

The State Vs. Tikaram Haneri

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Court : Guwahati

Decided On : Sep-12-1969

Judge : P.K. Goswami and N.C. Pathak, JJ.

Appellant : The State

Respondent : Tikaram Haneri

Judgement :

P.K. Goswami, J.

1. This is a Criminal reference from the Mizo Hills. The accused has been convicted and sentenced to death by the Additional Deputy Commissioner and Additional District Magistrate, Mizo Hills, under Section 302, Indian Penal Code. The accused has also put in an appeal from jail.
2. The Additional Deputy Commissioner, Mizo Hills, is empowered to try cases of this nature under an appropriate notification dated 19-2-69.
3. The accused was a sepoy in the Assam Rifles at the material time serving in the Mizo Hills and the deceased was an orderly of Adjutant there sharing the same bunker with the accused. It is said that the accused caused the murder of the deceased Man Bahadur Gurung on the night of 20th December 1966 and his dead body was discovered in the gerge below in the morning of 21st. The accused was taken to Quarter Guard on his making extra-judicial confession before his Officer

and others and later the Police registered a case and sent him up for trial. After commitment, the case was ultimately tried by the Additional Deputy Commissioner who convicted and sentenced him as stated below.

4. As it appears from the judgment, the accused was undefended during the entire trial. This is something very serious. Whenever and wherever under the jurisdiction of this Court an accused person is tried for murder under Section 302, Indian Penal Code, where the extreme penalty of law may be inflicted if the offence is established, he must not remain undefended in the trial. No person can be allowed to lose his life in an established Court of Law under any civilised system without affording an opportunity of defence. The reason that the accused did not ask for a lawyer or did not know his rights to exercise the same to ask for an opportunity for being defended by a lawyer of his choice, does not absolve the trial Court from its duty to arrange for his defence. Undefended as he was, facing a Sessions trial and which, as in this case, has resulted in his conviction and sentence to death, we are of opinion that the rule of Pauper defence laid down in the Assam Law Department Manual should be applicable in this case and cases of like nature. Rule 19(1) of this Manual clearly lays down:

When an accused is committed for trial on a charge of murder, the committing Magistrate shall at the time of passing order for his commitment enquire of the accused whether he will make arrangements for his own defence in the Court of Sessions or wishes to be defended at the expense of Government, and shall communicate the result of his enquiry to the Sessions Judge direct filing a copy of the letter with the commitment record. If the accused expresses a wish to be defended at Government expense, the committing Magistrate shall state in the letter whether in his opinion the accused can afford to engage a pleader in the Sessions Court, giving the grounds for his opinion. It shall be stated whether the accused was defended by a pleader in the Lower Court.

There is another very significant rule, namely Rule 19(3), which may also be set out:

Notwithstanding these precautions if it appears at the commencement of the trial that an accused charged with murder is undefended, the Public Prosecutor shall

bring the fact to the notice of the presiding Judge, and request him to appoint a pleader for the defence of the prisoner. The Judge may then appoint any barrister or pleader on the list referred to above, or any member of the Bar present in Court, to defend the prisoner.

These are salutary rules and may be said ,to be in accord with the constitutional Tight of an accused under Article 22(1) of the Constitution of India. Although this is not the case of the accused getting a particular lawyer of his choice, the position in this case was worse. Here is no proper trial at all in absence of a lawer to defend the accused facing a murder charge. We are, therefore, clearly of opinion that there has not been a proper trial in this case and the whole trial is, therefore, vitiated on account of the omission of the Court to ensure defence to an undefended accused facing a murder charge. The accused is thus deprived of defence in the course of the trial. For this short reason, we set aside the conviction and sentence of the accused and remand the case for trial in accordance with law after arranging for the defence of the accused in an appropriate manner under the provisions of the Assam Law Department Manual.

5. The reference is, therefore, rejected and the jail appeal is allowed. The case is remanded and the retrial should commence immediately on receipt of the records and there should be an expeditious hearing. Let the records be immediately despatched to the Court below.

N.C. Pathak, J.

6. I agree.

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