

2023 LiveLaw (SC) 732 : 2023 INSC 780

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S.OKA; J., PANKAJ MITHAL; J.**

August 29, 2023.

CRIMINAL APPEAL NOS.2643-2644 OF 2023 (Arising out of S.L.P.(Cr.) Nos. 6854-6855 of 2023)

NIRANJAN DAS @ NIRU DAS @ MAHANTO versus THE STATE OF WEST BENGAL

Legal Aid - An advocate appointed to represent the accused should be given reasonable time to go through the file and get ready to assist the Court - The object of appointing an advocate to espouse the cause of the appellant who was unrepresented was to ensure that justice is done to him.

(Arising out of impugned final judgment and order dated 12-05-2022 in CRA Nos.325/2008 and 642/2008 passed by the High Court at Calcutta)

For Petitioner(s) Mr. Ranjan Mukherjee, Adv. Mr. Anindo Mukherjee, Adv. Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) Mr. Ashok Kumar Panda, Sr. Adv. Mr. Chanchal Kumar Ganguli, AOR Mr. Aniket Gupta, Adv. Ms. Preeti Sirohi, Adv. Ms. Tuli Ghosh, Adv.

J U D G M E N T

ABHAY S.OKA, J.

Leave granted.

2. Heard the learned counsel appearing for the appellant and the learned senior counsel appearing for the respondent-State.

3. The present appellant-Niranjan Das was Accused No.2 before the Trial Court. He was convicted by the Trial Court for the offence punishable under Section 302 of the Indian Penal Code (IPC). The Trial Court convicted the appellant as well as the Accused No.1-Subodh Rajbanshi. It is pertinent to note that both of them were convicted simplicitor under Section 302 of the IPC and Section 34 IPC was not applied.

4. Separate appeals were preferred by both the accused. The appeals were heard on 12th May, 2022. In the impugned judgment delivered on the same day, it is recorded in the judgment that on the day on which these appeals were heard, the present appellant-Niranjan Das was not represented by any advocate. Therefore, the Division Bench which heard the appeals appointed an empaneled advocate to espouse the cause of the appellant. The High Court directed the Secretary of the High Court Legal Services Authority to regularise the appointment of the said advocate. It appears that after appointing the advocate, the Court did not grant time to the advocate to prepare herself. In the impugned judgment, it is recorded that the advocate appointed to espouse the cause of the appellant adopted the arguments made by the advocate for the co-accused in the other appeal. Another argument made by the said advocate has been recorded that it cannot be said that the present appellant shared common intention with the co-accused to commit the murder.

5. The learned counsel appearing for the respondent states that looking to the submissions of the advocate recorded in the impugned judgment, obviously, the advocate was ready to argue.

6. This was a case where the appellant was convicted for the offence punishable under Section 302 of the IPC and was sentenced to undergo life imprisonment. Therefore, it was a duty of the Court to give a reasonable time to the advocate appointed to go through the

file and get ready to assist the Court. Apart from adopting the submissions made by the co-accused, it appears that the advocate appointed to espouse the cause of the appellant made a submission that the appellant did not share common intention to commit the murder with the co-accused. The very fact that such submission is made shows that the advocate was not ready with the matter, as there was no conviction of the appellant with the aid of Section 34 of the IPC. Obviously, the advocate was not aware that Section 34 of the IPC was not invoked by the Trial Court and therefore, she has argued as if the appellant was convicted with the aid of Section 34 of the IPC. This happened obviously because the appointed advocate was not given time to prepare herself. There were 20 prosecution witnesses in this case.

7. The object of appointing an advocate to espouse the cause of the appellant who was unrepresented was to ensure that justice is done to him. The High Court decided the appeal on the same day on which the advocate was appointed. In this case, the advocate appointed to represent accused was not granted even a reasonable time to prepare herself. Therefore, the impugned judgment insofar as relates to the appeal preferred by the appellant-Niranjan Das is concerned will have to be set aside and the appeal will have to be remanded to the High court.

8. The learned counsel appearing for the appellant, on instructions, states that the appellant will engage his own advocate and therefore, it is not necessary for the High Court Legal Services Committee to appoint any advocate to espouse his cause.

9. Hence, we set aside the impugned judgment dated 12th May, 2022 confined to Criminal Appeal No.325 of 2008 filed by the appellant-Niranjan Das and remand the said appeal to the High Court for fresh consideration.

10. We make it clear that the impugned judgment insofar as it relates to Criminal Appeal No.642 of 2008 preferred by Subodh Rajbanshi, is not disturbed.

11. The appellant has already undergone incarceration for a period of more than eight years.

12. Therefore, he deserves to be enlarged on bail on appropriate terms and conditions, as may be decided by the Trial Court.

13. We, accordingly, direct that the appellant-Niranjan Das shall be produced before the Trial Court within a period of one week from today so that the Trial Court can enlarge the appellant-Niranjan Das on bail, pending the final disposal of the Criminal Appeal before the High Court.

14. We direct that the advocate appointed by the appellant shall appear before the roster Bench on Monday, the 20th November, 2023 in the morning session so that the Bench can fix the appropriate date for hearing. Even the counsel for the State shall also remain present on that day.

15. The appeals are partly allowed on the above terms.

16. The Trial Court record sent to this shall be transmitted back to the High Court.