(2016) 06 MAD CK 0147

MADRAS HIGH COURT

Case No: Criminal Appeal No. 245 of 2012

Suresh Kumar		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: June 8, 2016

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 300, 302, 307, 436

Citation: (2016) 2 MadWNCri 372 : (2016) 3 MLJCriminal 513

Hon'ble Judges: Mr. M. Jaichandren and Mr. S. Nagamuthu, JJ.

Bench: Division Bench

Advocate: Mr. R. Sankarasubbu for Mr. K. Sakthivel, Advocates, for the Appellant; Mr. M. Maharaja, Additional Public Prosecutor, for the Respondent

Final Decision: Partly Allowed

Judgement

S. Nagamuthu, J.—The appellant, the sole accused in S.C.No. 63 of 2009 on the file of the learned Principal Sessions Judge, Namakkal, who stands convicted for offence under Sections 436, 302 and 307 of IPC [4 counts] and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,00,000/- in default to undergo rigorous imprisonment for one year for the offence under Section 436 of IPC; to undergo imprisonment for life and to pay a fine of Rs. 1,00,000/- in default to undergo rigorous imprisonment for one year for offence under Section 302 of IPC; and to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5,000/- each in default to undergo rigorous imprisonment for one month for each count for offence under Section 307 of IPC [4 counts], has come up with this criminal appeal.

2.0. The case of the prosecution in brief is as follows:- The accused is the younger brother of P.W.1. Their father was one Sri. Jayagopal [P.W.6]. P.W.1 as well as the accused are married. In the year 1993, it is alleged that there was a partition in the

family, in which, a share was allotted to the accused. The accused sold away the same to a third party and thereafter shifted his family to Erode and settled there permanently.

2.1. P.W.1, with his wife Mrs. Srividhya [P.W.7] and his daughter - Ms. Nagasandhya Lakshmi [P.W.8] was residing at D.No.49/26, Bazaar Street, Namakkal. The parents of P.W.1 and the accused were living separately in a house at Rangar Sannadhi Street, Namakkal. P.W.1 was doing jewellery business under the name and style as "Padmashree Traders". The said jewellery shop was run in the ground floor of the building whereas in the first floor of the building, P.W.1 was residing along with his wife and daughter. The accused used to visit P.W.1 as well as his father and demand more properties and money from them. P.W.1''s father refused to part away with any more property to him and told him that his share had already been settled to him. But, the accused was not persuaded by the same. He continued to come and demand properties and money from P.W.1 as well as his father and to quarrel with them. This is stated to be the motive for the occurrence.

2.2. On 06.04.2009, P.W.1 was sitting in his jewellery shop in a sofa in front of the cash-counter. His father P.W.6 was sitting in the cash-counter. One Sri. Dhandapani, an employee of the shop under P.W.1 was also in the shop [hereinafter referred to as "the deceased"]. Around 08.30 p.m., after closing the business P.W.1 and his father were about to close the shop. The deceased was arranging the materials in the shop thereby preparing to close the shop. At that time, the accused came in front of the shop. He was holding a plastic can in his hand containing a combustible liquid like petrol. He poured the liquid from the can on P.W.1 and then, attempted to throw a lighted cigarette on the body of P.W.1. His father [P.W.6] intercepted and prevented him from doing so. Then, the accused poured the rest of the combustible liquid into the shop and threw a lighted match stick into the shop. The fire engulfed the shop. P.Ws.1 and 6 rush out of the shop. In the process, they also sustained burn injuries. The deceased rush to the first floor of the building through the upstairs to bring down the wife and daughter of P.W.1 with a view to save them. But, the fire engulfed the entire shop and smoke poured into the first floor namely, the residential building of P.W.1. P.Ws.1 and 6 cried for help. The deceased and P.Ws.7 (the wife of P.W.1) and 8 (the daughter of P.W.1) would not come down from the first floor of the building. The entire ground floor was in flames. They were caught in the smoke. On receiving information, the Fire and Rescue Services rush to the place of occurrence. After a long fight, they put out the fire. When they went into the house of P.W.1 in the first floor, they found P.Ws.7 and 8 and the deceased lying unconsciously. They brought down all the three and rush them to the hospital, by name Thangam Hospital. On his way, unfortunately, the deceased-Dhandapani died. P.Ws.7 and 8 were admitted in the hospital. P.Ws.1 and 6, who sustained burn injuries also were admitted in the same hospital.

2.3. P.W.10 Dr. Kulandaivelu, examined P.W.1 at 09.10 p.m. on 06.04.2009. He found burn injuries on his both legs and buttocks. He sustained burn injuries at 25%. P.W.1 underwent treatment till 16.05.2009 for injuries. According to P.W.10-Doctor, the injuries were grievous in nature. On the same day, at 09.00 p.m. P.W.10, Doctor examined P.W.6. He found burn injuries on his both legs and on his right hand. He sustained burn injuries at 20%. He also underwent treatment till 16.05.2009. At 09.15 p.m. on the same day, P.W.10-Doctor, examined P.W.7, the wife of P.W.1, who was unconscious. On examination, he found that the oxygen level in her body was only 60%. He gave treatment. There was carbonized mucosa in the nose, throat and lungs. He gave treatment for P.W.7 for ten days and thereafter, he was discharged. He found that both her lungs were severely affected due to carbon dioxide. On 05.05.2009, she was discharged from the hospital. He gave opinion that the injuries were grievous. On the same day at 09.20 p.m., P.W.10-Doctor, examined P.W.8, the daughter of P.W.1. She was also unconscious. The oxygen level was 80% in her body. There was carbonized mucosa in the nose, trachea and lungs. The lungs were severely affected due to carbon dioxide. He gave treatment till 28.04.2009. He gave opinion that the injuries were grievous in nature.

2.4. While P.W.1 was in the hospital, on getting intimation from the hospital, P.W.17, the then Sub Inspector of Police, Namakkal Police Station, went to the hospital and recorded the statement of P.W.1 at 10.00 p.m. and on returning to the police station at 11.30 p.m., he registered a case in Crime No.611 of 2009 under Section 436, 307 and 302 of IPC based on the statement of P.W.1 under Ex.P1. Ex.P.13 is the FIR. She forwarded both the complaint-Ex.P1 and the FIR-Ex.P13 to the court which were received by the learned Magistrate at 06.00 a.m. on 07.04.2009. Thereafter, he handed over the case diary to the Inspector of Police for investigation.

2.5. In the mean time, the investigation was taken up by P.W.18, the Inspector of Police on the midnight of 06.04.2009 itself. He made arrangements to send the dead body of the deceased for being kept in the mortuary at Government Hospital, Namakkal. P.W.18 visited the place of occurrence on the next day at 06.00 a.m. He prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P17) in the presence of P.W.4 and another witness. He also recovered a melted plastic bucket and other partially burnt materials namely M.Os.1 to 7 under a mahazar [Ex.P.3]. Thereafter, he conducted inquest on the body of the deceased in the presence of the panchayatars and prepared an inquest report [Ex.P.15]. Then, he forwarded the dead body of the deceased for post-mortem.

2.6. P.W.9 Dr. Ramasamy, the then Assistant Surgeon, Government Headquarters Hospital at Namakkal, conducted autopsy on the body of the deceased at 10.30 a.m. On 07.04.2009. He found the following injuries on the body of the deceased:-

"No external injuries; Bloody frothy fluid oozing out from mouth/both nostrils. Internal Examination: Head : No fracture. Brain congested. Neck: Hyoid bone intact. Inner aspect of larynx, trachea blood clotted. Mucosa congested. Thorax: No

ribs/clavicle fracture. Heart: congested. Chambers filled with blood; lungs: congested, on cut section bloody frothy liquid present. Stomach : empty. Intestines distended with gas. Liver, spleen, both kidneys congested. Bladder empty."

Ex.P4 is the post-mortem certificate. He gave opinion that the deceased had died due to asphyxia due to severe suffocation.

2.7. After the post-mortem was over, in the course of investigation, P.W.18 recovered the clothes from the body of the deceased. On 01.05.2009 at about 09.30 a.m., near Ramesh Theatre at Trichy Namakkal Main Road, he arrested the accused in the presence of P.W.12 and another witness. On such arrest, the accused gave a voluntary confession in which he disclosed the place where he had hidden the pants. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the pants [M.O.8] which was recovered by P.W.18 under a mahazar [Ex.P11]. The accused was found with burn injuries on his body. Therefore, P.W.18 forwarded him to Government Hospital at Namakkal for treatment. Ex.P.22 is the Accident Register. The Doctor found a old healed burn scar on the right leg above the ankle about 10 x 6 cm. P.W.18, examined the Fire Officer and the other official witnesses and collected the records including the medical records. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed two charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 18 witnesses were examined and 22 documents were exhibited, besides 13 Material Objects.

4.0. Out of the above said witnesses, P.Ws.1, 6, 7 and 8 are the injured eye witnesses in the occurrence. P.Ws.3 and 5 are neighbours of P.W.1 and they are also eye-witnesses to the occurrence. These witnesses have vividly spoken about the entire occurrence. P.W.2 is the wife of the deceased-Dhandapani. She has stated that she heard about the occurrence and came to know that her husband was no more. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of material objects from the place of occurrence.

4.1. P.W.9 has spoken about the post-mortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.10 has spoken about the treatment given to P.Ws.1, 6, 7 and 8 at Thangam Hospital, Namakkal. P.W.11, the then District Fire Officer at Namakkal, during the relevant period, has stated that on 06.04.2009 at 08.25 p.m. one Mr. Syed Khader, an Advocate of Namakkal informed him over phone that there was a fire accident in a jewellery shop at Namakkal. Taking a posse of firemen, he rush to the place of occurrence. He found that the shop was still in flames. After a long fight, they put out the fire. When one of his firemen entered into the first floor of the building, he found P.Ws.7 and 8 and the deceased lying unconscious due to suffocation due to smoke. He brought

them down and took them to hospital. On his way, the deceased died. P.Ws.7 and 8 were admitted in the hospital. P.Ws.1 and 6 were also admitted in the hospital. P.W.12, the then Village Administrator of Namakkal Town, has spoken about the arrest of the accused and the consequential recovery of pants [M.O.8] based on the disclosure statement made by the accused at 09.00 a.m. on 01.05.2009.

4.2. P.W.13 has spoken about the photographs taken at the place of occurrence on the instructions given by P.W.18. P.W.14, who is a resident of Pethanaickenpalayam Village, Athur Taluk, Salem District and a carpenter by profession, has stated that the value of the properties burnt down was around rupees ten lakhs. P.W.15 the Head Constable attached to Namakkal Police Station has stated that he took the FIR and the Complaint and handed over the same to the learned Magistrate at 06.00 a.m. on 07.04.2009. P.W.16 has stated that he carried the dead body of the deceased to the hospital and identified the same to the Doctor for post-mortem. P.W.17 has spoken about the registration of the case on the complaint made by P.W.1. P.W.18 has spoken about the entire investigation done by him in the case and the filing of final report against the accused. At this juncture, be it noted that the appellant did not cross examine any witness and thus, the entire evidence let in by the prosecution stands unchallenged.

5. When the above incriminating materials were put to the accused, neither he admitted any fact nor denied the same. He answered to all the questions under Section 313 of Cr.P.C. that since he had no occasion to engage an Advocate to defend him, he had nothing to say about the above incriminating materials.

6. Having considered all the above, the trial Court convicted the accused for the offences under sections 436, 302 of IPC and 307 IPC [4 counts]. Aggrieved over the same, the appellant/accused is now before this Court with this criminal appeal.

7. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor for the respondent/State and also perused the records carefully.

8. The learned counsel for the appellant would submit that none of the eighteen witnesses examined in this case on the side of the prosecution was cross examined by the accused for want of legal assistance. The learned counsel would submit that legal assistance to an accused facing a serious offence of murder is a fundamental right forming part of the fair procedure guaranteed under Article 21 of the Constitution of India. In this case, according to the learned counsel, since the trial conducted by the sessions court is not a fair trial and since the life and liberty of the appellant has been deprived of without following the fair procedure, the entire judgement is vitiated. The learned counsel would, therefore, pray for setting aside the conviction and sentence imposed on the appellant and to remit the case back to the trial court so as to afford fair opportunity to the accused to engage a counsel and to cross examine all the eighteen witnesses. The learned counsel would further

submit that after all the eighteen witnesses are cross examined by the accused and after hearing him, on appreciating the evidences, the trial court should decide the case afresh.

9. The learned Additional Public Prosecutor would vehemently oppose this criminal appeal. According to him, it is not the case of denial of fair opportunity to the accused. As a matter of fact, according to him, the trial court afforded sufficient opportunity to engage a counsel. But, the accused did not engage any counsel. The learned Additional Public Prosecutor would further submit that with a view to afford a fair trial to the accused, the trial court appointed a counsel at the cost of the State, but, the accused did not accept him and he did not allow him to do the case on his behalf. Till the judgment was delivered, he did not make any attempt to engage a counsel to defend him. Thus, according to the learned Additional Public Prosecutor, there was no violation of fair procedure as guaranteed under Article 21 of the Constitution of India. He would further submit that the accused had been making all abortive efforts and attempts only to simply drag on the proceedings so as to harass the prosecution witnesses. He would further add that remanding the case at this length of time for fresh disposal would itself would not be fair. Therefore, according to the learned Additional Public Prosecutor, the criminal appeal deserves only to be dismissed.

10. We have considered the rival submissions carefully and also perused the records carefully.

11. The trial court records reveal that after the case was committed to the court of sessions for trial, the sessions court granted repeated adjournments at the request of the accused to enable him to engage a counsel to defend him. Though more than a year''s time was so granted, the accused did not chose to engage a counsel. Neither did he ask for a counsel at the cost of the state. Since the accused was unnecessarily dragging on the proceedings for more than one year without engaging any counsel, the trial court thought it fit to appoint one Sri. Arumugam, a counsel having thirty years of standing at the bar and having rich experience in criminal trials, to conduct the case on behalf of the accused at the cost of the state. It was only after hearing him, the trial court on 16.11.2010, framed charges against the accused. But, thereafter, the accused did not permit the said counsel to conduct the case at all on his behalf. Every time, the accused was simply dragging on the proceedings informing the court that he would engage his own counsel and there was no necessity for the court to appoint a counsel at the cost of the State. Meanwhile, P.W.1 had filed a petition in Crl.O.P. No.19692 of 2010 before this court under Section 482 of Cr.P.C. seeking a direction to the trial court to expedite the trial of the sessions case. By order dated 26.08.2010, this court had passed an order directing the trial court to dispose of the case within a period of six months. Accordingly, the case was posted for trial on 07.12.2010.

12. On 07.12.2010, though Sri. Arumugam, the learned counsel appointed at the cost of the state was present, the accused did not permit him to proceed with the case. The accused informed the court that he had already engaged a counsel by name Mrs. Indira and she would come and conduct the case on his behalf. Therefore, the case was passed over and witnesses were made to wait till afternoon. In the afternoon, when the witnesses were present on summons, the private counsel engaged by the accused as it was informed to the court did not turn up. The trial court, however, found no option but to examine P.W.1 in the presence of the accused. On the same day, i.e., on 07.12.2010, P.W.2, the wife of the deceased was also examined in chief. Though the accused informed the court that he had engaged Mrs. Indira as his counsel, she neither appeared nor filed any memo of appearance.

13. The trial court had recorded on the earlier hearings on 04.02.2010; 19.02.2010; 26.02.2010; 12.03.2010; 26.03.2010; 09.04.2010; 23.04.2010; 04.06.2010; and 15.06.2010, that the counsel for the accused namely Mrs. Indira did not turn up. The court waited for her arrival on 07.12.2010. Since she did not turn up and since the accused did not permit Sri. Arumugam, the learned counsel to do the case and since he himself was also not prepared to cross examine the witnesses, the trial court adjourned the case to 20.12.2010 to enable the accused to ensure the presence of his counsel and to get on with the trial.

14. On 20.12.2010, that was on the adjourned date, when the case was taken up for trial, again a number of witnesses were present in response to the summons. On that day also, the counsel Mrs. Indira, reportedly engaged by the accused did not turn up. Having waited for some time, the court proceed to examine P.Ws.3 to 5. Again the accused informed the court that he was not willing to conduct the trial. Therefore, the court recorded that there was no cross examination by the accused and adjourned the case to 11.01.2011.

15. On 11.01.2011, three witnesses were present in attendance in response to the summons. On that day also, no counsel appeared for the accused. The accused informed the court that he would soon engage a counsel. He also informed that he was not willing to conduct the case. The trial court examined P.Ws.6 to 8 and recorded that there was no cross examination by the accused. The case was adjourned to 24.01.2011. On that date, two witnesses were in attendance in response to the summons. That day also neither the Advocate who was reportedly engaged already by the accused turned up and the accused again reiterated that he was not willing to accept the services of the counsel appointed by the trial court. He again expressed that he was not willing to conduct the case. Therefore, the trial court examined P.Ws.9 and 10 on 24.01.2011 and adjourned the case to 28.02.2011. On 28.02.2011, three witnesses were in attendance in response to the summons. The trial court examined the witnesses as P.Ws.11 to 13. That day also, neither Advocate allegedly engaged by the accused already turned up nor he was ready to permit the state brief counsel to conduct the case. He informed the court that he

had already engaged a counsel and that counsel would soon come. Having waited for that counsel to arrive, the trial court, at last, recorded that there was no cross examination. The accused expressed that he was not willing to conduct the case. The case was, accordingly, adjourned to 15.03.2011.

16. On 15.03.2011, three witnesses were in attendance in response to the summons. The trial court examined the witnesses, who were present as P.Ws.14 to 16. But, the Advocate reportedly engaged by the accused did not turn up. Again the accused did not permit the state brief counsel to conduct the case. He informed the court that his counsel would come soon. The trial court, therefore, recorded that there was no cross examination by the accused and adjourned the case to 18.04.2011.

17. On 18.04.2011, two witnesses were in attendance in response to the summons. On that day also, the counsel allegedly engaged by the accused did not turn up. The court below examined P.Ws.17 and 18 in chief. The accused again told the court that the counsel engaged by him would come soon. He did not permit the state brief counsel to conduct the case on his behalf. The court below, therefore, recorded that there was no cross examination by the accused and adjourned the case to 25.04.2011 for further proceedings.

18. On 25.04.2011, the trial court went on to examine the accused under Section 313 of Cr.P.C. in respect of the incriminating evidences spoken and exhibited against him. For each and every question, the accused told the court that since he was in jail and since he had not engaged any counsel, he had nothing to say about the above incriminating evidences. For the last question, as to whether he had anything to say about the case, he told the court that he would say anything only after engaging a counsel and since he was all along in jail, he was not able to engage a counsel. The court below, therefore, adjourned the case for judgement. While so, Mrs. Indira, the counsel engaged by the accused made appearance on 29.04.2011 and filed a memo of appearance.

19. In the light of the above admitted facts, now, we have to examine whether the trial conducted by the sessions court would amount to unfair trial infringing upon the fundamental right guaranteed to the accused under Article 21 of the Constitution of India.

20. Article 21 of the Constitution of India, guarantees not only protection of life and liberty, but, it also provides for deprivation of such right by following the procedure established by law. The Hon''ble Supreme Court declared many a times that procedure as guaranteed under Article 21 of the Constitution should be real and not a fanciful procedure. In **Menaka Gandhi v. State 1978 (1) SCC 248**, a Constitution Bench of the Hon''ble Supreme Court dealt extensively with the procedure for depriving a person of his life and liberty. The Hon''ble Supreme Court held that such procedure depriving a person of his life and liberty should be fair, reasonable and just. The Hon''ble Supreme Court has further held that it is not fair or just that a

criminal case should be decided against an accused in the absence of a counsel. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. The Hon''ble Supreme Court further went on to say that if a criminal case (whether a trial or appeal/revision) is decided against an accused in the absence of a counsel, it will be violative of Article 21 of the Constitution. Later, in **Zahira Habibullah Sheikh v. State of Gujarat, AIR 2006 SC 1367**, the Hon''ble Supreme Court has held as follows:-

"This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the ''majesty of the law."

(Emphasis added)

The Hon''ble Supreme Court has further held as follows:-

"If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators."

(Emphasis added)

The Hon''ble Supreme Court has further held as follows:-

"It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson''s eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an in-built right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and 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 witnesses get threatened or are forced to give false evidence that also would not result in a fair

trial. The failure to hear material witnesses is certainly denial of fair trial."

(Emphasis added)

21. From these judgments, it is well known that the trial court is expected to be fair not only to the accused who is facing trial but also to the victims, their family members as well as to the society at large because each one has an in-built right to be dealt with fairly in a criminal trial. In the instant case, it is not as though the trial court did not afford any opportunity at all to the accused to engage a counsel to defend him. Admittedly, the case was adjourned repeatedly for several hearings, spreading for a year or more to enable the accused to engage a counsel. Though he was informing the court that he had engaged a counsel none turned up. Even then, the court did not show any hurry to go ahead with the trial immediately thereafter.

22. The trial court was obviously conscious of all the rights guaranteed under Article 22(1) of the Constitution of India and Section 340 of Cr.P.C. and the laws declared by the Hon''ble Supreme Court which give right to an accused to have a counsel at the expenses of the State.

23. The Hon''ble Supreme Court in **Hussainara Khatoon v. State of Bihar, 1980 (1) SCC 98**, having taken note of the law declared by the Constitution Bench of the Hon''ble Supreme Court in Menaka Gandhi''s case [cited supra], held thus:

"Now a procedure which does not make available legal service to an accused person who is too poor which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as ''reasonable fair and just. It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court''s process that he should have legal services available to him."

24. In **Khatri v. State of Bihar, 1981 SCC (1) 627**, the Hon''ble Supreme Court has reiterated the earlier declaration that the right to legal aid as a Fundamental Right of an accused person by a process of judicial construction of Article 21 of the Constitution of India.

25. In the very same judgement, the Hon''ble Supreme Court has expressed its anguish that most of the States in the country have not taken note of this decision to provide free legal services to a person accused of an offence. It further made it obligatory on the part of the courts to inform the accused that he has got right to free legal service. Legal aid would become merely a paper promise and it would fail of its purpose, unless the magistrate or the sessions judge before whom the accused appears is held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State.

26. The Hon''ble Supreme Court in **Ram Awadh v. State of U.P. 1999 Cri. L.J. 4083** held that the requirement of providing counsel to an accused at the State expense is not an empty formality which may be not by merely appointing a counsel whatever his calibre may be. When the law enjoins appointing a counsel to defend an accused, it means an effective counsel, a counsel in real sense who can safeguard the interest of the accused in best possible manner which is permissible under law.

27. Keeping in view, the above constitutional obligation, the trial court, in the instant case, having afforded opportunity for more than a year to the accused to engage a counsel, at last, informed him that he was entitled to have legal assistance at the cost of the State. After so informing him, the trial court appointed one Sri. Arumugam, an Advocate having 30 years of standing at the bar with rich experience in criminal trials to defend the accused at the cost of the State.

28. In the instant case, it is not at all the stand of the accused that Sri. Arumugam, the learned counsel who was appointed at the cost of the State would not be an effective counsel to defend him by projecting his case properly. After Sri. Arumugam was appointed as counsel at the cost of the State, the accused simply informed the court that he had already engaged one Mrs. Indira as his counsel and she would appear. Therefore, the matter was again adjourned though Sri. Arumugam continued to be on record for the accused as the counsel at the cost of the state.

29. As we have already narrated, P.Ws.1 and 2 were examined on 07.12.2010. On that date, the accused informed the court that the counsel engaged by him privately was on her away to the Court. Therefore, the court waited till 02.30 p.m. Since the counsel did not appear, post lunch, the court proceeded with the trial of the case. The trial court cannot be blamed as though it acted in a hurry. Section 309 of the code mandates that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing. Yet another proviso to subsection (2) of Section 309 of Cr.P.C. states that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party; and the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment. It further states that where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross examination of the witness, as the case may be.

30. It was only in tune with the said statutory provisions, the trial court thought it fit to examine P.Ws.1 and 2 on 07.12.2010 in chief examination. The trial court did not close the examination of these two witnesses, instead, the trial court adjourned the case to 20.12.2010 to enable the accused to ensure the presence of his counsel. As we have extracted herein above, thereafter, the case was tried on 20.12.2010, 11.01.2011, 24.01.2011, 28.02.2011, 15.03.2011, 18.04.2011 and 25.04.2011. Though

Section 309(1) states that the trial shall be continued on day to day basis, in this case, the trial court had taken a very liberal approach to grant a long adjournment with a view to enable the accused to secure the presence of his counsel to cross examine the witnesses. Though the witnesses were examined between 07.12.2010 and 18.04.2011, though the accused was examined under Section 313 of Cr.P.C. on 25.04.2011; and though he was informing the court that he had engaged one Mrs. Indira as his counsel, the said counsel neither filed any memo of appearance, nor did she appear before the court. Admittedly, she appeared before the court on 29.04.2011 by filing a memo of appearance and again she appeared on 06.06.2011. Even on these two hearings, the learned counsel did not file any petition seeking to recall any witness. It was in those circumstances, after having considered the evidences available on record, the trial court convicted the accused. Thus, in the instant case, we find that there was no denial of fair trial to the accused at all. He was afforded fair opportunity which was real and not fanciful to engage a counsel to defend himself for more than one year and then, after the commencement of trial, for a period of four months, he did not utilise the opportunities afforded to him to engage a counsel. When the court appointed a very seasoned counsel with experience of more than three decades to defend him, he did not permit him to do the case. Mrs. Indira, the learned counsel appeared only on 29.04.2011 and it is not informed to the court as to how the accused was informing the court that he had already engaged Mrs. Indira to appear on behalf of him. It is only for Mrs. Indira to explain to the court whether she was engaged prior to 29.04.2011 and if so, why she did not appear for about one year and four months. At any rate, we find that fair opportunity was afforded to the accused to engage a counsel and also by providing legal assistance, but, he refused to accept the same. When it was so refused, it is no obligation of the court to force a counsel upon him. Thus, we conclude that in this case, there is no violation of fair procedure contemplated under Article 21 of the Constitution of India.

31. The learned counsel for the appellant would submit that the case may be remanded back to the trial court after setting aside the conviction and sentence so as to enable the accused to recall all the eighteen witnesses and to cross examine them. As we have already pointed out, the Hon''ble Supreme Court has held that courts of law are meant not only to protect life and liberty of the accused but they are equally under obligation to protect the life and liberty of the victims, their family members as well as the society at large. Speedy trial is, undoubtedly, a fundamental right which falls within the scope of the fair trial as guaranteed under Article 21 of the Constitution of India. Speedy trial is not aimed at only in favour of the accused, it is equally aimed at in favour of the victims as well as the society at large. If the witnesses are summoned repeatedly by the court so as to give evidence, in our considered view, it would amount to harassment and infringement upon their human rights. Such recalling of witnesses to the court has been deprecated by the Hon''ble Supreme Court in **Advocate General v. Shiv Kumar Yadav, 2015 (9) Scale**

32. The Hon''ble Supreme Court has further held that mere fact that the accused was in custody and that he will suffer by the delay would be no consideration for allowing recall of witnesses, particularly at the fag end of the trial. Here, in the instant case, the alleged occurrence was in the year 2009. Now, at this length of time, if the witnesses are allowed to be recalled, it may not amount to fair trial to the victims who have suffered injuries at the hands of the accused in setting fire. In our considered view it will only amount to harassment. If really, the accused had been prevented by any genuine cause in engaging the counsel and conducting the trial, this court would not have found any semblance of reluctance to accede to the request of the accused. But, in this case, the accused had deliberately, had not either engaged a counsel or the counsel engaged by him did not appear before the court for her own reasons and, she appeared after the questioning of the accused under Section 313 of the Code was over and even then, she did not make any grievance that there was no fair trial. The narration of the facts made thus far would go to show that the accused has made every attempt only to drag on the proceedings with a view to harass the witnesses. Thus, we hold that at this stage if the witnesses are recalled, the same would not be fair to the witnesses. In view of the above position, the first ground raised by the learned counsel for the appellant/accused that the trial is vitiated is rejected.

33. Now, turning to the evidences available on record, P.Ws.1 and 6 are the injured eye witnesses. They are brother and father respectively of the accused. They have spoken about the motive and they have also vividly spoken about the entire occurrence. The medical evidences revealed that they had sustained extensive burn injuries. P.Ws.3 and 5 are the neighbours who witnessed the entire occurrence and they had no axe to grind against the accused. They have also vividly spoken that it was this accused who poured petrol and set fire. P.Ws.7 and 8 are also injured witnesses. They have not seen the occurrence since they were in the first floor of the building where they were residing. Though P.Ws.7 and 8 have stated that they saw the accused setting fire, we find it difficult to believe them because, admittedly, they were not in the shop and they were in the house situated in the first floor of the building. They have further stated that the main doors of the house in the first floor was located and the same was opened only by the deceased. Therefore, these witnesses are partly unbelievable. The District Fire Officer, examined as P.W.11, has stated that he rush to the place of occurrence at 10.25 p.m. and extinguished the fire. He only rescued P.Ws.7 and 8 besides the deceased from the house situated in the first floor of the building. His evidence further corroborates the evidences of the eye witnesses. From these evidences, the prosecution, in our considered view, has clearly established that it was this accused who poured petrol and set fire to the shop in which P.Ws.1, 6, 7 and 8 sustained burn injuries. Unfortunately, they survived due to the treatment though they sustained extensive burn injuries. The prosecution has further proved that the deceased, an employee under P.W.1 died

due to suffocation due to smoke when he attempted to save P.Ws.7 and 8. Thus, the prosecution has proved that the death of the deceased was caused by this accused.

34. Having come to the said conclusion, now, we have to consider as to what was the offence that the accused had committed. The motive for the occurrence has been spoken clearly by P.Ws.1 and 6. It has been established that the accused came to the place of occurrence with a can containing petrol. This would clearly go to prove that he came with the intention to cause the death of P.Ws.1 and 6 and with that intention he poured petrol and set fire. Initially, he poured petrol on P.W.1 and when P.W.6 intercepted, he poured petrol into the shop and set fire. Thus, the intention of the accused in causing burn injuries on P.Ws.1 and 6 was only to cause their death and therefore, for having caused such an attempt on the lives of P.Ws.1 and 6, he is liable to be punished for offence under Section 307 of IPC [Two counts].

35. It is not as though the accused was not aware that P.W.1''s family members were residing in the first floor of the building. After all the accused is the brother of P.W.1. With the knowledge that setting fire to the shop would imminently cause the death of the victims of the house, the accused had set fire to the shop after pouring petrol into the shop. Thus, the act of the accused in causing injuries to P.Ws.7 and 8 with the knowledge that his act would imminently cause danger to their lives, would therefore, fall within the fourth limb of Section 300 of IPC (two counts).

36. Similarly, for having caused the death of the deceased by pouring petrol and setting fire to the shop with the knowledge that it would result in the death of the victim, his act would fall within the fourth limb of Section 300 of IPC. Therefore, he is liable to be punished under Section 302 of IPC.

37. Since it has been established that the accused poured petrol into the shop and set fire to the shop and caused extensive damages as spoken by the prosecution witnesses, he is liable for punishment under Section 436 of IPC.

38. Now, turning to the quantum of punishment, the trial court has imposed Rs. 2,20,000/- as fine in total, which, in our considered view, is not just and proportionate going by the economic status of the accused. Therefore, we are inclined to reduce the fine amounts alone. So far as the quantum of substantive sentences imposed on the appellant/accused, the trial court has imposed only lesser proportionate punishments. In fact, the substantive sentence of imprisonment for one year imposed for the offence under Section 307 I.P.C. is inadequate. But, since no appeal for enhancement has been filed, we are unable to enhance the same. Thus, we do not interfere with the substantive sentence of imprisonment.

39. In the result, this criminal appeal is partly allowed in the following terms:-

(i) The conviction of the appellant/accused for offence under Section 436 of IPC and the substantive sentence of imprisonment for life imposed on the appellant/accused for the said offence are confirmed, however, the fine of Rs. 1,00,000/- imposed on

him is set aside and instead, he is sentenced to pay a fine of Rs. 5,000/- in default to undergo rigorous imprisonment for two weeks.

(ii) The conviction of the appellant/accused for offence under Section 302 of IPC and the substantive sentence of imprisonment for life imposed for the said offence are confirmed, however, the fine of Rs. 1,00,000/- imposed on him is set aside and instead, he is sentenced to pay a fine of Rs. 5,000/- in default to undergo rigorous imprisonment for two weeks.

(iii) The conviction of the appellant/accused for offence under Section 307 of IPC [4 counts] and the substantive sentence of rigorous imprisonment for one year for each count for the said offence are confirmed, however, the sentence of fine of Rs. 5,000/- for each count imposed on the appellant/accused is reduced to Rs. 2,000/- for each count in default, he shall suffer rigorous imprisonment for one week.

(iv) The fine amount, if any paid already, shall be adjusted towards the fine imposed herein and the balance of fine amount, if any, shall be refunded to the appellant/accused.