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**Court :** Madhya Pradesh

**Decided On :** Jun-26-1987

**Reported in :** 1988CriLJ1592

**Judge :** K.L. Shrivastava, J.

**Appellant :** Badri

**Respondent :** State of M.P.

**Judgement :**

ORDER

**K.L. Shrivastava, J.**

1. This revision petition is directed against the appellate judgment and order dated 24-1-86 passed by the 2nd Additional Sessions Judge) Ratlam in Criminal Appeal No. 117 of 1985 whereby the applicant's convictions under Sections 363, 323 and 342 IPC and the various sentences passed thereunder have been maintained.

2. Circumstances giving rise to this petition are these. According to the prosecution on 29-3-85 at about 7.00 a.m. Ku. Sharda (P.W. 2) aged about 12 years daughter of Babu (P.W. 1) was going to school. The Petitioner who was earlier in service of Babu (P.W.1) met her on way and told her that her father required her presence at home. On her refusal, he forcibly took her away on his bicycle. This he did in the presence of Basantilal (P.W. 3) aged 14 years. He took

her to different places and ultimately brought her to Ratlam. There he was beating her. Her cries brought Gopal (P.W. 6) aged 14 years to the scene.

3. The matter was reported to the Ratlam Police at 2.15 p.m. the same day.

4. After investigation the petitioner was prosecuted with the result already stated.

5. The defence of the petitioner was that there is land dispute between him and Babu (P.W. 2) and Gopal has deposed against him at the instance of Babu.

6. The contention of the learned Counsel for the petitioner in this Court is that the petitioner could not engage a counsel for his defence due to his poverty and in view of the decision in Suk Das's case : 1986 CriLJ1084 the trial must be held to be vitiated.

7. On a careful consideration of the facts and circumstances of the case I find that the contention sought to be canvassed has force and must prevail.

8. It is apposite to reproduce the following excerpt below the hand note in the decision in Suk Das's case (Supra) (1986 Cri LJ 1084) (SC):

Free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty. This fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. The exercise of this fundamental right is not conditional upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance, the trial may lawfully proceed without adequate legal representation being afforded to him. On the other hand the Magistrate or the Sessions Judge before whom the accused; appears is under an obligation to inform the. accused that if he is unable to engage the service of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. The conviction reached without informing the accused that they were entitled to free legal assistance and requiring from them whether they wanted a lawyer to be provided to them at State cost which resulted in the accused remaining unrepresented by a lawyer in the trial is clearly a violation of the fundamental right of the accused under Article 21 and the trial must

be held to be vitiated on account of a fatal constitutional infirmity.

(emphasis supplied)

9. In the instant case, the petitioner faced the trial without the assistance of a lawyer and there is nothing to disclose that the learned trial Magistrate had discharged his, obligation to inform him regarding the availability of free legal assistance.

10. For the foregoing reason, the revision deserves to be allowed.

11. Learned Counsel for the petitioner further contends that the petitioner has already undergone a substantial portion of the sentence of imprisonment and it is in the interest of justice that he is not exposed to the hazards of a fresh trial after providing free legal assistance. In support of his submission he has invited my attention to paragraph 7 of the judgment in Suk Das's case (1986 Cri LJ 1084) (SC) (Supra). The material portion thereof reads thus:

But the result of our quashing the conviction of the appellants would be that the appellants would have to be tried again in accordance with law after providing free legal assistance to them at State cost and that would mean that the appellants would continue to; be exposed to the risk of conviction and; imprisonment and the possibility cannot be ruled out that the offence charged may ultimately be proved against them and they might land up in jail and also lose their service. We, therefore, felt that it would not only meet the ends of justice but also to be in the interest of the appellants that no fresh trial should be held against them and they should be reinstated in service but without; backwages. We accordingly direct that the; appellants shall be reinstated in service but they shall not be entitled to claim any backwages and no fresh trial shall be held against them. The appeal will stand disposed of in these terms

12. On a perusal of the record, I find that the petitioner was in custody for about six months as undertrial and has undergone more than 1 1/2 years towards the sentence imposed on him. It also appears that the prosecution story is not wholly true. There is no medical evidence to show that Sharda (P.W. 2) had sustained

any injury. Basantilal(P.W. 3) does not support her version that the petitioner had threatened him with knife injury. According to the evidence, there was a preexisting dispute against the petitioner,

13. On a careful consideration I am of the view that the contention aforesaid must also prevail.

9. In the result, the revision petition succeeds and is allowed. The petitioner's conviction and sentence are both set aside. It is directed that no fresh trial shall be held against him.

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