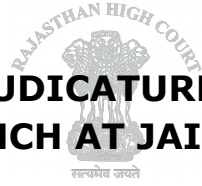




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Criminal (Jail) Appeal No. 242/2023

Angad @ Rinku S/o Shri Amlesh Kharwal, Aged About 33 Years, R/o Plot No. 32, Vishunpur, P.S. Mehnagar, District Aajamgarh (Utter Pradesh) At Present R/o Rajat City Ke Saamne Tapari, Kunhari, P.S. Kunhari, Kota (Raj.). At Present Accused Is In Central Jail, Kota).

----Appellant

Versus

State of Rajasthan, Through P.P.

----Respondent

For Appellant(s) : Mr. Jaswant Singh Rathore (Amicus Curiae)
For State : Mr. Sudesh Saini, Addl. G.A.,
Mr. Vivek Sharma, Addl. G.A. &
Mr. Kshitiz Tiwari

**HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MRS. JUSTICE SHUBHA MEHTA**

JUDGMENT

25/11/2024

1. Appellant has preferred this Criminal Appeal aggrieved by the judgment and sentence dated 20.12.2022 passed by learned Special Judge, Prevention of Children From Sexual Offences Act, whereby the appellant has been convicted for the offences under Sections 376(AB) of I.P.C. & 5(m)/6 of the POCSO Act and has been sentenced to life imprisonment for remainder of his life and a fine of Rs.20,000/-; on non-payment of fine, to further undergo four month's simple imprisonment.

2. It is contended by Mr. Jaswant Singh Rathore, Amicus Curiae appearing for the appellant that counsel for the appellant refused to appear on behalf of the accused-appellant before the Trial



Court, still the Trial Court did not provide Amicus Curiae to the appellant to defend his case. It is also contended that no cross-examination of two main witnesses of the case i.e. I.O. & Doctor (PW-16 & PW-20 respectively), has been done.

3. Learned Addl. Govt. Adv. has opposed the grounds taken by the Amicus Curiae. It is contended that there was refusal on the part of the counsel for the appellant to cross-examine and the Court was left with no other alternative to close the cross-examination.

4. We have considered the contentions.

5. Present is a case of an accused who is represented by Amicus Curiae, as rightly pointed out by the Amicus Curiae that if a counsel refuses to appear for the accused, it is the bounden duty of the Court to appoint Amicus Curiae to represent the accused.

6. In the present case, on 11.11.2022, when the counsel refused to appear for the accused, the Trial Court closed the evidence and, thereafter, wrote to the District Legal Services Authority, Kota for appointment of an Amicus Curiae, but the point remains that on the date when the counsel for the accused refused to appear on behalf of the accused, no advocate was representing him and the evidence was closed without giving opportunity of cross-examination to the accused, who was in custody.

7. In view of the above, we deem it proper to partly allow the present Criminal Appeal and set-aside the judgment and sentence dated 20.12.2022 passed by learned Special Judge, Prevention of Children From Sexual Offences Act and remand the case back to the concerned Court for deciding the matter afresh, with a



direction to appoint an Amicus Curiae for the accused and re-summon PW-16 & PW-20 and permit Amicus Curiae to cross-examine PW-16 & PW-20. The appellant would also be free to adduce additional evidence, if so advised.

8. The present Criminal Appeal is accordingly partly allowed.
9. The concerned Jail Authorities are directed to produce the accused before the concerned Court on 16.12.2024.
10. Office is directed to send the record back to the concerned Court forthwith along with certified copy of this order.

(SHUBHA MEHTA),J

(PANKAJ BHANDARI),J

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