
(2014) 03 CAL CK 0051
In the Calcutta High Court
Case No : C.R.R 2534 of 2013

Kalyan Dey and Others

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 147, 148, 307, 379, 506

Citation : (2014) 03 CAL CK 0051

Hon'ble Judges : Asim Kumar Roy, J

Bench : Single Bench

Advocate : Debabrata Acharya, Advocate for the Appellant; Pawan Kumar Gupta for the State, Advocate for the Respondent

Judgement

Ashim Kumar Roy, J.—The petitioners were facing trial in connection with Sessions Trial No. 10(7) of 2008 before the learned Additional Sessions Judge, Fast Track, 4th Court, Barrackpur, North 24-Parganas on charges under Sections 147/148/379/307/506 of the Indian Penal Code.

2. During the trial, 21st June 2013 was fixed for recording of evidence of P.W.s 3, 4 and 5. On that day, the learned defence Counsel was absent in court due to some personal reasons and an application was moved for adjournment. However, the learned trial court rejected such application and proceed with the trial. Then after recording of evidence of three witnesses, the evidence was closed and it was recorded that cross-examination was declined. On the next date, that is, on 24th June, 2013, a prayer was made on behalf of the petitioners for permitting them to cross-examine those witnesses but such prayer was rejected. Hence this criminal revision.

3. Heard the learned Counsel appearing for the parties. Perused the impugned order and other materials on record.

4. In a criminal trial, right to cross-examine of a witness is a very valuable right

of an accused person and is an integral part of a fair trial. The concept of fair trial is guaranteed under Article 21 of the Constitution. Therefore, ordinarily, no accused can be deprived of his such right, unless court finds that the adjournment was sought for as a matter of dilatory tactics and to delay the proceeding. When in absence of a defence lawyer, the accused moved for adjournment, if not such prayer was a regular event, the court may either adjourn the trial or may after examination in chief of the witnesses is over, defer the date for cross-examination.

5. The learned counsel for the State has not opposed the prayer of the learned Counsel of the petitioners that a further chance be given to the defence to cross-examine the witnesses. This court has been informed by the learned Counsel for the petitioners that due to the pendency of this application, trial has not proceeded any further from that stage of examination of P.Ws. 3, 4 and 5.

6. In the result, the application is allowed and the order impugned stands quashed and the trial court is directed on the next date fixed, that is, on 31st March, 2014, to give an opportunity to the defence to cross-examine P.Ws 3, 4 and 5 and after their cross examine is over, the Court shall then proceed to the next stage of trial. If not on the date, the cross-examination is over, further opportunity must be given to the accused.

7. I, however, make it clear if on the next date, the petitioners failed to cross-examine the witnesses without any reasonable ground then in that case, court shall proceed to the next stage of the trial.

8. Criminal Section is directed to deliver urgent photostat certified copy of this order to the learned advocate of the petitioners, if applied for, as early as possible.