



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Case Comment: Suk Das v Union Territory of Arunachal Pradesh

Trivikramaadithya K. P.<sup>a</sup>

<sup>a</sup>K.L.E Society's Law College, Bengaluru, India

*Received 27 November 2022; Accepted 07 December 2022; Published 16 December 2022*

---

### INTRODUCTION

Under Article 21 of the Indian Constitution,<sup>1</sup> free legal assistance is affirmed as a fundamental right. This right is also recognized under Article 39A.<sup>2</sup> According to Article 39A, the State shall make sure that none of its citizens is denied access to justice due to an economic disability or other impairment. Despite having such valuable concepts in the Constitution, it is challenging to ensure that they are implemented with the same enthusiasm. However, in one such case, the court gave a novel dimension to the concept of free legal aid, thereby fulfilling the spirit of Article 21 of the Constitution. This case is none other than Suk Das v Union Territory of Arunachal Pradesh.<sup>3</sup> In this landmark case, Former CJI, Justice P.N Bhagwati emphasized the actual necessity of making the public aware of the fundamental right of receiving free legal assistance. Other aspects such as the Magistrate's obligation to inform the accused about such rights and the consequences of failing to apply for legal aid services were also dealt with in this case by the Supreme Court.

---

<sup>1</sup> Constitution of India 1950, art. 21

<sup>2</sup> Constitution of India 1950, art. 39A

<sup>3</sup> *Suk Das and Anr v Union Territory of Arunachal Pradesh* (1986) SC 991

## **BACKGROUND**

The appellant in this case allegedly threatened a Public Works Department employee to revoke his transfer orders. The appellant was accused under section 506 of the Indian Penal Code.<sup>4</sup> As a result of his poverty, the appellant was unable to afford legal representation and could not cross-examine the prosecution witnesses. The appellant himself tried to cross-examine the material witnesses. Nevertheless, the appellant was sentenced to two years of simple imprisonment.

A High Court appeal was then filed by the appellant. The claim was that there was no free legal assistance given for the appellant's defence, thereby giving rise to the vitiation of the trial. The High Court ruled that even though the appellant had an undoubtedly constitutional right to receive free legal assistance, since he failed to seek legal assistance from the Additional Deputy Commissioner and did not request legal aid, the verdict cannot be overturned based on his failure to request legal assistance. In light of the High Court's upholding his conviction, the appellant filed an appeal before the Supreme Court.

## **LEGAL ISSUES**

- Whether the fundamental right of free legal assistance be lawfully denied if the accused has failed to seek legal aid service?
- Whether the trial can proceed lawfully without the requisite legal counsel if the accused has not applied for legal aid service.
- Whether the Magistrates or Sessions Judges have a responsibility to tell the accused of his right to obtain legal aid service and ask if he would like to have state-provided defence counsel.
- Whether an unrepresented accused's conviction stands if he was convicted without having been informed about free legal aid service.

---

<sup>4</sup> Indian Penal Code 1860, s 506

## OBSERVATIONS OF THE COURT

The Court observed what was held in *Hussainara Khatoon's* case,<sup>5</sup> that, to ensure a just, fair, and reasonable process for a person accused of any crime, a free legal aid service should be offered, as it is implied in Article 21 of the Constitution. In cases where accused persons cannot afford a lawyer and obtain legal services because of poverty, indigence, or incommunicado living conditions, they should be granted free legal assistance. If the nature of the case requires a lawyer's representation, the State is obligated to provide such a lawyer, unless the person voluntarily refuses it. Therefore, any person accused of a crime has the fundamental right to obtain free legal assistance.

The Court noted that in rural areas, around 70% of the population is illiterate, and even more people, including literates, are unaware of their legal rights. Their legal needs are prone to be crisis-oriented as they cannot anticipate legal issues and seek advice from a lawyer, and most of the time their legal problems are amplified by poverty. As a result, such persons cannot become self-reliant. Since they have no idea in what capacity they can get legal assistance, to end their exploitation and gain their rights, the law ceases to be their only protector here. A certain degree of helplessness can be alleviated by creating legal awareness and for this reason, it has always been a cornerstone of the legal aid campaign to promote legal literacy. However, the concept of legal aid would become meaningless if ignorant accused persons were left to request it on their own. The idea of free legal assistance would become nothing more than a paper promise, failing to fulfill its sole purpose.

The Court referred to *Khatri v The State of Bihar*,<sup>6</sup> where it was decided that whenever an accused person appears in front of a Magistrate or a Sessions Judge, it is the duty of the Magistrate or the Sessions Judge to caution him that he has a constitutional right to free legal assistance at the state's expense if he is poor or indigent to afford a lawyer. Following the ruling, the Court informed all Magistrates and Sessions Judges, throughout the country of their duty to educate the accused persons about free legal assistance. The Court also laid down a condition

---

<sup>5</sup> *Hussainara Khatoon & Ors v Home Secretary, State of Bihar* (1979) SCR (3) 532

<sup>6</sup> *Khatri & Ors v State of Bihar & Ors* (1981) SCR (2) 408

for obtaining legal aid services. To qualify for legal assistance, the Court required that the offence should lead to imprisonment upon conviction, as well as that free legal representation was appropriate given the context and social justice requirements. All these things referred to were reiterated as it is in this case.

## **DECISION**

The Court held that the appellant was never informed that he was entitled to free legal assistance. He was convicted even though he did not have a lawyer to represent him. Since the trial was vitiated by a constitutional defect, the conviction and sentence of the appellant must be vacated. Nevertheless, a quashing of conviction would entail that the appellant should have to undergo a retrial after receiving free legal aid from the state, as per law. The Court held, however, that a fresh trial was not required against the appellant. In this way, the court ensured a fair trial, thus fulfilling the intent of the Constitution.

## **ANALYSIS**

There is no doubt that the case holds utmost importance in the Indian Criminal Justice system and, to this day, it is cited and followed as precedent in many cases. The Supreme Court has rightly emphasized that access to free legal assistance is a fundamental right, that cannot be taken away from an accused simply because he has not requested it. It is the magistrate's responsibility to inform the accused of his rights, and if he doesn't do so, the proceedings will be unfair and unconstitutional. The accused having never been informed of his valuable and foremost fundamental right the court correctly has set aside his conviction. Thus, the Judgement serves as a binding source of authority to ensure a fair and just trial in the country.

In the course of questioning witnesses, the prosecution always tends to ask leading questions. In addition, there is the possibility of introducing irrelevant and inadmissible documents, as well as hearsay evidence. Neither the prosecution nor the defence can have a trial judge on their side as he should act neutrally. In such circumstances, a counsel representing the accused must participate in proceedings, note down the demeanour of the witnesses and draw the attention of the trial judge to this aspect, object when the prosecution asked leading questions to the

witnesses or when the prosecution adduced hearsay evidence or if the prosecution tried to introduce irrelevant and inadmissible documents. Thus, it is extremely important to have a defence lawyer involved from day one of the trial until the very end.<sup>7</sup> Therefore it becomes a necessity to provide legal assistance to the accused even though he failed to apply for it. Moreover, a lack of knowledge of his legal right would be the real reason for his failure to apply for legal aid, as rightly pointed out by the court in this case. Most people are not legally literate, so in such scenarios, if we force the accused to seek legal assistance on his own, it is impossible that he will do so because he has no clue what it is even about. Thus, the court has appropriately viewed that if we adopt absurd interpretations of the concept of free legal aid, the whole purpose of it would be completely defeated. Furthermore, this is one of the reasons why the court in this case emphasized legal awareness and literacy as integral concepts of legal aid services. To date, the judgment has made an impact on promoting legal awareness.

The Court reiterated what has been observed in *Khatri v The State of Bihar* that it is the court's responsibility to let the accused know about his right of obtaining legal assistance. An indigent accused person cannot be entitled to free legal services till he has been informed by the Magistrate or Sessions Judge of his rights. Thus, to ensure a just trial, we are required by our Criminal Law system to provide legal assistance to accused persons and inform them of their rights, as correctly held by the court. If an accused isn't informed about legal assistance, he will be deprived of the constitutional promises made to him. Due to this, there was a good reason for the court to set aside such a conviction until a fair trial had been conducted.

The decision of the court is also an authority for the proposition that based on facts and observations of a given case, the court may direct no fresh trial to be conducted unnecessarily.<sup>8</sup> A fresh trial should only be conducted when necessary otherwise it would just delay the process and impede the justice system. Thus, as a result, the court, taking both the interests of the accused and justice into account, has rightly decided not to hold a fresh trial.

---

<sup>7</sup> *S Yuvaraj v State* (2013) (6) CTC 320 [30]

<sup>8</sup> *Khurshid v The State* (2008) 1 JCC 21 [8]

## CRITICISMS

The Court in this case has identified certain exceptions in providing free legal assistance to individuals accused of crimes. The following was declared: “There may be cases involving offences such as economic offences or offences against the law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State.”

This criterion is neither well-defined nor exhaustive. Thus, the question arises as to whether certain offences can be excluded from legal aid. The sole purpose of free legal aid is to ensure equality before the law by not letting indigent or illiterate individuals suffer merely because of their indigence or illiteracy. Consequently, it should be the only criterion and nothing else. Every indigent accused person should receive legal assistance, regardless of the offence charged against him. The constitutional directive for legal aid is a goal in itself and not a means to achieve other goals such as social justice.<sup>9</sup>

The Court in *Rajoo Alias Ramakant v The State of Madhya Pradesh*<sup>10</sup> held that there is no certainty that such exceptions to the provision of legal aid will exist. This is due to the mandate of the Constitution and the universal notion that “everyone is presumed to be innocent until proven guilty.” Furthermore, the court opined that, if one accepts such exceptions, one might be tempted to add a few more, such as for terrorism, etc. There is a risk that this may erode the fundamental right enshrined in Article 21 of the Constitution.

## CONCLUSION

If an accused person is found to be unrepresented, he must be assigned a lawyer to stand by him throughout the trial. As a constitutional requirement, courts must be able to provide an accused person with a lawyer before starting a trial. This is regardless of whether he asks for it or remains silent. At the onset of the trial, the court is bound to provide a lawyer to the accused person unless he expresses voluntarily that he doesn’t want a lawyer. The criminal proceedings and

---

<sup>9</sup> *Suk Das v Union Territory of Arunachal Pradesh* (1986) 2 SCC 401, 403-404

<sup>10</sup> *Rajoo Alias Ramakant v State of MP* (2012) 8 SCC 553 [17]

subsequent conviction, as well as the sentence imposed on the accused person, would be invalidated by default if the courts have failed to inform the accused person, of his right to obtain legal assistance. Thus, a landmark law was passed by the court to ensure fair trials, and by doing so it upheld the very purpose of Article 21 of the Constitution.