

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.254 of 2016**

Arising Out of PS. Case No.-56 Year-2014 Thana- PAROO District- Muzaffarpur

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1. Shambhu Nath Singh @ Shambhu Singh son of Raj Keshi Singh
 2. Ravindra Kumar @ Ravindra Singh son of Shambhu Singh
 3. Dharendra Kumar @ Dharendra Singh son of Sri Shambhu Singh
All residents of village-Fatehabad, Police Station-Paroo in the district of Muzaffarpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
For the Respondent/s : Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 20-01-2022

In the instant appeal, the appellants have challenged the judgment of conviction dated 30.01.2016 and order of sentence dated 02.02.2016 passed by the learned Additional Sessions Judge-IX, Muzaffarpur in Sessions Trial No. 787 of 2014 arising out of Paroo P.S. Case No. 56 of 2014 by which they have been convicted for the offences punishable under Sections 302/34, 307, 326, 325, 324 and 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life till death



and a fine of Rs. 1 lac for the conviction under Section 302/34 of the Indian Penal Code and rigorous imprisonment for ten years and a fine of Rs. 50,000/- for the conviction under Section 307 of the India Penal Code and in default of payment of fine to further undergo rigorous imprisonment for three years. However, no separate sentence has been awarded for the conviction under Sections 326, 325, 324 and 323 of the Indian Penal Code.

2. The prosecution case, in short, as disclosed in the *fardbeyan* of Abhinav Kumari @ Gunja Kumari (P.W.11), daughter of Late Baliram Singh, resident of village-Fatehabad, Police Station-Paroo in the district of Muzaffarpur recorded by P.N. Singh (not examined), Sub-Inspector of Police of Ahiyapur Police Station on 14.03.2014 at 10:30 AM at SKMCH, Muzaffarpur is that her deceased father had gone to the field to harvest mustard plant situated at a distance of half kilometer towards South. She herself and her elder sister Amrita Kumari (deceased) along with her younger sister Pushpanjali Kumari had gone to the field carrying breakfast for their deceased father. At about 10.30 AM, her co-sharers, namely, Shambhu Singh, Ravindra Kumar, Dharendra Kumar and Sudha Devi reached to the field being armed with weapons in their hands. They stopped



her father from harvesting mustard plant upon which an altercation took place, whereafter the appellant no. 2 Ravindra Kumar assaulted her father with *farsa* with an intention to kill him and appellant no. 1 Shambhu Singh assaulted him with iron rod. Thereafter, appellant no. 3 Dhirendra Kumar, who was armed with pistol assaulted her father with the butt of the pistol, as a result of which, he became seriously injured. When she and her two sisters tried to save their father, the appellants brutally assaulted her elder sister Amrita Kumari causing fracture of her hand. They also assaulted her younger sister Micky Kumari, as a result of which, she died in the field itself. Thereafter, the appellants proceeded towards her house saying that her mother (P.W.8) should also be finished. They came to her house and mercilessly assaulted her mother with an intention to kill her. On hulla, several persons arrived there and her father was taken to hospital at Paroo. After initial treatment, the doctor referred him to SKMCH. While being taken to SKMCH, her father Baliram Singh died on the way. She herself, her younger sister and her mother are being treated at SKMCH in injured condition.

3. On the basis of the aforesaid oral statement of the informant (P.W.11), the First Information Report (for short the



‘FIR’) was drawn up and Paroo P.S. Case No. 56 of 2014 was registered on 14.03.2014 at 01:00 PM.

4. On completion of investigation, the police submitted a report under Section 173(2) of the Code of Criminal Procedure (for short the ‘Cr.P.C.’) vide charge-sheet no. 37 of 2014 dated 28.05.2014.

5. The FIR named accused Shambhu Singh (appellant no. 1), Ravindra Kumar (appellant no. 2) and Dhirendra Kumar (appellant no. 3) were sent up for trial for the offences punishable under Sections 341, 323, 324, 307, 325, 326, 302 and 504/34 of the Indian Penal Code.

6. On receipt of the charge-sheet, cognizance was taken by the learned Jurisdictional Magistrate vide order dated 18.09.2014 and the case was committed to the Court of Sessions on 25.09.2014.

7. The learned Sessions Judge, Muzaffarpur transferred the case to the Court of Additional Sessions Judge-IX, Muzaffarpur, who explained the charges to the appellants on 20.11.2014 under Sections 323, 324, 341, 325, 326, 307, 302 and 504/34 of the Indian Penal Code.

8. Since the appellants did not plead guilty and claimed to be tried, the trial commenced.



9. In order to establish the charges, the prosecution examined altogether fifteen witnesses between 11.12.2014 and 28.08.2015.

10. After the closure of the prosecution case, the appellants were examined under Section 313 of the Cr.P.C. on 02.09.2015 and the case was fixed for evidence on behalf of the defence. Subsequently, on the same day, an application was filed on behalf of the appellants for granting time to file an application under Section 311 Cr.P.C. for recall of the prosecution witnesses in order to cross-examine them. In the order dated 02.09.2015, however, it is written as application under Section 311 Cr.P.C. Again on 08.09.2015 application under Section 311 Cr.P.C. was filed on behalf of the defence. The said petition was taken up by the Trial Court on 08.09.2015. On that day, an adjournment was sought for on behalf of the prosecution to file a reply to the application preferred on behalf of the appellants under Section 311 Cr.P.C, which was allowed by the court and the hearing of the application was adjourned to 16.09.2015.

11. After hearing the parties on the application dated 08.09.2015 under Section 311 Cr.P.C., the case was adjourned to 17.09.2015 for orders. On 17.09.2015, the said application was rejected and the case was fixed for arguments on 22.09.2015.



12. Subsequently, the impugned judgment of conviction dated 30.01.2016 and order of sentence dated 02.02.2016 was passed.

13. Assailing the impugned judgment of conviction and order of sentence, Mr. Ajay Kumar Thakur, learned counsel for the appellants submitted that the primary object of a criminal justice system is to ensure a fair trial of the accused. According to him, every trial begins with the presumption of innocence in favour of the accused and the provisions of the Cr.P.C. are so framed that a criminal trial should be governed by this essential presumption. He contended that the manner in which the trial was conducted, it is clear that there was no fairness at any stage and the interest of the appellants was put to prejudice on several counts. The order-sheet of the Trial Court would make it evident that at the time of framing of charge, the accused persons were brought from the jail and in presence of the Prosecutor, the appellants were heard and the charges were framed. At that stage, the appellants were not being represented by any counsel. He contended that the order-sheet would further reveal that during the entire trial, the appellants were not being represented by any counsel and the Trial Court did not assign any legal aid for their defence. He urged that though the order-sheet would reveal that P.Ws. 4, 5, 6 and 8 were cross-examined by the



appellants, neither from the testimonies of the witnesses nor from the order-sheet, it would be evident that out of the three appellants, who actually cross-examined those witnesses.

14. Mr. Thakur, learned counsel for the appellants submitted that it was the duty of the Trial Court to inform the accused persons that if they were unable to engage the services of lawyer, they are entitled to obtain legal aid through the District Legal Services Authority. According to him, the conviction of the appellants without informing them that they are entitled to free legal assistance is clearly in violation of the fundamental right guaranteed under Article 21 of the Constitution of India. He urged that since the appellants were not represented by any lawyer and they were not informed that they are entitled to obtain free legal service, their conviction is vitiated and is liable to be set aside.

15. In support of his submissions, Mr. Thakur, learned counsel for the appellants relied upon the judgments of the Hon'ble Supreme Court in **Madhav Hayawadanrao Hoskot v. State of Maharashtra** since reported in [AIR 1978 SC 1548], ***Suk Das and Another v. Union Territory of Arunachal Pradesh*** since reported in [AIR 1986 SC 991], **Mohd. Hussain Alias Zulfikar Ali v. State (Government of NCT of Delhi)**



since reported in [(2012) 2 SCC 584] (for the sake of convenience hereinafter referred to as “Mohd. Hussain I”), **Mohd. Hussain Alias Zulfikar Ali v. State (Government of NCT of Delhi)** since reported in [(2012) 9 SCC 408] (for the sake of convenience hereinafter referred to as “Mohd. Hussain II”) and **Anokhilal v. State of Madhya Pradesh** since reported in [AIR 2020 SC 232].

16. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State submitted that the right of the accused to appear in person before the court has not been infringed in the present case. They were present before the court through out the trial. At all stages, the Trial Court provided them adequate opportunity to cross-examine the witnesses. They themselves cross-examined PWs. 4, 5, 6 and 8 and expressed their unwillingness to cross-examine the other witnesses. She contended that from the record itself, it would also appear that an advocate was appointed by the appellants before the Court of learned Magistrate, but he did not turn up in the court on the dates on which the witnesses were examined. She, however, fairly conceded that in view of the judgments of the Hon’ble Supreme Court on which reliance has been placed by the appellants, the Trial Court ought to have provided legal



assistance of a counsel to the accused-appellants.

17. Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State contended that at this belated stage remanding the matter back to the Trial Court for *de novo* trial would not be in the interest of justice, as it is not known as to whether all the witnesses examined during trial are alive or dead. She submitted that even if they are alive, it would be extremely difficult to procure their attendance after eight years of the incident.

18. We have heard learned counsel for the parties primarily on the issue pertaining to the legality of the present trial. Thus, for the present, we are confined with the issue as to whether the approach adopted by the learned Trial Court in the present matter could be accepted or whether the trial stood vitiated because the appellants were not provided with the legal aid counsel even as they were unable to cross-examine the witnesses themselves.

19. In order to appreciate the rival submissions and the issues involved in the instant case, it would be appropriate to reproduce the translated English version of the relevant orders of the Trial Court, which were mostly recorded in Hindi as under:-



Date	Order
11.12.2014	The three accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 1 Shatrughan Singh has filed his attendance. On call, his examination-in-chief has been conducted. No advocate has entered into appearance on behalf of the accused persons and the accused persons do not want to cross-examine him themselves. Hence, the witness is discharged. Put up on 18.12.2014 for evidence.
18.12.2014	The accused persons are produced from the jail custody. P.W. 2 Ajit Kumar Singh has filed his attendance. His examination-in-chief was conducted. No advocate appeared on behalf of the accused persons to cross-examine the witness. The accused persons informed that he was not available and they refused to cross-examine themselves. The witness is discharged. Put up on 05.01.2015 for evidence.
05.01.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 3 Jitendra Kumar has filed his attendance. His examination-in-chief has been conducted. No advocate appeared on behalf of the defence to cross-examine the witness. The accused persons stated that they have nothing to ask and that their lawyer would cross-examine him. Hence, the witness is discharged. Put up on 16.01.2015 for evidence.
16.01.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 4 Awani Kumar has filed his attendance. His examination-in-chief has been conducted. The accused himself cross-examined the witness. The witness is discharged. Put up on 23.01.2015 for evidence.



23.01.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 5 Shiv Nath Thakur has filed his attendance. His examination-in-chief was conducted. After cross-examination by the accused persons, the witness is discharged. Put up on 02.02.2015 for evidence.
02.02.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 6 Hari Bhushan Singh has filed his attendance. His examination-in-chief was conducted. No advocate appeared on behalf of the defence to cross-examine him and the accused persons stated that they do not have to ask any question. The witness is discharged. Put up on 11.02.2015 for evidence.
11.02.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 7 Bijay Singh has filed his attendance. His examination-in-chief has been conducted. He has been cross-examined by the accused and discharged. Put up on 21.02.2015 for evidence.
21.02.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 8 Saraswati Devi has filed her attendance. She has been fully examined and cross-examined. The witness is discharged. Put up on 02.03.2015 for evidence.
02.03.2015	The accused persons are produced from the jail custody. On behalf of the prosecution, P.W. 9 Pushpanjali Kumari and P.W.10 Harendra Prasad Singh have filed their attendance. On call, PWs-9 and 10 have been examined. No advocate appeared to cross-examine them. The witnesses are discharged. Put up on 11.03.2015 for evidence.



11.03.2015	All the three accused persons are produced from the jail custody. APP filed hajri of P.W. 11 Abhinav Kumari. P.W.11 examined. During the examination, signature of Jitendra Kumar on application is marked as Exhibit-1. Witness discharged. O/c to issue summon upon rest non-examined C.S. witness and issue the same upon I.O. and doctor. Put up on 18.03.2015 for evidence.
18.03.2015	All the three accused persons are produced from the jail custody. P.W. 12 Dhananjay Kumar Singh filed his attendance along with the list of documents. P.W. 12 has been examined. On identification of the witness, the discharge ticket of Micky Kumari was marked as Exhibit-2. The discharge ticket of Gunjan Kumari from SKMCH is marked as Exhibit-2/1. The discharge ticket of Sarawsati Devi is marked as Exhibit-2/2. The C.T. scan report of Micky Kumari dated 10.04.2012 is marked as Exhibit-2/3. The C.T. scan report of Micky Kumari dated 17.12.2014 is marked as Exhibit-2/4 and the C.T. scan report of Micky Kumari dated 14.08.2014 is marked as Exhibit 2/5. Nobody appeared to cross-examine the witness on behalf of the defence. The witness is discharged. Put up on 31.03.2015 for evidence.
31.03.2015	All the three accused persons are produced from the jail custody. The compliance report of the summons issued is unavailable. No witness is in attendance. Put up on 07.04.2015 for evidence.
07.04.2015	All the three accused persons are produced from the jail custody. On behalf of the prosecution, P.W.13 Sujit Kumar has filed his attendance. P.W. 13 has proved the pagination done on the <i>fardbeyan</i>, which has been marked as Exhibit-3. The writing of Parmanand Singh on the <i>fardbeyan</i> has been marked as Exhibit-3/a. The signature



	of Parmanand Singh on the <i>fardbeyan</i> has been marked as Exhibit-3/b. The formal FIR has been marked as Exhibit-4. The signatures of the witnesses on the formal FIR have been marked as Exhibit-4a and Exhibit-4b. An application has been filed by the learned APP that the inquest report is not available on record and the Investigating Officer would produce the inquest report on the next date. Hence, the further examination-in-chief may be deferred. Heard. On account of the application of the learned APP, the further examination-in-chief of the witness is deferred. Put up on 08.04.2015 for further examination-in-chief of P.W.13.
08.04.2015	All the three accused persons are produced from the jail custody. The APP filed hajri of P.W.13 Sujit Kumar and submitted the inquest report. The further examination-in-chief has been conducted. P.W.3 proved inquest report, which has been marked as Exhibit-5. He also proved the writing and signature of Parmanand Singh on the inquest report, which is marked as Exhibit-5/a. Nobody appeared on behalf of the defence to cross-examine the witness. The accused persons stated that they have nothing to ask from the witness. Hence, the witness is discharged. Put up on 16.04.2015 for evidence.
16.04.2015	The Presiding Officer is on leave. All the accused persons are produced from the jail custody. Put up on 18.04.2015.
18.04.2015	The Presiding Officer is on leave. All the accused persons are produced from the jail custody. Put up on 22.04.2015.
22.04.2015	The Presiding Officer is on leave.



	All the accused persons are produced from the jail custody. Put up on 07.05.2015.
07.05.2015	All the accused persons are produced from the jail custody. Hajiri of P.W.14 Dr. Vijay Kumar Prasad has been filed. The witness has been examined. During examination-in-chief, he proved the postmortem report of Baliram Singh, which has been marked as Exhibit-6 and the postmortem report of Amrita Kumari, which has been marked as Exhibit-7. Nobody appeared to cross-examine the witness. Hence, the witness is discharged. On behalf of the prosecution, the application dated 18.04.2015 was pressed. Heard. The application is accepted. The office is directed to issue letter to SKMCH in the light of the application. Put up on 19.05.2015 for evidence.
19.05.2015	All the three accused persons are produced from the jail custody. Wait for reply. Put up on 29.05.2015 for evidence.
29.05.2015	All the three accused persons are produced from the jail custody. Wait for reply. Put up on 09.06.2015 for evidence.
09.06.15	All the three accused persons are produced from the jail custody. O/c to issue reminder for report. Put up on 20.06.2015 for evidence.
19.06.2015	A letter bearing no. 1522 dated 17.06.2015 from the Superintendent of Sri Krishna Medical College & Hospital containing the attested injury report of Micky Kumari, Gunjan Kumari and Saraswati Devi has been received. Put up on record.
20.06.2015	All the three accused persons are produced from the jail custody. Seen the injury report available on record.



	They are photocopies and are not legible. Hence, office is directed to call the original register. Put up on 09.07.2015.
09.07.2015	All the three accused persons are produced from the jail custody. Wait for reply to the letter no. 1142 dated 25.06.2015. Put up on 20.07.2015.
20.07.2015	All the three accused persons are produced from the jail custody. Put up on 31.07.2015 for evidence.
23.07.2015	The injury report register of SKMCH has been received along with the letter no. 1834 dated 22.07.2015. Put up on record and produced it on the fixed date.
31.07.2015	All the three accused persons produced from the jail custody. Office is directed to issue summons to Dr. Ramesh Chandra Singh. Put up on 07.08.2015 for evidence.
07.08.2015	All the three accused persons produced from the jail custody. Office is directed to comply with the order dated 31.07.2015. Put up on 18.08.2015 for evidence.
18.08.2015	All the three accused persons produced from the jail custody. Office is directed to immediately comply with the earlier order. Put up on 28.08.2015 for evidence.
28.08.2015	All the three accused persons produced from the jail custody. On behalf of the prosecution, attendance of P.W. 15 Dr. Ramesh Chandra Singh has been filed. His examination-in-chief was conducted. During his examination-in-chief, he proved the injury reports, which have been marked as Exhibits-8, 8/a, 8/b. The defence declined to cross-examine him. The witness is discharged. At the request of the



	prosecution, the prosecution evidence is closed. Put up on 02.09.2015 for recording the statements of the accused persons under Section 313 Cr.P.C.
02.09.2015	All the three accused, namely, Dhirendra Kumar, Shambhu Nath Singh and Ravindra Kumar from the jail custody. Their statements have been recorded under Section 313 Cr.P.C. Put up on 08.09.2015 for defence evidence. Later, on 02.09.2015, an application has been filed on behalf of the accused persons under Section 311 of the Cr.P.C. Put up on record.
08.09.2015	All the three accused persons produced from the jail custody. The defence has filed an application under Section 311 Cr.P.C. The prosecution has sought for an adjournment in order to file reply, which is accepted. A request has been made on behalf of the prosecution to return the injury register of SKMCH received on 23.07.2015. From perusal of the record, it is evident that the injury report has been marked as exhibit and there is no requirement of the injury register in the case. Hence, the office is directed to send back the injury register to SKMCH. Put up on 16.09.2015 for reply.
16.09.2015	All the three accused persons produced from the jail custody. A reply has been filed on behalf of the prosecution to the application filed on behalf of the defence dated 08.09.2015. Both the parties have been heard on the application dated 08.09.2015. Put up on 17.09.2015 for order.
17.09.2015	An application under Section 311 Cr.P.C. was filed on behalf of the defence on 08.09.2015. A reply to the said application was filed on



	behalf of the prosecution on 16.09.2015 and the case was fixed for orders. Both the parties have been heard. All the three accused persons produced from the jail custody. The defence has filed the application stating therein that the three accused persons, namely, Shambhu Nath Singh, Ravindra Singh and Dharendra Kumar are being tried and after the framing of charge, 14 witnesses have been examined and they have been discharged. The case has become defenceless because of non-appointment of advocate to cross-examine the prosecution witnesses. There is none in the family of the accused persons to do pairvi and no panel lawyer has been provided to them. If no opportunity is given to cross-examine the witnesses, it will prejudice the right of the defence and it will also be gross irregularity. Hence, the application has been filed in order to recall the prosecution witnesses for their cross-examination. An objection petition has been filed on behalf of the prosecution to the application preferred on behalf of the defence wherein it has stated that the application of the defence is not maintainable. Altogether 15 witnesses have already been examined. Out of whom, PWs. 4, 5, 7 and 8 were cross-examined by the accused persons and deliberately the remaining witnesses were not cross-examined. The accused persons had appointed an advocate, who has filed Vakalatnama but deliberately he did not appear to cross-examine the witnesses. The accused persons never expressed their desire that they should be provided with a panel lawyer for their defence. The accused persons had appointed Umesh Prasad Singh as their advocate, who had also filed his Vakalatnama. The instant application has neither been filed by the accused persons nor the advocate appointed by them. Hence,
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	it cannot be taken into consideration. A Similar application was filed on 02.09.2015, which also deserves to be rejected. Hence, the application dated 08.09.2015 filed on behalf of the defence under Section 311 Cr.P.C. be also rejected. Both the parties have been heard. Perused the records. From perusal of the record, it appears that in the instant case, charges were framed against the accused persons under Sections 326/34, 307/34, 302/34, 504/34, 323, 324, 341 and 325/34 of the Indian Penal Code on 20.11.2014. A perusal of the records makes it evident that in the instant case, P.W.1 was examined on 11.12.2014, P.W. 2 was examined on 18.12.2014, P.W. 3 was examined on 05.01.2015, P.W. 4 was examined on 16.01.2015, P.W. 5 was examined on 23.01.2015, P.W. 6 was examined on 02.02.2015, P.W. 7 was examined on 11.02.2015, P.W. 8 was examined on 21.02.2015, P.Ws. 9 and 10 were examined on 02.03.2015, P.W. 11 was examined on 11.03.2015, P.W. 12 was examined on 18.03.2015, P.W. 13 was examined on 07.04.2015 and 08.04.2015 P.W. 14 was examined on 07.05.2015 and P.W. 15 was examined on 28.08.2015. Thereafter, the prosecution evidence was closed on 28.08.2015 and the case was adjourned to 02.09.2015 for recording the statements under Section 313 Cr.P.C. On 02.09.2015, the statements of the accused persons were recorded under Section 313 Cr.P.C. After recording of the statements, an application was filed on behalf of the defence that the witnesses have not been cross-examined, hence, time may be granted to file an application under Section 311 of the Cr.P.C. The case was fixed on 08.09.2015 from before for evidence on behalf of the
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	defence. After the order dated 02.09.2015 was recorded, the application was filed on behalf of the defence on 02.09.2015 itself. Later on, an application was filed on 08.09.2015 on behalf of the defence to recall the prosecution witnesses for cross-examination under Section 311 Cr.P.C. P.Ws. 1, 2 and 3 were not cross-examined by the accused persons. On enquiry about the advocate appointed by the accused persons by the court, the accused persons stated that their lawyer was not available and he will cross-examine the witness when he will come. They stated that we do not have to ask any question. They also stated that after return from Delhi their advocate would cross-examine the witness. P.Ws. 4 and 5 were cross-examined by the accused. Nobody cross-examined Hari Bhushan Singh P.W.-6 and the accused persons stated that they do not have to ask any question from him. P.W. 7 Bijay Singh was cross-examined at length by the accused persons. P.W. 8 was also cross-examined at length. With regard to P.W. 9 the accused persons refused to cross-examine him. Their advocate did not turn up to cross-examine him. P.W. 10 was also cross-examined by the accused persons. With regard to P.W. 11, the accused persons stated that they have cross-examined some witnesses but they did not intend to cross-examine him. With regard to P.Ws. 12 13 and 14 also they stated that they do not intend to cross-examine them. The accused persons did not request for providing a lawyer from the Panel. Some of the witnesses were examined while some of them were not. The application filed on 02.09.2015 and 08.09.2015 bear signature of a lawyer, who has not filed any Vakalatnama. This case is coming on evidence since December 2014. On the one hand the defence says that there is none to do pairvi
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	on their behalf but after closure of prosecution evidence all of a sudden they got all the persons to do pairvi and got advocate, this has been done with a pre-planned and in a pre-meditated manner. Some how or other, the accused persons want recall of witnesses and in case the witnesses fail to appear particularly the official witnesses then their evidence will have no value. The prosecution relied on the judgment of the Hon'ble Supreme Court in the case of A.G. v. Shivkumar Yadav and Other, a judgment delivered on 10th September, 2015. Perused the said judgment. In paragraph-11 thereof it is clearly mentioned that in course of trial not only the accused but the aggrieved party and society be also given adequate opportunity. And in sub paragraph-5 and 6 of paragraph-29 it has been observed that it should be seen that the victim is not harassed and there will be no benefit only because the accused is in defence. In these circumstances, keeping in view the case-law and the facts and circumstances of this case, the application dated 08.09.2015 filed by the defence is rejected. 22.09.2015 is fixed for arguments. 22.09.2015 to 14.01.2016- Matter adjourned for various reasons.
18.01.2016	All the three accused persons are produced from the jail custody. An application is filed on behalf of the defence. The accused persons are in attendance along with their advocates Shri Umesh Prasad Singh and Shri Vijay Kumar Das. When asked to argue, the accused persons stated that they are not able to comprehend what to argue in the matter. Their advocates are also not ready to argue the case. Hence, the accused persons are directed either to argue the case themselves or through their lawyers on



	19.01.2016 (wrongly recorded in the order as 19.01.2015) at 11:30 AM, failing which the case will be fixed for judgment.
On 19.01.2016, when the accused persons were brought from the jail custody for argument, their advocates did not appear. They stated that they will not argue the case. The learned Trial Court adjourn the matter to 20.01.2016 giving the last opportunity to the defence to argue the case. On 20.01.2016 when the accused persons were brought from the jail custody before the court, their advocates did not turn up. The Trial Court has recorded in its order that the accused persons stated that they will not get the case argued and it may be fixed for judgment. Hence, the case was fixed on 30.01.2016 for judgment.	
30.01.2016	The accused Dhirendra Kumar, Shambhu Nath Singh and Ravindra Kumar are produced from the jail custody. No advocate has entered into appearance on their behalf. The accused persons stated that they will not get the case argued and the judgment may be passed. Under such circumstances, the case is adjourned to 30.01.2016 for judgment. The accused persons are remanded back to the jail custody.
Ultimately, on 30.01.2016, vide impugned judgment dated 30.01.2016 and order of sentence dated 02.02.2016 passed by the Trial Court, the appellants were convicted and sentenced.	

20. From the aforesaid orders passed by the learned Trial Court, it would be evident that during the examination of P.Ws. 1 to 15, no advocate defended the case of the appellants. Further, no cross-examination was done by the accused persons of the P.Ws. 1, 2, 3, 6, 9, 10, 11, 12, 13, 14 and 15. It would further appear from the order-sheet that the P.Ws. 4, 5, 7 and 8 were cross-examined by the accused themselves. It has rightly



been pointed out by the learned counsel for the appellants that out of the three accused persons, it is not clear who cross-examined P.Ws. 4, 5, 6 and 8. On perusal of the testimony of the P.Ws. 4, 5, 7 and 8, we find that a few formal questions were asked from them which are not of any relevance. We further find from the record that the appellants were arrested on the date of occurrence itself. Through out the trial, they were in jail and were being produced before the court from jail. On few dates, one of the appellants, may have tried to cross-examine some of the witnesses, but due to lack of knowledge, the said cross-examination was of no use. Right from the inception of the trial, the Trial Court failed to ensure a fair trial to the accused persons.

21. It is well settled that a trial primarily aimed at ascertaining truth has to be fair to all concerned, which includes the accused, the victims and society at large. Each person has a right to be dealt with fairly in a criminal trial. The denial of a fair trial amounts to injustice not only to the accused but also to the victim and the society. An accused has a right to fair trial. Under our constitution as also the international treaties and conventions, the right to get a fair trial is considered as a basic human right. The denial of fair trial is like crucifixion of human



rights.

22. The word 'Trial' is not defined anywhere in the Cr.P.C. A criminal trial is a judicial examination of the facts in the case process in the discovering truth to decide the facts in issue to arrive at a just decision of the question being the guilt or the innocence of the accused.

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

"Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere judicial calm. A fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause which is being tried, is eliminated."

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



direct or indirect. The whole burden of fair and impartial trial, thus, rests on the shoulders of the judiciary.

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

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



27. Once, there was no lawyer to represent the appellants, who were in custody at the relevant time, it was the duty of the Trial Court to provide legal assistance to them.

28. The Trial Court ought to have kept in mind that Section 303 of the Cr.P.C. gives right to any person, accused of an offence before a criminal court to be defended by a pleader of his choice and Section 304 of the Cr.P.C. of the Cr.P.C. contemplates legal aid to the accused facing charge in a case triable by the Court of Sessions at State expense.

29. Section 304 of the Cr.P.C. reads as follows:-

“304. Legal aid to accused at State expense in certain cases.

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

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

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

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

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

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub- sections



(1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.”

30. In **Suk Das and Another v. Union Territory of Arunachal Pradesh** since reported in [AIR 1986 SC 991], even before the enactment of Legal Services Authorities Act, 1987 the Hon’ble Supreme Court held 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. In para-5 of the said judgment, it was held:-

“ that the right to free legal service is... clearly an essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence and it must be held to be implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.”

This Court pointed out that it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal service available to him. The same view was taken by a Bench of this Court earlier in M.H. Hoskot v. State of Maharashtra [(1978) 3 SCC 544 : 1978 SCC (Cri) 468] . It may therefore now be taken as settled law that free legal assistance at State cost is



a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. Of course, it must be recognised that there may be cases involving offences, such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal service may not be provided by the State. There can in the circumstances be no doubt that the appellant was entitled to free legal assistance at State cost when he was placed in peril of his personal liberty by reason of being accused of an offence which if proved would clearly entail imprisonment for a term of two years.

31. In **Mohd. Hussain I (supra)** while allowing the appeal and reversing the conviction of the appellant on the basis that the trial was vitiated by unfairness a two Judge Bench of the Hon'ble Supreme Court held:-

“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 the learned counsel and her appearance during the last stages of the trial



was rather pro forma 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...”
(emphasis supplied)

32. In para-50 of the aforesaid judgment while emphasizing that entitlement of free legal aid is not dependent on making an application to that effect the Hon’ble Supreme Court held:-

“ In a trial before the Court of Session if the accused is not represented by a pleader and has not sufficient means, the court shall assign a pleader for his defence at the expense of the State. The entitlement to free legal aid is not dependent on the accused making an application to that effect, in fact, the court is obliged to inform the accused of his right to obtain free legal aid and provide him with the same...” (emphasis supplied)

33. In para-51 of the aforesaid judgment, the Hon’ble Supreme Court while highlighting the right of an accused in view of the Constitutional Mandate and International Covenants and Human Rights Declarations held:-

“The right of an accused to be defended by a legal practitioner, flowing from Article 22(1) of the



Constitution has further been fortified by the introduction of the directive principles of State policy embodied in Article 39-A of the Constitution by the Forty-second Amendment Act of 1976 and enactment of sub-section (1) of Section 304 of the Code of Criminal Procedure. Legal assistance to a poor person facing trial whose life and personal liberty is in jeopardy is mandated not only by the Constitution and the Code of Criminal Procedure but also by international covenants and human rights declarations. If an accused too poor to afford a lawyer is to go through the trial without legal assistance, such a trial cannot be regarded as reasonable, fair and just. The right to be heard in criminal trial would be inconsequential and of no avail if within itself it does not include the right to be heard through counsel.”

34. In para-52 of the aforesaid judgment highlighting the importance of a guiding hand of the counsel at every step, the Hon’ble Supreme Court held:-

“One cannot lose sight of the fact that even intelligent and educated men, not trained in law, have more than often no skill in the science of law if charged with crime. Such an accused not only lacks both the skill and knowledge adequately to prepare his defence but many a time loses his equilibrium in face of the charge. A guiding hand of the counsel at every step in the proceeding is



needed for fair trial. If it is true of men of intelligence, how much true is it for the ignorant and the illiterate or those of lower intellect! An accused without the lawyer faces the danger of conviction because he does not know how to establish his innocence.”

35. In **Mohd. Hussain I (supra)** both the Hon’ble Judges of the Supreme Court were of the view that the conviction and sentence of the appellant deserved to be set aside, as he was not given the assistance of a lawyer to defend himself during trial. However, one of the Hon’ble Judge (H.L. Dattu, J.) while allowing the appeal and setting aside the conviction and sentence imposed by the Trial Court and the judgment of the High Court remanded the case to the Trial Court for fresh disposal in accordance with law but the second Hon’ble Judge (C.K. Prasad, J.) was not persuaded to remand the matter to the Trial Court for fresh trial of the appellant, who was a Pakistani citizen at a belated stage and directed that he be deported his country in accordance with law and till then he should remain in jail custody.

36. In view of the aforesaid difference of opinion between the two Hon’ble Judges of the Hon’ble Supreme Court, the matter was referred to a three Judge Bench of the Hon’ble Supreme Court to decide in the appeal as to whether the matter requires to



be remanded for *de novo* trial in accordance with law.

37. The three Judge Bench of the Hon'ble Supreme Court in **Mohd. Hussain II (supra)** while answering the reference held as under:-

“42. Insofar as the present case is concerned, it has been concurrently held by the two Judges [Mohd. Hussain v. State (Govt. of NCT of Delhi), (2012) 2 SCC 584 : (2012) 1 SCC (Cri) 919] who heard the criminal appeal that the appellant was denied due process of law and the trial held against him was contrary to the procedure prescribed under the provisions of the Code since he was denied right of representation by counsel in the trial. The Judges differed on the course to be followed after holding that the trial against the appellant was flawed.”

“43. We have to consider now, whether the matter requires to be remanded for a de novo trial in the facts and the circumstances of the present case. The incident is of 1997. It occurred in a public transport bus when that bus was carrying passengers and stopped at a bus-stand. The moment the bus stopped an explosion took place inside the bus that ultimately resulted in death of four persons and injury to twenty-four persons. The nature of the incident and the circumstances in which it occurred speak volume about the very grave nature of offence. As a matter of fact, the



appellant has been charged for the offences under Sections 302/307 IPC and Section 3 and, in the alternative, Section 4(b) of the ES Act. It is true that the appellant has been in jail since 9-3-1998 and it is more than 14 years since he was arrested and he has passed through mental agony of death sentence and the retrial at this distance of time shall prolong the culmination of the criminal case but the question is whether these factors are sufficient for the appellant's acquittal and dismissal of indictment. We think not.

“44. It cannot be ignored that the offences with which the appellant has been charged are of very serious nature and if the prosecution succeeds and the appellant is convicted under Section 302 IPC on retrial, the sentence could be death or life imprisonment. Section 302 IPC authorises the court to punish the offender of murder with death or life imprisonment. Gravity of the offences and the criminality with which the appellant is charged are important factors that need to be kept in mind, though it is a fact that in the first instance the accused has been denied due process. While having due consideration to the appellant's right, the nature of the offence and its gravity, the impact of crime on the society, more particularly the crime that has shaken the public and resulted in death of four persons in a public transport bus cannot be ignored and overlooked. It is desirable that punishment should follow offence as closely



as possible. In an extremely serious criminal case of the exceptional nature like the present one, it would occasion in failure of justice if the prosecution is not taken to the logical conclusion. Justice is supreme. The retrial of the appellant, in our opinion, in the facts and circumstances, is indispensable. It is imperative that justice is secured after providing the appellant with the legal practitioner if he does not engage a lawyer of his choice.”

38. In **Mohd. Hussain II (supra)** while holding that in an extremely serious case of exceptional nature, it would occasion in failure of justice if the prosecution is not taken to its logical conclusion and that the retrial of the appellant is indispensable, the Hon’ble Supreme Court answered the reference in para-47 as under:-

“In what we have discussed above we answer the reference by holding that the matter requires to be remanded for a de novo trial. The Additional Sessions Judge shall proceed with the trial of the appellant in Sessions Case No. 122 of 1998 from the stage of prosecution evidence and shall further ensure that the trial is concluded as expeditiously as may be possible and in no case later than three months from the date of communication of this order.”



39. In the instant case, when we closely look at the order dated 17.09.2015 passed by the learned Trial Court, we find that one of the grounds on which the application dated 08.09.2015 filed on behalf of the defence for recall of the prosecution witnesses for cross-examining them under Section 311 of the Cr.P.C. was rejected is that the accused persons had never applied for appointment of a panel lawyer. The said view of the Trial Court was clearly in breach of the provisions of Section 304 of the Cr.P.C. and Articles 21 and 22(1) of the Constitution of India as well as the law laid down by the Hon'ble Supreme Court in **Mohd Hussain I (supra)** wherein it has categorically been held that in a trial before the Court of Session if the accused is not represented by a pleader and has no sufficient means, the court shall assign a pleader for his defence.

40. We are also of the opinion that in absence of any evidence, the Trial Court has presumed that the defence was adopting a delaying tactics. The order dated 17.09.2015 passed by the Trial Court would further indicate that the Trial Court was of the view that since Umesh Prasad Singh, an advocate, was engaged by the accused persons before the Court of learned Magistrate, there was no requirement for appointment of any legal aid counsel. The said view of the Trial Court was



completely erroneous. If a lawyer was appointed before the Court of learned Magistrate and was not representing the accused before the Court of Sessions, there could not have been any presumption against the accused persons that the non-appearance of the lawyer was a planned and deliberate move to delay the trial and defeat the ends of justice.

41. In **Anokhilal (supra)**, a three Judge Bench of the Hon'ble Supreme Court overturned a conviction and death sentence ordered by the learned Trial Court for the reason that the accused's right to legal aid was violated. In that case a lawyer was appointed by the Legal Services Authority for the accused a day before hearing for framing of charges. On the date of hearing, the lawyer was not present and a new lawyer was appointed immediately by the Legal Services Authority. However, on the same day, charges were framed under Sections 302, 363, 366, 376(2)(f) and 377 of the Indian Penal Code and Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012. Not only were the charges framed the same day, the trial itself got concluded within a fortnight thereafter.

42. In **Anokhilal (supra)** after taking note of the earlier judgments on the point, the Hon'ble Supreme Court while remanding the case back to the Trial Court for fresh



consideration restated some principles on the right to free legal aid, in para-22, which reads as under:-

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

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

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

(iii) Whenever any 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 conceded accused. Such interactions may prove to be helpful.”

43. In the instant case, the records would disclose that before



the Court of learned Magistrate, the appellants were assisted by one Umesh Kumar Singh, a learned counsel. However, after the committal proceeding, the appellants were not assisted by any lawyer either at the stage of framing of charge or thereafter till the prosecution case was closed and their statements were recorded under Section 313 of the Cr.P.C. Thereafter, a lawyer filed an application under Section 311 Cr.P.C. for recall of the prosecution witnesses for their cross-examination. Since the said lawyer was not holding Vakalatnama executed by the appellants, the Trial Court held that he was not authorised in law to file any application on behalf of the appellants. Subsequently, at the stage of arguments, on one date, the lawyer engaged before the Court of Magistrate appeared before the Court, but he refused to argue the case and, on the next date, he did not even turn up. The records further disclose that right from the beginning i.e. from the date of institution of the FIR, the accused persons were in the jail custody. The records further reveal that the court did not appoint any counsel to defend the accused persons. Since the appellants were not being represented by any counsel, it was the mandatory duty of the court to appoint a counsel to represent them at all stages. The records reveal that the evidence of 11 out of the 15 witnesses examined by the prosecution in support of



the charges including the eyewitnesses, the investigating officer and the doctor were recorded by the Trial Court without any cross-examination either by the accused persons or by their advocate. The four other prosecution witnesses were cross-examined by one of the accused personally (identity of whom is not known). However, the testimony of those four witnesses would reveal that the cross-examination conducted by the accused-appellant was a mere formality in the name of cross-examination.

44. It would thus be evident that the Trial Court did not think it proper to appoint any advocate to defend the appellants when the advocate engaged by him before the Court of learned Magistrate did not appear from the stage of charge till the stage of examination of witnesses and the recording of statements under Section 313 Cr.P.C.

45. In our view, the right to a fair trial in the spirit of right to life and personal liberty has been completely denied to the appellants in the instant case by the learned Trial Court.

46. Apparently, in the pursuit of expeditious disposal of the trial, the Trial Court has sacrificed the basic tenet of the criminal jurisprudence i.e. “the cause of justice”. We are of the opinion that the fast tracking of the trial has resulted in burying the



cause of justice.

47. In the circumstances going by the principles laid down by the Hon'ble Supreme Court in **Suk Das (supra)**, **Zahira Habibullah Sheikh (supra)**, **Mohd. Hussain I (supra)**, **Mohd. Hussain II (supra)** and **Anokhilal (supra)**, we agree with the submissions made by Mr. Thakur, learned counsel for the appellants.

48. We, therefore, have no hesitation in setting aside the judgment of conviction dated 30.01.2016 and order of sentence dated 02.02.2016 passed by the learned Additional Sessions Judge-IX, Muzaffarpur in Sessions Trial No. 787 of 2014 arising out of Paroo P.S. Case No. 56 of 2014 against the appellants and directing for a *de novo* trial. The impugned judgment and order are accordingly set aside.

49. The matter is remanded to the learned Trial Court with a specific direction that the learned Trial Court would provide the appellants a legal aid counsel in terms of the order passed by the Hon'ble Supreme Court in **Anokhilal (Supra)**, if the appellants are unable to employ an advocate of their choice. The learned Trial Court shall ensure that such legal aid counsel is provided to the appellants before commencement of the trial till its conclusion.



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

(Ashwani Kumar Singh, J)

(Rajeev Ranjan Prasad, J)

rohit/-

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