IN THE HIGH COURT FOR THE STATE OF TELANGANA: HYDERABAD

*** * ***

CRIMINAL APPEAL No.630 of 2024

Between:
Maloth Ravi, S/o. Chandru

Appellant

VERSUS

The State of Telangana.

Respondent

JUDGMENT PRONOUNCED ON: 18.12.2024

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**

AND

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

+ CRIMINAL APPEAL No.630 of 2024

% 18.12.2024

Between:
Maloth Ravi, S/o. Chandru

Appellant

VERSUS

The State of Telangana.

Respondent

! Counsel for Appellant(s) : Mr. Y. Soma Srinath Reddy, learned counsel, appearing on behalf of M/s. Harsheet Reddy Law Firm.

^Counsel for the respondent(s) : Mrs. Shalini Saxena, learned Additional Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred
1) (2012) 2 Supreme Court Cases 584
2) 2024 SCC OnLineSC 3580

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

CRIMINAL APPEAL No.630 of 2024

JUDGMENT: *(per the Hon'ble Sri Justice **P.Sam Koshy**)*

The instant is an appeal filed by the appellant - accused under Section 374(2) of Cr.P.C. challenging the judgment of conviction dated 15.05.2024, in Sessions Case No.290 of 2022, passed by the I Additional Sessions Judge, Warangal.

2. Heard Mr. Y. Soma Srinath Reddy, learned counsel, appearing on behalf of M/s. Harsheet Reddy Law Firm, for the appellant – accused and Mrs. Shalini Saxena, learned Additional Public Prosecutor for the respondent – State.

3. *Vide* the impugned judgment, the appellant has been found guilty for the offence punishable under Section 498A of IPC and was sentenced to undergo simple imprisonment for a period of one year with a fine of Rs.5000/- and default stipulation. Likewise, having been found guilty for the offence punishable under Section 3 of the Dowry Prohibition Act, 1961 (for short, 'the Act') the appellant was sentenced to undergo simple imprisonment for a period of five years with fine of Rs.15,000/- with default stipulation. Further, the appellant was also

found guilty for the offence punishable under Section 4 of the said Act and was sentenced to undergo simple imprisonment for a period of six months with fine of Rs.10,000/- with default stipulation. The appellant was also found guilty for the offence punishable under Section 302 of IPC and sentenced to undergo imprisonment for life with fine of Rs.1,000/- and default stipulation.

4. The case of the prosecution in brief is that PW.1-Bhukya Jamla lodged a report at Police Station, Chennaraopet, on 13.09.2016 at around 16.30 hours stating that the appellant Maloth Ravi, his son-in-law, has physically tortured and assaulted his deceased daughter Maloth Rama on 12.09.2016 and after mercilessly assaulting his daughter, she was in a very serious condition left in front of the PW.1's son house at Kazipet. PW.1's son and the watchman of that area shifted the deceased to Sharanya Hospital, Hanamkonda for treatment where the hospital authorities informed that the condition of the deceased is critical.

5. PW.1 through his complaint has requested for an appropriate action to be taken against the appellant. Based on the said complaint, Crime No.132 of 2016 was registered and offences under Section 498A of IPC along with Sections 3 and 4 of the Act and Section 307 of IPC was charged against the appellant. The police authorities after

registering the case, immediately went to Sharanya Hospital at Hanamkonda and found the deceased still to be unconscious and undergoing treatment and was put on ventilators. In the course of treatment, the deceased succumbed to her injuries on 12.09.2016 at around 10.37 hours, which too was intimated to the police authorities, who in turn then altered the offences which were charged against the appellant and added Section 302 of IPC. In the course of time, charge-sheet was filed and the appellant stood prosecuted for the offences under Section 498A of IPC and Sections 3 and 4 of the Act and Section 302 of IPC.

6. The matter was thereafter committed to the I Addl. Sessions Judge at Warangal, where the case was registered as S.C.No.290 of 2022. The prosecution in all examined thirteen witnesses i.e. PWs.1 to 13 and also exhibited eleven witnesses i.e. Ex.P1 to P11. However, there was neither any witness nor any document exhibited on behalf of the defence. Later on, the statement of the appellant was recorded under Section 313 of Cr.P.C. and finally the impugned judgment was passed where the Trial Court found the appellant guilty for the offence punishable under Sections 498A and 302 of IPC and also convicted the appellant under Sections 3 and 4 of the Act.

7. At the outset, the learned counsel appearing for the appellant raised a contention as regards whether the appellant has been provided with a fairtrial and has been provided with an effective opportunity of defence. Learned counsel for the appellant drew the attention of the Court through the proceedings, particularly the depositions wherein it would reflect that the appellant was not assisted by any legal practitioner and that since the appellant did not have any lawyer defending him before the Trial Court, the appellant was not able to effectively cross-examine the prosecution witnesses, nor was be able to take an effective defence in the course of trial. Thus, the learned counsel for the appellant submitted that the entire trial is liable to be vitiated on this count and the appellant also deserves to be acquitted of all the charges on this very ground itself.

8. *Per contra*, the learned Additional Public Prosecutor contended that the perusal of the depositions and the case file would go to show that the appellant was in fact given assistance of a learned counsel and in addition the appellant himself has examined most of the witnesses. Thus, it cannot be said that the trial was not conducted fairly or for that matter the trial was conducted without providing sufficient opportunity of defence to the appellant.

9. It was contended by the learned Additional Public Prosecutor that since the appellant was assisted with a learned counsel and also had himself conducted the cross-examination of most of the witnesses, the ground alleged by the appellant of the case being in violation of principles of natural justice is not sustainable and the appeal deserves to be rejected.

10. Having heard the contentions put forth on either side and on perusal of records, in order to ascertain whether the appellant was provided with an proper opportunity of defence, we need to look into the material papers of the Trial Court.

11. From the paper book furnished, it appears that, as if at the stage of framing charges, the appellant was not assisted by any Counsel when PW.1 was examined after the examination-in-chief. In the absence of the Counsel for the appellant, the cross-examination was treated as nil. Again when PW.2 and PW.3 were examined on 27.10.2023, the Counsel for the appellant present in the Court left the Court when he was asked to cross-examine the witnesses. Subsequently, the appellant himself put few formal questions to the witnesses and the witness PW.2 was thereafter discharged. So also PW.4, PW.5 and PW.6 were examined on 01.11.2023. The Counsel provided by the legal-aid to the appellant remained absent and upon a

suggestive question put by the appellant himself, the witnesses were discharged.

12. Similarly, PW.7 also was examined on 07.11.2023, on which date also the Counsel representing the appellant remained absent and the witness was discharged after just one suggestive question being put by the appellant himself. Further, the remaining witnesses i.e. PW.9, PW.10, PW.11, PW.12 and PW.13 all of whom were examined on 11.12.2023, 14.12.2023, 19.12.2023 and 27.12.2023 respectively and after the examination-in-chief there was no assistance provided by the Counsel representing the appellant inasmuch as he remained absent on all the dates and there was neither cross-examination from the appellant side nor asuggestive question put to the witnesses and they were discharged. These suggestive questions on the plain reading itself would go to show that it seems to have been put by the Trial Court itself towards completion of the formality of cross-examination and it does not seem to have been voluntarily and deliberately made by the appellant.

13. Thus, from the plain reading of the depositions and the manner in which the witnesses were let-off without there being effective cross-examination, coupled with the fact that the appellant was not represented effectively by the Counsel on any of the dates of hearing,

this Bench has no hesitation in reaching to the conclusion that the appellant has been substantively and effectively deprived of an effective defence and also has been denied of an effective legal assistance during trial.

14. The aforesaid view of this Bench stands fortified from a series of decisions, even if not of a similar nature. Just to highlight a few is the judgment rendered by the Hon'ble Supreme Court in the case of **Mohd. Hussain alias Zulfikar Ali vs. State (Government of NCT of Delhi)**[1] (a split opinion of the Division Bench), and also in the case of **Ashok vs. State of Uttar Pradesh**[2].

15. In the case of **Mohd. Hussain** (supra) i.e. decided by the Division Bench) the Hon'ble Supreme Court in paragraph Nos.14, 23, 24, 28 and 29 has held as under, viz.,

> *"**14.** The purpose of cross-examination of a witness has been succinctly explained by the Constitution Bench of this Court in Kartar Singh v. State of Punjab [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] : (SCC p. 686, para 278)*
>
> > *"278. Section 137 of the Evidence Act defines what cross-examination means and Sections 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination*

[1](2012) 2 Supreme Court Cases 584
[2]2024 SCC OnLineSC 3580

is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:

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

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

23. *The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result, the accused charged with a serious offence must not be stripped of his valuable right of a fair and impartial trial. To do that, would be negation of concept of due process of law, regardless of the merits of the appeal. The Criminal Procedure Code provides that in all criminal prosecutions, the accused has a right to have the assistance of a counsel and the Criminal Procedure Code also requires the court in all criminal cases, where the accused is unable to engage counsel, to appoint a counsel for him at the expenses of the State. Howsoever guilty the appellant upon the inquiry might have been, he is until convicted, presumed to be innocent. It was the duty of the court, having these cases in*

charge, to see that he is denied no necessary incident of a fair trial.

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

28. *In view of the above discussion, I cannot sustain the judgments impugned and they must be reversed and the matter is to be remanded to the trial court with a specific direction that the trial court would assist the accused by employing a State counsel before the commencement of the trial till its conclusion, if the accused is unable to employ a counsel of his own choice. Since I am remanding the matter*

for fresh disposal, I clarify that I have not expressed any opinion regarding the merits of the case.

29. *In view of the above, I allow the appeal and set aside the conviction and sentence imposed by the Additional Sessions Judge in Sessions Case No. 122 of 1998 dated 3-11-2004 and the judgment and order passed by the High Court in State v. Mohd. Hussain [State v. Mohd. Hussain, (2007) 140 DLT 428] dated 4-8-2006 and remand the case to the trial court for fresh disposal in accordance with law and in the light of the observations made by me as above. Since the incident is of the year 1997, I direct the trial court to conclude the trial as expeditiously as possible at any rate within an outer limit of three months from the date of communication of this order and report the same to this Court."*

16. Because of the split opinion in the aforesaid judgment, i.e. **Mohd. Hussain alias Zulfikar Ali vs. State (Government of NCT of Delhi),** the matter was directed to be referred to a larger Bench of the Hon'ble Apex Court. The larger Bench of the Hon'ble Apex Court *vide* its decision dated 31.08.2012 had remanded the matter back to the Trial Court for a fresh *de novo* trial and while ordering for re-trial the larger Bench in its judgment held at paragraph Nos.41 and 42 as under, viz.,

"41. '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 ofseveral 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-a-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 criminaltrial should not operate against the continuation of prosecution and if the right of 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 theappeal court is confronted with the question whether or not retrial of an accused should be ordered.

42. The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code. That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A de novo trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when

in the opinion of the appellate court such course becomesindispensable to avert failure of justice. Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. A retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not losehope in legal system and the interests of the society are not altogether overlooked."

17. In the case of **Ashok** (supra) dealing with the aspect of a fair trial or a trial without legal assistance to the accused, the Hon'ble Supreme Court held at paragraph No.19 as under, viz.,

*"**FAILURE TO PROVIDE LEGAL AID TO THE ACCUSED***

***19.** After having perused the record of the case, we found a very disturbing feature. It is about the failure of the State to provide timely legal aid to the appellant. The other issue is about the quality of legal aid. Apart from provisions of Article 21 and Article 39A of the Constitution of India, the law on the issue of the right to legal aid has been evolved by this Court through its landmark decisions. This Court's first well-known decision is in the case of Hussain ara Khatoon (IV) v. Home Secy., State of Bihar[3]. In Paragraph 7, this Court held thus:*

"7. *We may also refer to Article 39-A the fundamental constitutional directive which reads as follows:*

> *"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. *We would, therefore, direct that on the next remand dates, when the undertrial prisoners, charged with bailable offences, are produced before the Magistrates, the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail, provided that no objection is raised to such lawyer on behalf of such undertrial prisoners and if any application for bail is made, the Magistrates should dispose of the same in accordance with the broad outlines set out by us in our judgment dated February 12, 1979. The State Government will report to the High Court of Patna its compliance with this direction within a period of six weeks from today."*

(emphasis added)

The second decision is in the case of M.H. Hoskot v. State of Maharashtra[4]*. In paragraphs 14 and 25 of the decision, this Court held thus:*

> *"14.* ***The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side****. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred*

legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law. Free legal services to the needy is part of the English criminal justice system. And the American jurist, Prof. Vance of Yale, sounded sense for India too when he said : [Justice and Reform, Earl Johnson, Jr. p. 11]

"What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the courts are open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee?""

(emphasis added)

"25.** If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Article 142, read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual "for doing complete justice". This is a necessary incident of the right of appeal conferred by the Code and allowed by Article 136 of the Constitution. **The inference is inevitable that this is a State's duty and not Government's charity. Equally affirmative is the implication that

> ***while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services***. *Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court."*
>
> *(emphasis added)*

This issue was again dealt with by a Bench of three Judges in the case of Anokhilal v. State of M.P.[5]*. In this decision, this Court revisited the law on this aspect. In paragraph 11, this Court relied upon the decision in the case of Hussain ara Khatoon (IV)*[3]*. In paragraph 20, this Court summarised the principles laid down from time to time. Paragraph 20 reads thus:*

> ***"20.*** *The following principles, therefore, emerge from the decisions referred to hereinabove:*

20.1. *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.*

20.2. 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 [ZahiraHabibulla H. Sheikh v. State of Gujarat,* ***(2004) 4 SCC 158 : 2004 SCC (Cri) 999] (as quoted in the decision in*** *Mohd. Hussain [Mohd. Hussain v. State (NCT of Delhi),* ***(2012) 9 SCC 408 : (2012) 3 SCC (Cri) 1139]) emphasises 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.***

20.3. *Even before insertion of Article 39-A in the Constitution, the decision of this Court in Bashira [Bashira v. State of U.P., (1969) 1*

SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495] put the matter beyond any doubt and held that the time granted to the Amicus Curiae in that matter to prepare for the defence 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.

20.4. *The portion quoted in Bashira [Bashira v. State of U.P., (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495] from the judgment of the Andhra Pradesh High Court authored [Alla Nageswara Rao, In re, 1954 SCC OnLine AP 115 : AIR 1957 AP 505] 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 defence 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.*

20.5. *In Bashira [Bashira v. State of U.P., (1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495] as well as in Ambadas [Ambadas Laxman Shinde v. State of Maharashtra, (2018) 18 SCC 788 : (2019) 3 SCC (Cri) 452 : (2018) 14 Scale 730], 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 with "sufficient opportunity" to the counsel."

(emphasis added)

In paragraph 31, norms were laid down by this Court, which read thus:

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

31.1. 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.

***31.2.** 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.*

***31.3.** 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.

31.4. *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 accused concerned. Such interactions may prove to be helpful as was noticed in ImtiyazRamzan Khan [ImtiyazRamzan Khan v. State of Maharashtra, (2018) 9 SCC 160 : (2018) 3 SCC (Cri) 721].”*

(emphasis added)

18. Further the Hon'ble Supreme Court also while concluding the matter issued certain guidelines in paragraph Nos.22 and 23, which for ready reference is reproduced herein under, viz.,

*“**22.** At the stage of framing the charge, the appellant was not represented by an advocate. From 8th June 2011, the appellant never declined legal aid. We are surprised to note that the examination-in-chief of PW-1 was allowed to be recorded without giving legal aid counsel to the appellant, who was not represented by an advocate. If the examination-in-chief of a prosecution witness is recorded in the absence of the advocate for the accused, a very valuable right of objecting to the questions asked in examination-in-chief is taken away. The accused is also deprived of the right to object to leading questions. It will not be appropriate to comment on the capabilities of the two legal aid lawyers appointed in this case as they are not parties before us. But suffice it to say that the cross-examination of the witnesses*

was not up to the mark. Some of the crucial questions that normally would have been put in the cross-examination have not been asked.

CONCLUDING PART

23. *Our conclusions and directions regarding the role of the Public Prosecutor and appointment of legal aid lawyers are as follows:*

> ***a.*** *It is the duty of the Court to ensure that proper legal aid is provided to an accused;*
>
> ***b.*** *When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;*
>
> ***c.*** *Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused;*
>
> ***d.*** *It is the duty of the Public Prosecutor to assist the Trial Court in recording the statement of the accused under Section 313 of the CrPC. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be*

put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;

e. *An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;*

f. *At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the Trial Court must ensure that a legal aid advocate is appointed to represent the accused;*

g. *As held in the case of Anokhilal*[5]*, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as amicus curiae or as a legal aid advocate. Even in the cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the*

newly appointed legal aid advocates to work with senior members of the Bar in a requisite number of trials;

h. *The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the court regularly and punctually when the cases entrusted to them are fixed;*

i. *It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice;*

j. *In the cases where the offences are of a very serious nature and complicated legal and factual issues are involved, the Court, instead of appointing an empanelled legal aid advocate, may appoint a senior member of the Bar who has a vast experience of conducting trials to espouse the cause of the accused so that the accused gets best possible legal assistance;*

k. *The right of the accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Article 21;*

l. *If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must*

> *be effective. Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated."*

19. Now the question to be considered by this Bench in this appeal is "whether upon the trial getting vitiated due to legal assistance not being provided to the appellant, would it be a case where the appeal itself need to be allowed?" or "whether it would be a case where the matter needs to be remanded back to the Trial Court?"

20. Learned counsel for the appellant relied upon the decision in the case of **Ashok** (supra) which was of the recent past and where the Hon'ble Supreme Court had completely allowed the appeal and had set aside the conviction and ordered for release of the accused. On the contrary, the learned Additional Public Prosecutor relied upon the larger Bench decision of the Hon'ble Supreme Court in the case of **Mohd. Hussain alias Zulfikar Ali vs. State (Government of NCT of Delhi)**, (larger Bench) dated 31.08.2012, where the larger Bench upon a specific question put in reference by the two Judge Bench which being "whether the matter requires to be remanded back for a *de novo*

trial in accordance with law or not" had answered in paragraph No.46 as under, viz.,

> *"46. 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."*

The said finding given by the larger Bench was dealing with a series of decision of the Hon'ble Supreme Court itself of the recent past while dealing with the issue of the consequences where the trial is found to be vitiated on technicalities.

21. Another aspect which we find is that, in the recent decision of the Hon'ble Supreme Court in the case of **Ashok** (supra), there is no reference of the three Judge Bench judgment of the Hon'ble Supreme Court in the case of **Mohd. Hussain alias Zulfikar Ali vs. State (Government of NCT of Delhi)**, (larger Bench) dated 31.08.2012. The case of **Ashok** (supra) was dealt with by the Hon'ble Supreme Court on an entirely different factual situation where it was found that the statement of the accused under Section 313 of Cr.P.C. to be highly

improbable and inadequate, coupled with the fact that the accused was not provided with any legal aid in his defence. Whereas, the larger Bench decision of the Hon'ble Supreme Court was primarily on the terms of reference of whether the matter under such circumstances where admittedly the trial is vitiated has to be remanded back for a *de novo* trial or not.

22. In view of the fact that the larger Bench judgment of the Hon'ble Supreme Court in the case of **Mohd. Hussain alias Zulfikar Ali vs. State (Government of NCT of Delhi)**, (larger Bench) dated 31.08.2012, being precisely on the question of law of whether the matter requires a remission or the conviction being set aside, we are also inclined to take the view that has been taken by the larger Bench for the reason of it being pin-pointedly decided on the said issue itself.

23. For all the aforesaid reasons, we allow the appeal in part and set aside the judgment of conviction dated 15.05.2024, in Sessions Case No.290 of 2022, passed by the I Additional Sessions Judge, Warangal. We remand the matter back to the Trial Court for a fresh *de novo* trial. Further, taking into consideration the view of the Hon'ble Supreme Court in the case of **Mohd. Hussain alias Zulfikar Ali vs. State (Government of NCT of Delhi)**, (larger Bench) dated 31.08.2012, we are also inclined to direct the Trial Court to take up trial on priority

basis and ensure that the trial is concluded within an outer limit of four (04) months from the date of receipt of the records along with a copy of this judgment.

24. The learned Public Prosecutor of the Trial Court is also directed to look into the matter and consider dropping all the unnecessary witnesses who may not be relevant for the prosecution. The appellant herein also is hereby directed to ensure that he provides all necessary co-operation and assistance for an early conclusion of the trial. The appellant is at liberty to engage a Counsel of his choice for his defence, or else the Trial Court should ensure that he is provided legal assistance through the legal-aid to represent him.

25. As a sequel, miscellaneous applications pending if any, shall stand closed.

P.SAM KOSHY, J

NAMAVARAPU RAJESHWAR RAO, J

Date: 18.12.2024

Note: LR Copy to be marked.
B/o.GSD