

FAIR TRIAL AND CORPUS DELICTI

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Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses or the cause which is being tried is eliminated. If the complainant, victim or witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to produce material witnesses is certainly denial of fair trial.

The Code of Criminal Procedure, 1973 ensures that an accused gets a fair trial. It is essential that the accused is given a reasonable opportunity to defend himself in the trial. He is also permitted to confront the witnesses and other evidence that the prosecution is relying upon. The right of a person charged with crime to have the services of a lawyer is fundamental and essential to fair trial. The right to be defended by a legal practitioner, flowing from Article 22(1) of the Constitution has further been fortified by the introduction of the Directive Principles of State Policy embodied in Article 39A of the Constitution by the 42nd Amendment and enactment of sub-section (1) of Section 304 of the Code of Criminal Procedure. Legal assistance to a poor person facing trial whose life and personal liberty is in jeopardy is mandated not only by the Constitution and the Code of Criminal Procedure but also by International Covenants and Human Rights Declarations. In *Maneka Gandhi Versus Union of India*, it has been held by a Constitution Bench of Hon'ble Supreme Court that the procedure for depriving a person of his life or liberty should be fair, reasonable and just. It is observed that it is not a fair or just that a criminal case should be decided against an accused in the absence of a counsel. In the case of *Hussainara Khaton and others Versus Home Secretary, State of Bihar (1980) ISCC 98*, it is held that the procedure under which a person may be deprived of his life or liberty should be "reasonable, fair and just."

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Where accused is unable to secure legal services on account of indigence, the philosophy of free legal service as an essential element of fair trial is found in *Khatri Versus State of Bihar* (1981) I S C C 627. The Hon'ble Supreme Court has held that the state is bound to provide free legal services to an indigent accused and the State cannot avoid its constitutional obligation to provide free legal service to a poor accused. In *Mohd. Hussain alias Julfikar Ali Versus State (Govt. of N.C.T.), Delhi* 2012 (3) CCSC 1153 Hon'ble Supreme Court has held that the right to free legal services would be illusory for an indigent accused unless the Magistrate or the Sessions Judge before whom he is produced inform him of such right.

Fair trial implies speedy trial also, while a speedy trial is an implied ingredient of fair trial. It is true that speedy trial is a must. But it is also necessary to mention here that some times the accused party being stronger in terms of money power and muscle power, seeks times for one excuse or the other till victim or witness is won over or is tired. Not only this complainant, victim and witnesses are threatened, they are abducted, they are maimed, they are done away with or even bribed. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice. It is not a fair trial where complainant, Victim and witnesses, who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. In this regard Section 309 Cr.P.C. enjoins upon the court to hold the trial expeditiously this is because it is not only an integral part of the fundamental right of a person guaranteed under Article 21 of Constitution, but it also helps to secure the proper evidence of the complainant, victim and witnesses. This procedure also minimize the chance to threaten or win over the complainants, victim or witnesses by the accused. The complainant, victim or witnesses should not be subjected to unnecessary restraint or inconvenience. Therefore if a witness is present in court he must be examined on that day for fair trial.

In order to balance the need for a fair trial with the need to ensure that victims/witnesses are not intimidated within the court rooms, it is important that the decorum of the court is maintained at all times. Victims should be treated with compassion and respect for their dignity. Complainant and victims should be informed of their rights in seeking

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redress through mechanism. Protection of a complainant, Victims and witnesses are a paramount importance. In case of witnesses steps shall be taken to ensure safe passage for the witnesses to and from the court precincts and provide security to them in their place of residence wherever considered necessary. In the matter of rape cases it must be ensured that the complainant of sexual assault should be provided with legal representation. The police and the court should be under a duty to inform the victim of her right to representation. A list of Advocates willing to act in these cases should be kept at the police station also for victim who did not have a particular lawyer in mind or where own lawyer was unavailable. The victims should be awarded compensation by the court.

Article 14 of the Constitution of India guarantees to every person the right to equality before the law or the equal protection of the laws. The right to equality in the Constitution is not merely a negative right not to be discriminated against but also a positive right to be treated as an equal. The State is under an obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled to as a human being. Article 39A of the Constitution provides that the State shall secure that the operation of the legal system promotes Justice on a basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing Justice are not denied to any citizen by reason of economic or other disabilities. In order to achieve this objective by providing free and competent legal service to the weaker sections of the society to ensure that opportunities for securing Justice are not denied to any citizen, which includes complainant and victim, by reason of economic or other disabilities, the Parliament enacted the Legal Services Authorities Act, 1987.

Admittedly, it is not a part of fair trial where the witnesses are present in the court for examination but the advocate of the accused withdraws his appearance only for getting the matter adjourned. In *R. Balakishana Pillai Versus State of Kerala* (2000) 7 S.C.C. 129 Hon'ble Supreme Court condemned this practice and observed that it requires to be strongly discouraged. Hon'ble Supreme Court held that in such a situation, for seeking the appearance of the accused, who was released on bail, there is no alternative for the court but to issue bailable warrant.

In *N.G. Dastane Versus Shrikant S. Shivde and another* (2001) 6 S.C.C. 135, the Hon'ble Supreme Court held that if the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the Court. Seeking adjournments for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. An advocate abusing the process of court in this manner is guilty of misconduct.

To protecting and ensuring the rights of the person who has suffered any loss or injury by reason of the act for which the accused person has been sentenced, an order of compensation under Section 357 of Cr.P.C. can be passed by the court. This power is intended to do something to reassure the victims that he or she is not forgotten in the criminal Justice system. In *Suganthi Suresh Kumar Versus Jagdeeshan* A.I.R. 2002 S.C. 681, Hon'ble Supreme Court has recommended to all courts to exercise this power liberally so as to meet the ends of Justice in a better way. In Section 372 of Cr.P.C. a new proviso has been inserted by Cr.P.C. (Amendment) Act, 2008. It gives to the victim the right to prefer an appeal against the order passed by the trial court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. Under Section 357 of Cr.P.C. an order of compensation can be passed by the trial court, appellate court or revisional court.

The Code of Criminal Procedure (Amendment Act), 2008 inserted victim compensation scheme by Section 357A. This section lays down that if the trial court, at the conclusion of the trial is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation and whenever a recommendation is made by the court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme prepared by the State Government in co-ordination with the Central Government. In exercise of the powers conferred by Section 357A the Government of Uttarakhand in

co-ordination with the Central Government framed the “Uttarakhand Victim from Crime Assistance Scheme, 2013” for providing funds for the purpose of assistance and rehabilitation to the victim or his dependents who have suffered loss or injury as a result of the crime. Scheme no.3 provides that the State Government shall establish a victim from crime assistance Fund. Schedule-1 covers the maximum limit of assistance for loss or injury in the particular matter.

A Criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence. The object of the criminal law process is to find out the truth and not to shield the accused from the consequences of his wrong done. It needs to be emphasized that the rights of the accused have to be protected. At the same time the rights of the complainant and the victims have to be protected. The rights of the complainant and the victims cannot be ignored. Accused persons are entitled to a fair trial where their guilt or innocence can be determined. But from the complainant and victim side the criminal should be punished.

Murderer invariably commits murder under the cover and cloak of secrecy. The murderer who commits murder in secrecy will not keep any evidence for the investigating Officer to come, collect it and produce before the court as evidence. The murderer who commits such murder would naturally take care to eliminate and destroy the evidence. In such cases, it would be very difficult for prosecution to prove the guilt of the accused. The prosecution may, however establish other circumstances consistent with the hypothesis of the guilt of the accused.

In a murder case, it is not necessary that the dead body of the victim should be found. Here I deal with the matter of recovery of corpus delicti. Corpus delicti means the body of facts which constitutes an offence. In *Mani Kumar Thapa versus State of Sikkim*, AIR 2002 page 2920 the Hon’ble Apex Court held that in a trial of murder, it is neither an absolute necessity nor an essential ingredient to establish corpus delicti. The fact of the death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. There are a number of possibilities where a dead body could be disposed of without any trace, therefore, if the recovery of the dead body is to be held to be mandatory to convict an accused, in many a case, the accused

would manage to see that the dead body is destroyed to such an extent which would afford the accused complete immunity from being held guilty or from being punished. What is, therefore, required in law to base a conviction for an offence of murder is that there should be reliable and plausible evidence that the offence of murder like any other factum of death was committed and it must be proved by direct or circumstantial evidence albeit the dead body may not be traced. Therefore, in a murder case, it is not necessary that the dead body of the victim should be found and identified, i.e. conviction for offence of murder does not necessarily depend upon corpus delicti being found. The corpus delicti in a murder case has two components death as result, and criminal agency of another as the means. Where there is a direct proof of one, the other may be established by circumstantial evidence as held by the Hon'ble Apex Court in Prithipal Singh etc. Versus State of Punjab and another, 2012 (1) C.C.S.C. 186.
