.P.C. it has also been directed that death penalty be not executed so long as it is not confirmed by the Hon'ble High Court, hence in that regard according to provision of Section 366(2) Cr.P.C. warrant of handing over accused sentenced to death to taken in custody of jail, is attached separately with warrant. Copy of judgment is given to accused and according to provisions of section 363 (4) Cr.P.C. accused is informed that he has right to appeal and period of appeal.

Let entire record of this case be sent for placing before the Hon'ble High Court forthwith for confirmation of death penalty as per provisions of Section 366 Cr.P.C.

Sd/-
Sessions Judge and Special Judge
Under Protection of Children from Sexual Offences Act, Khandwa

(G) In its judgment and order dated 4.3.2013, the Trial Court accepted the case of the prosecution and stated:-

"65. From above analysis it is clear that present case having similar facts like judicial citation of Rajendra Prahladrao Vasnic is in the category of 'rarest of rare' case and excess to that in the present case accused is previous convict in sexual offence of similar nature. Hence, in view of above analysis imposing punishing of only imprisonment for life cannot be adequate and death sentence is necessary.

66. Accused Anokhilal son of Sitaram has been convicted in charge of offence punishable under Section 363, 366, 376(2)(f), 377 and 302 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 hence, according to analysis so done:

(one) for the offence under Section302 IPC accused Anokhilal son of Sitaram is awarded 'death sentence'. By tying knot in neck, he be hanged till his death. It is also directed that above death sentence be not executed unless it is confirmed by the Hon'ble High Court.

(two) For the offence under Section 363 IPC the accused is sentenced to seven years rigorous imprisonment with fine of Rs.1000/-, in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(three) For the offence under Section 366 IPC, the accused is sentenced to seven years rigorous imprisonment with fine of Rs.1,000/-, in default of payment of fine, the accused is directed to undergo another one month rigorous imprisonment.

(four) For the offence under Section 376 (2)(f) IPC the accused is sentenced to imprisonment for life with fine of Rs.1000/-, in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(five) For the offence under Section 377 IPC the accused is sentenced to imprisonment for seven years with fine of Rs.1,000/- in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(Six) Considering the provisions of Section 42 of Act, where for similar act the accused has been convicted under the sections of Act and IPC, then he should be sentenced for the offences having larger punishment and in this regard principle of Section 71 IPC is also perusable and in Section 376(2)(f) IPC and in Section 6 of the Act, there is provision of punishment for imprisonment for life and minimum sentence of 10 yrs rigorous imprisonment and for similar act, order of sentence is being passed for the offence under Section 376(2) (f) and Secton 377 IPC also, hence separate order of sentence for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 is not being passed.

All the sentences of imprisonment shall run concurrently.

67. The accused is in detention since 04.02.2013 hence, let certificate of the period undergone by him in detention during trial be attached with warrant as per provisions section 428 Cr.P.C. which may be used for setting off under Section 428 Cr.P.C. or as per requirement for computing sentence as provided in Section 433 Cr.P.C.

68. On payment of fine, entire amount of fine means Rs.4000/- unless otherwise directed, after expiry of period of appeal be paid to Shantubai PW-3 mother of deceased as compensation.

69. According to provisions of Section 366 Cr.P.C. let entire records and proceeding of the case be placed before the Hon'ble High Court, Jabalpur for confirmation of death sentence and death sentence be not executed till it is confirmed by the Hon'ble Madhya Pradesh High Court and for keeping accused in custody in above period let he be handed over with warrant in above regard for jail custody.

70. I appreciate for assistance of all where in regard to incident which happened in mid night of 30-31 January, after arrest of accused on 04.02.2013, completing investigation immediately charge-sheet was submitted on 18th February and to prosecution which ensured quick trial by placing entire evidence from 19 February to 02 March, 2013 and specially for assistance of defence because disposal of case is ensured within only 1 month of incident only because of above assistance and completing trial only in 12 working days could be possible."

(H) Criminal Reference No.4/2013 was accordingly registered in the High Court for confirmation of death sentence. The appellant also preferred Criminal Appeal No.748 of 2013 challenging his conviction

and sentence. The High Court by its judgment and order presently under appeal, affirmed the view taken by the Trial Court and upheld the death sentence and other sentences imposed by the Trial Court. It was observed by the High Court as under:-

> "8. ……. The victim was, thus, last seen alive with the accused by Kirti Bai whose evidence discloses that the victim and accused were seen together at the point of time in proximity with the time and date of the commission of crime. Also after the incident no one saw the accused alone because he had absconded. We are, therefore, of the view that the prosecution has successfully established the last seen theory beyond any reasonable doubt against the accused.
>
> 9. We also find that the report, Ex.58, of the DNA Finger Printing Unit completely connects the accused with the commission of crime. The report clearly states that the hairs seized from the fist of victim and the skin found in the cut-nails of victim belonged to the accused. The report further states that the semen found on the paijama of victim was of the accused. Not only this, according to the report, blood found on the underwear of accused was of the victim. The cremation of the body of victim was done on 1.2.2013 whereas the accused was arrested on 4.2.2013. There was, therefore, no possibility of the blood of victim having been put on the seized underwear of the accused.
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> … … …
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> 11. The evidence on record clearly establishes that the accused was close to the family of Ramlal and the victim trusted him. She, therefore, on his asking immediately rushed to buy "bidi" for him from a kirana shop. The accused then followed the victim

> with a premeditated mind to commit the crime. The accused, taking advantage of the trust of victim, after kidnapping and subjecting her to brutal rape and carnal sex most gruesomely throttled her to death. The numerous injuries on the body of victim testify this fact. He even dumped the body of victim in the field. Earlier also, the accused was convicted vide judgment dated 21.10.2010, Ex.49, for committing carnal sex with a small boy. Thus, an innocent hapless girl of nine years was subjected to a barbaric treatment showing extreme depravity and arouses a sense of revulsion in the mind of a common man. We feel that the crime committed satisfies the test of "rarest of rare" cases. We, therefore, uphold the death sentence and also other sentences imposed by the trial court."

3. During the pendency of these appeals in this Court, it was observed by this Court in its Order dated 12.12.2018 as under:-

> "One of the issues that has arisen in the present case is compliance with the statutory timeframe fixed by proviso to Section 309(1)of the Cr.P.C.(as amended in 2018). That Section provides a time limit of 60 days within which the trial is supposed to be completed. In this context, we consider it appropriate to explore the possibility of using video-conferencing for the purpose of recording evidence since it is believed that such use will eliminate the time taken for summoning the witnesses to Court.
>
> However, an apprehension is expressed at the Bar that the video-conferencing facility is not always available throughout the trial in various parts of the country and in the present state of the art, it cannot be wholly relied on. Since, this appears to be surmountable, we consider it appropriate to hear National Informatics Centre (NIC) and Department of Justice in the matter. Accordingly, issue notice … …"

4. When these appeals came up for final hearing, certain issues were highlighted by Mr. Siddharth Luthra, learned Senior Advocate who appeared for the appellant on behalf of the Supreme Court Legal Services Authority. According to him, the way the trial was conducted, there was no fairness at all and the interest of the appellant-accused was put to prejudice on more than one count. The principal submission was recorded in the order dated 10.12.2019 passed by this Court as under:-

> "In the submission of the learned Senior Counsel, following aspects are, therefore, very clear:
>
> a) The learned Amicus Curiae came to be appointed the same day when the charges were framed, which effectively means that the learned Amicus Curiae did not have sufficient opportunity to study the matter nor did he have any opportunity to have any interaction with the accused to seek appropriate instructions;

The other issues noted in the Order dated 12.12.2018 were referred to but it was observed:-

> "As presently advised, we will deal first with the issue pertaining to the present trial and whether the approach adopted by the Trial Court in the present matter could be accepted or whether there was any infraction or error on the part of the Trial Court in adopting the approach in the present matter. Other issues, namely applicability of Section 309 and advisability of having video-conferencing in the

> matter will be dealt with at a later stage and the consideration of these issues, for the time being, is deferred."

5. The consideration at present is thus confined to the issue as stated above.

6. In support of his submissions, Mr. Sidharth Luthra, learned Senior Advocate, relied upon certain decisions of this court and, particularly, in ***Bashira vs. State of U.P.***[2] and ***Mohd. Hussain Alias Julfikar Ali vs. State (Government of NCT of Delhi)***[3]. Mr. Varun Chopra, Deputy Advocate General appearing for the State, however, submitted that the evidence on record, without any doubt, pointed towards the guilt of the accused and as such the order of conviction recorded by the Courts below was correct and did not call for any interference.

7. In ***Bashira***[2], the Trial Court had fixed 28th February, 1967 as the date for starting the actual trial and, on that very day, before beginning the trial, an *Amicus Curiae* was appointed to represent the accused. On that very day, the Trial Court amended the charge to which the accused pleaded not guilty and two principal prosecution witnesses were examined. The

2 (1969) 1 SCR 32 : AIR 1968 SC 1313
3 (2012) 9 SCC 408

other witnesses were examined on 1st March, 1967 and the accused was also examined under Section 342 of the Code of Criminal Procedure, 1898 (equivalent to Section 313 of the Code of Criminal Procedure, 1973 or "the Code", for short). The case was thereafter fixed on 10th March, 1967 for arguments, on which date the Amicus Curiae presented an application for recall of one of the prosecution witnesses for further cross-examination. The application was rejected. Arguments were then heard on the same day and the judgment was delivered on 13th March, 1967 convicting the accused for the offence under Section 302 IPC and sentencing him to death. In the backdrop of these facts, the submissions of the *Amicus Curiae* appearing in this Court were recorded as under:-

> "2. In this case, the principal ground urged on behalf of the appellant raises an important question of law. Learned counsel appearing for the appellant emphasised the circumstance that the amicus curiae counsel to represent the appellant was appointed by the Sessions Judge on 28th February, 1967, just when the trial was about to begin and this belated appointment of the counsel deprived the appellant of adequate legal aid, so that he was unable to defend himself properly. It was urged that the procedure adopted by the court was not in accordance with law, so that, if the sentence of death is carried out, the appellant will be deprived of his life in breach of his fundamental right under Article 21 of the Constitution which lays down that no person shall be deprived of his life or personal liberty, except according to procedure established by law."

The submissions were dealt with as under:-

> "8. There is nothing on the record to show that, after his appointment as counsel for the appellant, Sri Shukla was given sufficient time to prepare the defence. The order-sheet maintained by the Judge seems to indicate that, as soon as the counsel was appointed, the charge was read out to the accused and, after his plea had been recorded, examination of witnesses began. The counsel, of course, did his best to cross-examine the witnesses to the extent it was possible for him to do in the very short time available to him. It is true that the record also does not contain any note that the counsel asked for more time to prepare the defence, but that, in our opinion, 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. In this case, the record seems to show that the trial was proceeded with immediately after appointing the amicus curiae counsel and that, in fact, if any time at all was granted, it was nominal. In these circumstances, it must be held that there was no compliance with the requirements of this Rule.
>
> 9. In this connection, we may refer to the decisions of two of the High Courts where a similar situation arose. In *Re*: *Alla Nageswara Rao, Petitioner*[4] reference was made to Rule 228 of the Madras Criminal Rules of Practice which provided for engaging a pleader at the cost of the State to defend an accused person in a case where a sentence of death could be passed. It was held by Subba Rao, Chief Justice as he then was, speaking for the Bench, that:

4 AIR 1957 AP 505

> "a mere formal compliance with this Rule will not carry out the object underlying the Rule. A sufficient time should be given to the advocate engaged on behalf of the accused to prepare his case and conduct it on behalf of his client. We are satisfied that the time given was insufficient and, in the circumstances, no real opportunity was given to the accused to defend himself".

This view was expressed on the basis of the fact found that the advocate had been engaged for the accused two hours prior to the trial. In *Mathai Thommen* v. *State*[5] the Kerala High Court was dealing with a Sessions trial in which the counsel was engaged to defend the accused on 2nd August, 1958, when the trial was posted to begin on 4th August, 1958, showing that barely more than a day was allowed to the counsel to get prepared and obtain instructions from the accused. Commenting on the procedure adopted by the Sessions Court, the High Court finally expressed its opinion by saying:

> "Practices like this would reduce to a farce the engagement of counsel under Rule 21 of the Criminal Rules of Practice which has been made for the purpose of effectively carrying out the duty cast on courts of law to see that no one is deprived of life and liberty without a fair and reasonable opportunity being afforded to him to prove his innocence. We consider that in cases like this counsel should be engaged at least some 10 to 15 days before the trial and should also be furnished with copies of the records."

In our opinion, no hard and fast rule can be laid down as to the time which must elapse between the appointment of the counsel and the beginning of the

5 AIR 1959 Kerala 241

> trial; but, on the circumstances of each case, the Court of Session must ensure that the time granted to the counsel is sufficient to prepare for the defence. In the present case, when the counsel was appointed just before the trial started, it is clear that there was failure to comply with the requirements of the rule of procedure in this behalf.
>
> (Emphasis by us)

It was also stated that the violation of the mandate of the concerned Rule would amount to breach of rights conferred by Article 21 of the Constitution as under:

> "In these circumstances, conviction of the appellant in a trial held in violation of that Rule and the award of sentence of death will result in the deprivation of his life in breach of the procedure established by law."

The operative part of the decision was :-

> "As a consequence, we set aside the conviction and sentence of the appellant. Since we are holding that the conviction is void because of an error in the procedure adopted at the trial, we direct that the appellant shall be tried afresh for this charge after complying with the requirements of law, so that the case is remanded to the Court of Session for this purpose."

8. In ***Hussainara Khatoon and others (IV) v. Home Secretary, State of Bihar, Patna***[6] it was observed as under:

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6 (1980) 1 SCC 98

> **"7.** We may also refer to Article 39-A the fundamental constitutional directive which reads as follows:
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> > "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." (emphasis added)
>
> This article also emphasises that free legal service is an unalienable element of "reasonable, fair and just" procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of "reasonable, fair and just", procedure for a person accused of an offence and it must be held 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. ……."

9. The developments in the matter of providing free Legal Aid as translated in various schemes and dealt with in the decisions of this Court,

were noted in ***Rajoo Alias Ramakant*** v. ***State of Madhya Pradesh***[7] as under:

> **"6.** By the Forty-second Amendment to the Constitution, effected in 1977, Article 39-A was inserted. This article provides for free legal aid by suitable legislation or schemes or in any other manner, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
>
> **7.** Article 39-A of the Constitution reads as follows:
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> > "**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."
>
> **8.** Subsequently, with the intention of providing free legal aid, the Central Government resolved (on 26-9-1980) and appointed the "Committee for Implementing the Legal Aid Schemes". This Committee was to monitor and implement legal aid programs on a uniform basis throughout the country in fulfilment of the constitutional mandate.
>
> **9.** Experience gained from a review of the working of the Committee eventually led to the enactment of the Legal Services Authorities Act, 1987 (for short "the Act").

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7 (2012) 8 SCC 553

10. The Act provides, inter alia, for the constitution of a National Legal Services Authority, a Supreme Court Legal Services Committee, State Legal Services Authorities as well as Taluk Legal Services Committees. Section 12 of the Act lays down the criteria for providing legal services. It provides, inter alia, that every person who has to file or defend a case shall be entitled to legal services, if he or she is in custody. Section 13 of the Act provides that persons meeting the criteria laid down in Section 12 of the Act will be entitled to legal services provided the authority concerned is satisfied that such person has a prima facie case to prosecute or defend.

11. It is important to note in this context that Sections 12 and 13 of the Act do not make any distinction between the trial stage and the appellate stage for providing legal services. In other words, an eligible person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending. In fact the Supreme Court Legal Services Committee provides legal assistance to eligible persons in this Court. This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate. It is also important to note that in view of the constitutional mandate of Article 39-A, legal services or legal aid is provided to an eligible person free of cost.

Decisions of this Court

12. Pending the enactment of the Legal Services Authorities Act, the issue of providing free legal services or free legal aid or free legal representation (all terms being understood as synonymous) came up for consideration before this Court.

13. Among the first few decisions in this regard is *Hussainara Khatoon (4)* v. Home Secretary, *State of*

Bihar, Patna[6]. In that case, reference was made to Article 39-A of the Constitution and it was held that (SCC p. 105, para 7) free legal service is an inalienable element of "'reasonable, fair and just', procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 [of the Constitution]". It was noted that: "This is a constitutional right of every accused person who is unable to engage a lawyer and secure [free] legal services on account of reasons such as poverty, indigence or incommunicado situation." It was held that 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, subject of course to the accused person not objecting to the providing of a lawyer.

14. The essence of this decision was followed in *Khatri and others (II)* v. *State of Bihar*[8]. In that case, it was noted that the Judicial Magistrate did not provide legal representation to the accused persons because they did not ask for it. This was found to be unacceptable. This Court went further and held that it was the obligation of the Judicial Magistrate before whom the accused were produced to inform them of their entitlement to legal representation at State cost. In this context, it was observed that the right to free legal services would be illusory unless the Magistrate or the Sessions Judge before whom the accused is produced informs him of this right. It would also 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 thereby rendering the constitutional mandate a mere paper promise.

15. *Suk Das* v. *Union Territory of Arunachal Pradesh*[9] reiterated the requirement of providing free and adequate legal representation to an indigent person and a person accused of an offence. In that case, it

8 (1981) 1 SCC 627
9 (1986) 2 SCC 401

was reiterated that an accused need not ask for legal assistance—the Court dealing with the case is obliged to inform him or her of the entitlement to free legal aid. This Court observed that (SCC p. 407, para 5) it was now

> "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 the Constitution]".

16. Since the requirements of law were not met in that case, and in the absence of the accused person being provided with legal representation at State cost, it was held that there was a violation of the fundamental right of the accused under Article 21 of the Constitution. The trial was held to be vitiated on account of a fatal constitutional infirmity and the conviction and sentence were set aside.

17. We propose to briefly digress and advert to certain observations made, both in *Khatri (2)*[8] and *Suk Das*[9] In both cases, this Court carved out some exceptions in respect of grant of free legal aid to an accused person. It was observed that: (SCC p. 632, para 6)

> "*6.* … 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 services need not be provided by the State."

We have some reservations whether such exceptions can be carved out particularly keeping in mind the

> constitutional mandate and the universally accepted principle that a person is presumed innocent until proven guilty. If such exceptions are accepted, there may be a tendency to add some more, such as in cases of terrorism, thereby diluting the constitutional mandate and the fundamental right guaranteed under Article 21 of the Constitution. However, we need not say anything more on this subject since the issue is not before us.
>
> **18.** The above discussion conclusively shows that this Court has taken a rather proactive role in the matter of providing free legal assistance to persons accused of an offence or convicted of an offence."

10. In ***Mohd. Hussain @ Julfikar Ali*** v. ***State (Government of NCT of Delhi)***[3] one of the submissions advanced on behalf of the accused was that he was denied right of a counsel and thus was not given fair and impartial trial. H.L. Dattu, J. (as the learned Chief Justice then was) in para 7 of his decision quoted orders passed by the Trial Court and in paras 10 to 12 observed that the evidence of 56 witnesses was recorded by the Trial Court without providing a counsel to the appellant-accused. It was stated: -

> **"18.** Section 311 of the Code empowers a criminal court to summon any person as a witness though not summoned as a witness or recall and re-examine any person already examined at any stage of any enquiry, trial or other proceeding and the court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

19. If the appellate court in an appeal from a conviction under Section 386 orders the accused to be retried, on the matter being remanded to the trial court and on retrial of the accused, such trial court retains the power under Section 311 of the Code unless ordered otherwise by the appellate court.

20. In *Machander* v. *State of Hyderabad*[10], it has been stated by this Court that while it is incumbent on the court to see that no guilty person escapes but the court also has to see that justice is not delayed and the accused persons are not indefinitely harassed. The Court further stated that the scale must be held even between the prosecution and the accused.

21. In *Gopi Chand* v. *Delhi Admn*[11], a Constitution Bench of this Court was concerned with the criminal appeals wherein plea of the validity of the trial and of the orders of conviction and sentence was raised by the appellant. That was a case where the appellant was charged for three offences which were required to be tried as a warrant case by following the procedure prescribed in the Criminal Procedure Code, 1898 but he was tried under the procedure prescribed for the trial of a summons case. The procedure for summons case and warrants case was materially different. The Constitution Bench held that having regard to the nature of the charges framed and the character and volume of evidence led, the appellant was prejudiced; the trial of the three cases against the appellant was vitiated and the orders of conviction and sentence were rendered invalid. The Court, accordingly, set aside the orders of conviction and sentence. While dealing with the question as to what final order should be passed in the appeals, the Constitution Bench held as under: (AIR pp. 619-20, para 29)

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10 AIR 1955 SC 792 : (1955) 2 SCR 524
11 AIR 1959 SC 609 : 1959 Crl. L. J. 782

> "*29.* … The offences with which the appellant stands charged are of a very serious nature; and though it is true that he has had to undergo the ordeal of a trial and has suffered rigorous imprisonment for some time that would not justify his prayer that we should not order his retrial. In our opinion, having regard to the gravity of the offences charged against the appellant, the ends of justice require that we should direct that he should be tried for the said offences de novo according to law. We also direct that the proceedings to be taken against the appellant hereafter should be commenced without delay and should be disposed as expeditiously as possible."

22. A two-Judge Bench of this Court in *Tyron Nazareth* v. *State of Goa*[12], after holding that the conviction of the appellant was vitiated as he was not provided with legal aid in the course of trial, ordered retrial. The brief order reads as follows: (SCC p. 322, para 2)

> "*2*. We have heard the learned counsel for the State. We have also perused the decisions of this Court in *Khatri (2)* v. *State of Bihar*[8] and *Sukh Das* v. *UT, Arunachal Pradesh*[9]. We find that the appellant was not assisted by any lawyer and perhaps he was not aware of the fact that the minimum sentence provided under the statute was 10 years' rigorous imprisonment and a fine of Rs 1 lakh. We are, therefore, of the opinion that in the circumstances the matter should go back to the tribunal. The appellant if not represented by a lawyer may make a request to the court to provide him with a lawyer under Section 304 of the Criminal Procedure Code or under any other legal aid

12 1994 Supp (3) SCC 321

> scheme and the court may proceed with the trial afresh after recording a plea on the charges. The appeal is allowed accordingly. The order of conviction and sentence passed by the Special Court and confirmed by the High Court are set aside and a de novo trial is ordered hereby."

23. This Court in *S. Guin* v. *Grindlays Bank Ltd.*[13] was concerned with the case where the trial court acquitted the appellants of the offence punishable under Section 341 IPC read with Section 36-AD of the Banking Regulation Act, 1949. The charge against the appellants was that they had obstructed the officers of the Bank, without reasonable cause, from entering the premises of a branch of the Bank and also obstructed the transaction of normal banking business. Against their acquittal, an appeal was preferred before the High Court which allowed it after a period of six years and remanded the case for retrial. It was from the order of remand for retrial that the matter reached this Court. This Court while setting aside the order of remand in para 3 of the Report held as under: (SCC pp. 655-56)

> "*3.* After going through the judgment of the Magistrate and of the High Court we feel that whatever might have been the error committed by the Magistrate, in the circumstances of the case, it was not just and proper for the High Court to have remanded the case for fresh trial, when the order of acquittal had been passed nearly six years before the judgment of the High Court. The pendency of the criminal appeal for six years before the High Court is itself a regrettable feature of this case. In addition to it, the order directing retrial has resulted in serious prejudice to the appellants. We are of the view that having regard to the

13 (1986) 1 SCC 654

> nature of the acts alleged to have been committed by the appellants and other attendant circumstances, this was a case in which the High Court should have directed the dropping of the proceedings in exercise of its inherent powers under Section 42 of the Criminal Procedure Code even if for some reason it came to the conclusion that the acquittal was wrong. A fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process."

24. The Constitution Bench of this Court in *Abdul Rehman Antulay* v. *R.S. Nayak*[14] considered right of an accused to speedy trial in light of Article 21 of the Constitution and various provisions of the Code. The Constitution Bench also extensively referred to the earlier decisions of this Court in *Hussainara Khatoon (1)* v. *State of Bihar*[15], *Hussainara Khatoon (3)* v. *State of Bihar*[16], *Hussainara Khatoon (4)* v. *State of Bihar*[6] and *Raghubir Singh* v. *State of Bihar*[17] and noted that the provisions of the Code are consistent with the constitutional guarantee of speedy trial emanating from Article 21. In para 86 of the Report, the Court framed guidelines. Sub-paras (9) and (10) thereof read as under: (*Abdul Rehman Antulay case*[14], SCC p. 272)

> "*86*. (*9*) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of

14 (1992) 1 SCC 225
15 (1980) 1 SCC 81
16 (1980) 1 SCC 93
17 (1986) 4 SCC 481

> proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order—including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded—as may be deemed just and equitable in the circumstances of the case.
>
> (*10*) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial."

25. In *Kartar Singh* v. *State of Punjab*[18], it was stated by this Court that no doubt liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution. In that case, the Court was dealing with a case under the TADA Act."

18 (1994) 3 SCC 569

It was thus held that the impugned judgment was required to be reversed and the matter was to be remanded for fresh trial. C.K. Prasad, J. concurred with H.L. Dattu, J. and accepted that the Judgments of conviction and sentence be set aside as the appellant-accused was not given assistance of a lawyer to defend himself during trial. However, in his view, the case was not required to be remanded for fresh trial and the benefit of complete acquittal be given to the appellant-accused.

On this difference of opinion, the matter went to a Bench of three Judges which accepted the view taken by H.L. Dattu, J. and directed *de novo* trial. It was observed[3]:-

> **"15.** Section 304 of the Code mandates legal aid to the accused at State's expense in a trial before the Court of Session where 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.
>
> … … …
>
> **38.** In *Best Bakery case*[19], the Court also made the following observations: (SCC p. 187, paras 38-40)
>
> > "*38*. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead

19 Zahira Habibulla H. Sheikh vs. State of Gujarat – (2004) 4 SCC 158

> 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."

The Bench emphasised that: (*Best Bakery case*[19], SCC p. 192, para 52)

> "*52*. Whether a retrial under Section 386 of the Code or taking up of additional evidence under Section 391 of the Code [in a given case] is the proper procedure will depend on the facts and circumstances of each case for which no straitjacket formula of universal and invariable application can be formulated."

40. "Speedy trial" and "fair trial" to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered."

11. In ***Ankush Maruti Shinde and others vs. State of Maharashtra***[20] the High Court had upheld the conviction and death sentence imposed upon accused nos. 1, 2 and 4 while accused nos. 3, 5 and 6 were sentenced to imprisonment for life. The appeals were preferred by accused nos. 1, 2 and 4 against their conviction and sentence while Criminal Appeal Nos. 881-882 of 2009 were preferred by the State seeking enhancement of sentence of life imprisonment to death sentence in respect of accused nos. 3, 5 and 6. In the Appeals preferred by the State, notice was served upon accused nos. 3, 5 and 6 only on 6.12.2008. However, even before service of such notice, the hearing in respect of all the appeals had begun on 04.12.2008. On 10.12.2008 the learned counsel who was appearing for the accused nos. 1, 2 and 4 was appointed as *Amicus Curiae* to represent accused nos. 3, 5 and 6. The hearing was concluded the same day and the judgment was reserved. By its decision dated 30.04.2009 this Court allowed the Appeals preferred by the State and imposed death sentence upon accused nos. 3, 5 and 6 while confirming the death sentence in respect of accused nos. 1, 2 and 4. All six accused were thus sentenced to death.

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20 (2009) 6 SCC 667

Thereafter, Review Petition (Crl.)Nos.34-35 of 2010 were preferred by accused nos. 1, 2 and 4 while Review Petition (Crl.)Nos.18-19 of 2011 were preferred by accused nos. 3, 5 and 6. While allowing Review Petitions by its Order dated 31.10.2018[21], this Court observed:-

> "From the above narration of facts, it is evident that Accused Nos.3, 5 and 6 had no opportunity to be heard by the Bench, before the appeals filed by the State of Maharashtra for enhancement of sentence were decided. They have been deprived of an opportunity of engaging counsel and of urging such submissions as they may have been advised to urge in defence to the appeals filed by the State for enhancement."

This Court, therefore, recalled the Judgment and order dated 30.04.2009 and the Criminal Appeals were restored to the file of this Court to be considered on merits.

Subsequently, a Bench of three Judges by its decision dated 05.03.2019[22] acquitted the concerned accused of the charges levelled against them. This Court also dismissed the appeals preferred by the State for enhancement of sentence *qua* accused Nos.3, 5 and 6.

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21 Ambadas Laxman Shinde and others vs. State of Maharashtra - (2018) 14 SCALE 730 = (2018) 18 SCC 788

22 2019 SCC Online SC 317 - Ankush Maruti Shinde and others vs. State of Maharashtra

12. In ***Imtiyaz Ramzan Khan vs. State of Maharashtra***[23] it was observed by this Court:-

> "4. We now come to the common feature between these two matters. Mr. Shikhil Suri, learned advocate appeared for the accused in both the matters. On previous dates letters were circulated by the learned advocate appearing for the petitioners that the matters be adjourned so as to enable the counsel to make arrangements for conducting videoconferencing with the accused concerned. The letter further stated that this exercise was made mandatory as per the directions of the Supreme Court Legal Services Committee. This Court readily agreed[24] and adjourned the matters. On the adjourned date, we enquired from Mr. Shikhil Suri, learned advocate whether he could successfully get in touch with the accused concerned. According to the learned advocate he could not get in touch with the accused in the first matter but could speak with his sister whereas in the second matter he could have video conference with the accused.
>
> 5. In our view such a direction on part of the Supreme Court Legal Services Committee is quite commendable and praiseworthy. Very often we see that the learned advocates who appear in matters entrusted by the Supreme Court Legal Services Committee, do not have the advantage of having had a dialogue with either the accused or those who are in the know of the details about the case. This at times seriously hampers the efforts on part of the learned advocates. All such attempts to facilitate dialogue between the counsel and his client would further the cause of justice and make legal aid meaningful. We, therefore, direct all Legal Services Authorities/Committees in every State to extend similar such facility in every criminal case wherever

23 (2018) 9 SCC 160
24 (2018) 9 SCC 163 – Imtiyaz Ramzan Khan vs. State of Maharashtra

> the accused is lodged in jail. They shall extend the facility of videoconferencing between the counsel on one hand and the accused or anybody in the know of the matter on the other, so that the cause of justice is well served."

13. The following principles, therefore, emerge from the decisions referred to hereinbove:-

a) Article 39-A inserted by the 42nd amendment to the Constitution, effected in the year 1977, provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The statutory regime put in place including the enactment of the Legal Services Authorities Act, 1987 is designed to achieve the mandate of Article 39-A.

b) It has been well accepted that Right to Free Legal Services is an essential ingredient of '*reasonable, fair and just*' procedure for a person accused of an offence and it must be held implicit in the right guaranteed by Article 21. The extract from the decision of this Court in ***Best Bakery case***[19] (as quoted in the decision in ***Mohd. Hussain***[3]) emphasizes that the object of criminal trial is to search for the truth and

the trial is not a bout over technicalities and must be conducted in such manner as will protect the innocent and punish the guilty.

c) Even before insertion of Article 39-A in the Constitution, the decision of this Court in ***Bashira***[2] put the matter beyond any doubt and held that the time granted to the *Amicus Curiae* in that matter to prepare for the defense was completely insufficient and that the award of sentence of death resulted in deprivation of the life of the accused and was in breach of the procedure established by law.

d) The portion quoted in ***Bashira***[2] from the judgment of the Madras High Court authored by Subba Rao, J., the then Chief Justice of the High Court, stated with clarity that mere formal compliance of the rule under which sufficient time had to be given to the counsel to prepare for the defense would not carry out the object underlying the rule. It was further stated that the opportunity must be real where the counsel is given sufficient and adequate time to prepare.

e) In ***Bashira***[2] as well as in ***Ambadas***[21], making substantial progress in the matter on the very day after a counsel was engaged as *Amicus Curiae*, was not accepted by this Court as compliance of '*sufficient opportunity*' to the counsel.

14. In the present case, the *Amicus Curiae*, was appointed on 19.02.2013, and on the same date, the counsel was called upon to defend the accused at the stage of framing of charges. One can say with certainty that the *Amicus Curiae* did not have sufficient time to go through even the basic documents, nor the advantage of any discussion or interaction with the accused, and time to reflect over the matter. Thus, even before the *Amicus Curiae* could come to grips of the matter, the charges were framed.

The concerned provisions viz. Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted therewith, 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

just a routine affair, the right under the said provisions stood denied to the appellant.

15. In our considered view, the Trial Court on its own, ought to have adjourned the matter for some time so that the *Amicus Curiae* could have had the advantage of sufficient time to prepare the matter. The approach adopted by the Trial Court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful.

16. There are other issues which also arise in the matter namely that the examination of 13 witnesses within seven days, the examination of the accused under the provisions of the Section 313 of the Code even before the complete evidence was led by the prosecution, and not waiting for the FSL and DNA reports in the present case. DNA report definitely formed the foundation of discussion by the High Court. However, the record shows that the DNA report was received almost at the fag end of

the matter, and after such receipt, though technically an opportunity was given to the accused, the issue on the point was concluded the very same day. The concluding paragraphs of the judgment of the Trial Court show that the entire trial was completed in less than one month with the assistance of the prosecution as well as the defense, but, such expeditious disposal definitely left glaring gaps.

17. In ***V.K. Sasikala vs. State Represented by Superintendent of Police***[25] a caution was expressed by this Court as under:-

> "23.4 While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well-entrenched principles of law that have been laboriously built by illuminating judicial precedents are sacrificed or compromised. In no circumstance, can the cause of justice be made to suffer, though, undoubtedly, it is highly desirable that the finality of any trial is achieved in the quickest possible time."

18. Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the

25 (2012) 9 SCC 771

pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.

19. In the circumstances, going by the principles laid down in ***Bashira***[2], we accept the submission made by Mr. Luthra, the learned *Amicus Curiae* and hold that the learned counsel appointed through Legal Services to represent the appellant in the present case ought to have been afforded sufficient opportunity to study the matter and the infraction in that behalf resulted in miscarriage of justice. In light of the conclusion that we have arrived at, there is no necessity to consider other submissions advanced by Mr. Luthra, the learned A*micus Curiae*.

All that we can say by way of caution is that in matters where death sentence could be one of the alternative punishments, the courts must be completely vigilant and see that full opportunity at every stage is afforded to the accused.

20. We, therefore, have no hesitation in setting aside the judgments of conviction and orders of sentence passed by the Trial Court and the High Court against the appellant and directing *de novo* consideration. It shall be open to the learned counsel representing the appellant in the Trial Court to make any submissions touching upon the issues (i) whether the charges framed by the Trial Court are required to be amended or not; (ii) whether any of the prosecution witnesses need to be recalled for further cross-examination; and (iii) whether any expert evidence is required to be led in response to the FSL report and DNA report. The matter shall, thereafter, be considered on the basis of available material on record in accordance with law.

21. It must be stated that the discussion by this Court was purely confined to the issue whether, while granting free Legal Aid, the appellant was extended real and meaningful assistance or not. The discussion in the matter shall not be taken to be a reflection on the merits of the matter, which shall be considered and gone into, uninfluenced by any observations made by us.

22. 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 learned 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 learned counsel, who is appointed as *Amicus Curiae* on behalf of the accused must normally be granted to have

meetings and discussion with the concerned accused. Such interactions may prove to be helpful as was noticed in ***Imtiyaz Ramzan Khan***[23].

23. In the end, we express our appreciation and gratitude for the assistance given by Mr. Luthra, the learned *Amicus Curiae* and request him to assist this Court for deciding other issues as noted in the Orders dated 12.12.2018 and 10.12.2019 passed by this Court, for which purpose these matters be listed on 18.02.2020 before the appropriate Bench.

24. With the aforesaid observations, the substantive appeals stand disposed of, but the matter be listed on 18.02.2020 as directed.

.....J.
[Uday Umesh Lalit]

.....J.
[Indu Malhotra]

.....J.
[Krishna Murari]

New Delhi;
December 18, 2019.