

(1986) 05 GAU CK 0013
In the Gauhati High Court
Case No : Criminal Revision No. 163 of 1980

Shri Anurag Saxena

APPELLANT

Vs

Ct. S. Damodaran

RESPONDENT

Date of Decision : 12-05-1986

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10
Criminal Procedure Code, 1973 (CrPC) — Section 248(2), 313, 313(1), 397, 401

Citation : (1986) 2 GLR 380

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : Chand Mohammad, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Phukan, J.—This is a case which proves that the maxim "justice delayed is justice denied" is not always true. The occurrence took place on 9th/10th September, 1979. The trial commenced on 10th September and on 11th September the accused constable S. Damodaran of the Central Reserve Police Force was found guilty of the charges u/s 10(n) of the Central Reserve Police Force Act, 1949 by the Magistrate 1st Class cum-Assistant Commandant, 12th Battalion, Central reserve Police Force, Amerigog Gauhati. The learned Magistrate-cum-Assistant Commandant, convicted the accused and sentenced him to undergo rigorous imprisonment of six months by his judgment and order dated 11th September, 1979 passed in Criminal Case No. 1 of 1979. An appeal was preferred and the Additional Sessions Judge. Kamrup at Gauhati by his judgment and order dated 14th and 21st July, 1980 passed in Cr. Appeal No. 32 (K-3)/79, remanded the case for retrial after setting aside the said judgment and order of the learned Magistrate. Hence the present Petition u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 by the Deputy Superintendent of Police, Coy. Commander (F. Coy.) 12th Battalion, CRPF, Gauhati.

2. In short, the prosecution case is that on 9.9.79 the accused constable misbehaved with his platoon Commander, Sultan Singh and he also used abusive language and threatened to kill Inspector, Sher Singh. It is further alleged that on 10.9.79 the accused assaulted his platoon Commander, Sultan Singh in presence of his Officer Commanding, Shri Anurag Saxena, Deputy Superintendent of Police.

3. On perusal of the judgment of the learned Magistrate-cum-Assistant Commandant, I find that on 10.9.79 the accused was produced before him, particulars of charges were explained and the accused pleaded guilty. The accused also refused to engage any defense counsel. The learned Magistrate was of the opinion that all the three charges were proved beyond any reasonable doubt. But on perusal of the judgment of the learned Magistrate it is not clear whether his finding was based on the evidence adduced by the prosecution or on the admission of the guilt by the accused person.

4. The learned Additional Sessions Judge was of the view that it was doubtful if the accused-Appellant had any opportunity to know consequence of his action for not defending his case properly before the learned trial Court, who was also the Assistant Commandant of the same Battalion in which the Appellant was working at a constable. The learned Sessions Judge also did not find anything on record to show that the offence was properly explained to the Appellant. On perusal of the statement of the accused recorded u/s 313 of the Code of Criminal Procedure, 1973, the learned Sessions Judge came to the conclusion that the learned trial Court put direct questions "with a biased view in mind" and the questions were hit by the provisions of Sub-section (1) of Section 313. The learned appellate Court also noted that the learned trial Court did not comply with the provisions of sub-section (2) of Section 248 of the Code of Criminal Procedure. In view of the above findings, the learned lower appellate Court set aside the Conviction and ordered retrial.

5. The only submission put forward before me by the learned Senior Standing Counsel was that the learned appellate Court erred in law by ordering retrial as the accused pleaded guilty before the learned trial Court. The accused person was a constable in the 12th Battalion and the allegation of misbehavior was against his superior officer of the same Battalion. The learned Magistrate was also an Assistant Commandant of the said Battalions.

The trial commenced and the teemed person was convicted on the same day on which the alleged occurrence took place. In view of the above circumstance I agree with the finding of the learned lower appellate Court that it was doubtful if the accused knew the consequences of his action of not defending his case properly. The fact that the accused pleaded guilty was also of no consequences considering the facts and circumstances of the case, as stated above. I am therefore, of the opinion that the contention of the learned Standing Counsel has no force.

6. The learned Standing Counsel could not show anything from records that the findings of the learned lower appellate Court that the offence was not properly explained to the accused and that the provision of Sub-section (2) of Section 248 of the Code of Criminal procedure was not followed, were erroneous. That apart, I entirely agree with the learned lower appellate Court that the examination of the accused person u/s 313 of the Code of Criminal Procedure was bad as the learned lower appellate Court instead of affording an opportunity to the accused to explain the circumstances appearing in the evidence against him, put direct questions which procedure was contrary to the provisions of Section 313 of the Code of Criminal Procedure.

7. The learned Standing Counsel has failed to draw my attention to any other irregularity or illegality committed by the learned lower appellate Court which would warrant setting aside the said judgment and order by exercising the revisional Jurisdiction.

8. Admittedly no legal aid was provided to the accused during trial. I have given my due consideration to this fact of the case in view of the constitutional guarantee enshrined in Article 21 and the commitment of the State to provide free legal aid embodied in Article 39A. It is true that the accused did not ask for such assistance. The Apex Court in *M.L. Jain Vs. Union of India*, held that:

it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service.

It is, therefore, not necessary for a person to ask for legal aid.

9. But the point for consideration is whether this is a fit case for providing legal aid. In *Mahadeo Hoskot AIR 1978 SC* (sic) there it as (sic) for the ends of (sic) liable in a particular case and the distortion (sic) In the case in hand the Petitioner was not only (sic) sentenced to suffer rigorous imprisonment for six (sic) also lost his job, i.e., his livelihood, In *Olga* (sic) SC 180, their Lordships considered whether right to (sic) guaranteed by Article "21 includes the right to live (sic) wiring the question in the affirmative their Lordship

Upon that assumption, the question which (sic) consider is whether the right to life include (sic) livelihood, We see only one answer to that (sic) mely, that it dose. The awe up of the right to (sic)rred by Article 21 is wide and for (sic) It do (sic) merely that life cannot be extinguished or taken (sic) for example, by the imposition and execution (sic) sentence, except according to the procedure (sic) law. That is but one aspect of the right to (sic) ally important facet of that right is the right to (sic) because, no person can live without the means (sic) that is, the means of livelihood, If the right (sic) is not treated as a part of the constitutional (sic) the easiest way of depriving a person of his. (sic) would be to deprive of his means of livelihood (sic) of abrogation, Such deprivation would not den(sic) of its effective content and meaningfulness but (sic) make life impossible to live. And yet, such (sic) would not have to be in accordance with the (sic)tablished by law, if right to livelihood is a part of to livelihood is not (sic) a part o f the right to life.

In Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, his Lordship (sic) Bhagwati (as he then was) made the following bold pro(sic)

When Article 21 provide that no person (sic) rived of his life or liberty except in accordance (sic) procedure established bylaw, it not enough (sic) should be some semblance of procedure provide (sic) but the procedure under which a person may (sic) of his life or liberty should be "reasonable, (sic) Now a procedure which does not make avails (sic) service to an accused parson who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance cannot possibly be regarded as reasonable, fair and just.

10. Situated thus I find that accused was deprived of hit liberty and livelihood, that is life without making available legal assistance. Since the constitutional right of the accused has been deprived it is necessary that free legal assistance should be provided to make the trial reasonable, fair and just. I am, therefore, of the view that in the instant case the accused is entitled to get legal assistance, if necessary, at the State expense during the trial. Since no such assistance was given during his trial by the Magistrate-cum-Assistant Commandant, the denial of the same would render the trial honest in the eye of law as it was not reasonable, fair and just and was hit by Act, 21. On this ground also the judgment and order of the learned trial Court cannot stand. However, I want to make it clear that each and every trial cannot be held bad for want of legal service and the Court may judge and consider the case from all angles before arriving at any decision.

11. Because of all the above, I am of the opinion that the present petition is liable to be dismissed, which I hereby do. I uphold the judgment and order of the learned Additional Session Judge, Kamrup at Gauhati with further direction that legal aid at the expense of the State shall be made available to the accused at the time of his trial.

12. In the result, the petition is dismissed.