

Criminal Revision
PRESENT: The Hon'ble Justice Ashim Kumar Roy

Judgment On: 06-01-2010.

C.R.R. No. 1399 of 2009

Goutam Borral @ Gedu
versus
State of West Bengal & Anr.

Point:

DEFENCE BY LAWYER: Right to defend in a trial by a lawyer of the choice of an accused is a very valuable right which ought not to be denied for ends of justice unless it drag a sessions trial on the pretext of changing his lawyer one after another - The Constitution of India, Art. 22(1) - Code of Criminal Procedure, 1973 S. 303

Fact: Petitioner facing trial of charge under Section 302/34 of the Indian Penal Code and was defended by a lawyer engaged by a Court at the expenses of the State. After examination of 5 witnesses, and on the date fixed for examination of P.W. 6 and P.W. 7, the petitioner prayed for time to engage a lawyer of his own choice and at his expenses. However Ld. Trial Court rejected such prayer and proceeded with trial.

Held: The right of the accused to be defended by a lawyer of his choice is not only guaranteed under Article 22 (1) of the Constitution but such right is also the mandate of Section 303 of the Code of Criminal Procedure. When an accused prayed for time for changing his lawyer engaged at the expenses of State and to defend himself by a lawyer of his own choice at his own expenses for ends of justice same ought not to be denied. However, of course no accused can be permitted to drag a sessions trial on the pretext of changing his lawyer one after another and certainly in such case such attempt of an accused ought to be resisted. (Paragraph - 3)

For Petitioner : Mr. Joymalya Bagchi
Mr. Abir Ranjan Neogi

For State : Mr. Abhijit Auddy

For O.P. No. 2 : Mr. Somnath Banerjee

The Court:

The present petitioner, who has been facing his trial along with others of a charge under Section 302/34 of the Indian Penal Code, was defended in the said trial by a lawyer engaged by the Court at the expenses of the State. However, after examination of first 5 witnesses was over and on the date fixed for examination of P.W. 6 and P.W. 7 the petitioner prayed for time expressing his desire to engage a lawyer of his own choice and at his expenses. However, the Trial Court rejected such prayer and proceeded with the trial. Aggrieved by such order the petitioner now moved the instant criminal revision.

2. Heard Mr. Joymalya Bagchi, the learned advocate, appearing on behalf of the petitioner as well as Mr. Somnath Banerjee for the defacto-complainant and Mr. Abhijit Auddy for the State.

3. From perusal of the impugned order it appears the Learned Trial Court has elaborately discussed and assigned reasons for not allowing the petitioner's prayer for adjournment for engaging a lawyer for his defence of his own choice and at his expenses. Undoubtedly, the right to defend in a trial is a very valuable right of an accused. The right of the accused to be defended by a lawyer of his choice is not only guaranteed under Article 22 (1) of the Constitution but such right is also the mandate of Section 303 of the Code of Criminal Procedure. At the top of everything, when an accused prayed for time for changing his lawyer engaged at the expenses of

State and to defend himself by a lawyer of his own choice at his own expenses for ends of justice same ought not to be denied. However, of course no accused can be permitted to drag a sessions trial on the pretext of changing his lawyer one after another and certainly in such case such attempt of an accused ought to be resisted.

4. Be that as it may, so far as the instant case is concerned, I am of the opinion the accused shall be given an opportunity to engage a lawyer of his own choice. Accordingly, the order impugned is set aside. Three weeks time from this date is granted to the accused to engage a lawyer of his choice. The Trial Court is directed within a week from communication of this order to fix a date for re-fixing the schedule of trial. The programme of trial must be fixed in presence of the accused/petitioner as well as the State. It is further directed the Trial Court shall give the opportunity to the present petitioner to cross-examine the prosecution witness, viz., the prosecution witness nos. 6, 7 and if any other witnesses examined in the meantime but not cross-examined on his behalf. No fresh opportunity to be given to the accused/petitioner to cross-examine the witnesses who have already been cross-examined on his behalf. The Learned Magistrate is directed to proceed with this trial strictly in terms of Section 309 of the Code of Criminal Procedure and not to grant any further adjournment to either of the parties on whatever reasons. I make it clear within the time as stipulated hereinabove if the petitioner fails to engage a lawyer of his own choice the Learned Trial Court shall have the liberty to proceed against him in accordance with the provisions of Section 304 of the Code of Criminal Procedure.

This criminal revision thus stands succeed and is allowed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)