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“Criminal Trial Is Not IPL T20 Match”: Orissa High Court Sets Aside Rape Conviction As Defence Counsel Not Granted Reasonable Time For Preparation

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The Orissa High Court has set aside the conviction and sentence imposed on a rape accused on the ground that the State Defence Counsel, who represented him in the Trial Court, was neither supplied with police papers nor given a reasonable amount of time to prepare for the cross-examination of the victim.

Expressing dissatisfaction over the hurried-up manner in which the cross-examination was completed, the Single Judge Bench of **Justice Sangam Kumar Sahoo** observed,

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*“Engaging a new State Defence Counsel without providing him police papers and just asking him to inspect the case record and to cross-examine the victim and also taking consent from him to conclude the cross-examination on that day itself, in my humble view, is a gross illegality and the accused has been seriously prejudiced by such action of the trial Court. **A criminal trial is not an IPL T20 match where every ‘substitute player’ can be an ‘impact player’.**”*

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The appellant faced trial in the Court of 3rd Additional Sessions Judge, Balasore for offence punishable under Section 376(2)(I) of the IPC on the accusation that he being a relative of the son-in-law of the informant committed rape on the victim, the disabled daughter of the informant.

The Trial Court found the appellant guilty under section 376(2)(I) of the IPC and sentenced him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- and in default, to undergo R.I. for a further period of one year. Being aggrieved by the said decision, the appellant approached the High Court filing this appeal.

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It was contended for the appellant that he has been seriously prejudiced as a new State Defence Counsel (SDC) was engaged by the Trial Court on the date of examination of the victim and no police paper was supplied to him. Further, the Trial Court asked the SDC to go through the case record and complete the cross-examination of the victim on that very day itself.

It was submitted that the SDC did not get a reasonable opportunity to read the case records deeply, to prepare the case thoroughly, to have an interaction with the appellant for such preparation for which he put a few questions to the victim in the cross-examination and closed it on account of pressure from the Trial Court. Thus, it was prayed to the Court to set aside the conviction and remand back the matter for fresh trial.

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Court's Observations

The Court deemed it proper to go through the order-sheets of the Trial Court, where it found that the Addl. Public Prosecutor filed a petition on 11.04.19 to appoint the father of the disabled victim girl as the interpreter to decode the evidence likely to be given by her and a copy of the petition was handed over to the SDC.

However, the SDC was granted only 50 minutes to file objection to such petition and when he sought for more time to file objection, the Trial Court rejected the same mainly on the ground the victim girl had come to the Court several times.

Then the SDC left the Court room and did not appear for the recording of the evidence of the victim. Since he did not turn up, another counsel, whose name found place in the list of State Defence Counsel, was appointed and he was directed to inspect the case records immediately.

After inspecting the record, he got ready to cross-examine the victim and gave his consent to complete the cross-examination of the victim on that day and accordingly, the evidence of victim girl was recorded taking the assistance of her father as interpreter and she was discharged.

After perusing the order sheet of the Trial Court, the Court was of the opinion that the concerned Judge had made up his mind to complete the recording of the evidence of the victim on that day itself. Though it was observed in the order-sheet that the victim had come to the Court several times, but the Court did not find mentioning of the same in the order-sheets of the previous dates.

Thus, Justice Sahoo expressed serious displeasure over the manner in which the cross-examination was conducted and completed on that day and said,

“The engagement of State defence counsel in the trial Court should not be a mere compliance of provisions of law or an empty formality. It must not be a sham or an eye-wash but with all intent, purpose and sincerity, the lawyer must conduct the case of the accused.”

He said our constitutional system demands that a person not only be given an opportunity of being heard before being condemned, but also that such opportunity be fair, just and reasonable.

“If the conducting counsel engaged for an accused appears to be superfluous and there is real contest, right to fair trial would be denied. It is the duty of the Court while appointing the State defence counsel to supply him all relevant papers and to give sufficient time to him for preparing the defence, otherwise such defence would only be a farce without its real purpose,” he added.

The Court also cited the guidelines issued by the Apex Court in **Anokhilal v. State of Madhya Pradesh** (<https://www.livelaw.in/top-stories/sc-sets-aside-death-sentence-in-a-13-day-trial-150933><https://www.livelaw.in/top-stories/sc-sets-aside-death-sentence->

in-a-13-day-trial-150933), for proper representation of accused persons in Courts having regard for Articles 39-A and 21 of the Constitution.

Emphasising the words used in **Section 304(1)**, CrPC, i.e. "*...the accused is not represented by a pleader*", the Court said it do not and cannot mean a kind of paper and sham representation as distinguished from a substantial, bona fide and diligent representation.

"Not ensuring the reasonable and diligent representation by counsel or pleader to the accused would not relieve the State of its obligation under section 304(1) Cr.P.C. and could not pass the test of fairness which every action of the State must withstand in keeping with the obligation under Articles 14 and 21 of the Constitution", it added.

Accordingly, the Court was of the view that proper opportunity was not granted to the SDC to prepare the case thoroughly and to cross-examine the victim.

Consequently, the impugned order of conviction of the appellant under Section 376(2)(I) of IPC was set aside, remanding it back to the Trial Court for fresh trial from the stage of cross-examination.

Case Title: Khudia @ Khudiram Tudu v. State of Odisha

Case No.: JCRLA No. 76 of 2019

Date of Judgment: March 22, 2023

Counsel for the Appellant: Mr. Jagannath Kamila, Advocate

Counsel for the State: Mr. Rajesh Tripathy, Addl. Standing Counsel

Citation: 2023 LiveLaw (Ori) 45