

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 3 | Issue 4 [2025] | Page 283 - 287

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CASE ANALYSIS: SANGITA GHOSH (SENGUPTA) V THE STATE OF WEST BENGAL & ORS, 2023

- Shreya Ranjan¹

Case name: Sangita Ghosh (Sengupta) v The State of West Bengal & Ors²

Court: Hon'ble High Court of Calcutta

Bench: Shampa Dutt (Paul), J.

CRR NO.: 3813 of 2019

Appellant: Sangita Ghosh

Respondent: The State of West Bengal

Judgment Date: 20 January 2023

Judgement Delivered by: Shampa Dutt (Paul), J.

The present case is a recent judgment given by the Hon'ble High Court of Calcutta. In this judgment, we can get the relevance of the victim's rights. This case is a criminal revision against the order given by the Learned Additional Session Judge of Islampur on 26th September, 2019. Under Article 300³ Under the Indian Constitution, the Government of India and the Government of the State may sue or be sued, and in this case, a criminal revision petition was filed against the State of West Bengal.⁴ Now, we are clear under which law and its provision, the State can be sued. Victim, being aggrieved by the injury caused by the offender, holds some rights like the right to be represented by a lawyer of own choice, right to free legal aid, right to equality, right to speech and expression, right to life and various other rights. In this case, under Section 302⁵ of The Code of Criminal Procedure, 1973, now Section 339⁶ Of the Bharatiya Nagarik Suraksha Sanhita, the

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² Sangita Ghosh (Sengupta) v The State of West Bengal CRR 3813/2019, (2023) LawSuit(Cal) 114

³ Constitution of India 1950, art 300

⁴ Testbook, 'Article 300 of Indian Constitution: Suits and proceedings' (testbook) <<https://testbook.com/constitutional-articles/article-300-of-indian-constitution>> accessed 20 July 2025

⁵ The Code of Criminal Procedure 1973, s 302

⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 339

petitioner wanted herself to be represented by the advocate of her choice, not by the Public Prosecutor, because she has lost faith in her public prosecutor. The main issue of the case revolves around whether she can be represented by the advocate, other than her Public Prosecutor or not. This case is of great significance as the relevance of judgments given by the Supreme Court and the relevance of various international instruments was also taken by the Court. Now, let's delve into the facts, issues and judgment of this case.

Keywords: Victim, representation, Victim's right

INTRODUCTION

The present case talks about the victim's rights like the right to be represented by a lawyer of own choice, the right to be heard, the victim's right to file an appeal against the order of acquittal, etc. The Court had taken into relevance various judgments and international instruments and dealt with the rights of the victim and the explicit provisions enshrined in Section 302⁷ of the Criminal Procedure Code, i.e., Section 339⁸ Of the Bharatiya Nagarik Suraksha Sanhita. The present criminal revision was filed against the order dated 26th September, 2019, by the Learned Additional Session Judge of Islampur in the Criminal Revision 04 of 2018. The petitioner was the de facto complainant in the criminal case filed against the opposite parties under Section 498A, Section 406 and Section 34 of the Indian Penal Code⁹ (now Section 85, Section 316(2), Section 3(5) of Bharatiya Nyaya Sanhita¹⁰, respectively), which was initiated in 2011. And, in this case (which was initiated by her in 2011), she wanted to be represented by a lawyer of her own choice. The petitioner has lost faith in the conduct of proceedings by the Learned Advocate for the prosecution (APP) because he made no opposition when repeated adjournments were given to the accused persons on flimsy grounds. Hence, she filed this criminal revision so as to get permission from the Court for being represented by a lawyer of her own choice, i.e. by her advocate. Now, let's delve into the facts, issues and judgment of this case.

BACKGROUND

The petitioner was the de facto complainant in the criminal case filed against the opposite parties under Section 498A, Section 406 and Section 34 of the Indian Penal Code¹¹ (now Section 85, Section 316(2), Section 3(5) of Bharatiya Nyaya Sanhita, respectively¹²), which was initiated in 2011.

⁷ The Code of Criminal Procedure 1973, s 302

⁸ Bharatiya Nagarik Suraksha Sanhita 2023, s 339

⁹ The Indian Penal Code 1860, s 498A, 406, 34

¹⁰ Bharatiya Nyaya Sanhita 2023, s 85, 316(2), 3(5)

¹¹ The Indian Penal Code 1860, s 498A, 406, 34

¹² Bharatiya Nyaya Sanhita 2023, s 85, 316(2), 3(5)

Being aggrieved by no opposition made by her APP in her case on the adjournments given on flimsy grounds, she filed this criminal revision petition in the Hon'ble High Court of Calcutta.

FACTS OF THE CASE

The appellant presented this revision against the order given by the Learned Additional Session Judge, Islampur. The appellant has lost all her faith in the public prosecutor or APP, who represented her in the case which was started by her in 2011 under Section 498A, Section 406 and Section 34 of the Indian Penal Code (now Section 85, Section 316(2), Section 3(5) of Bharatiya Nyaya Sanhita, respectively), due to no opposition made by her APP in her case on the adjournments given on flimsy grounds, she filed this criminal revision petition in the Hon'ble High Court of Calcutta. Even the copies of the petitions filed by the accused before the Trial Court on many occasions were also not being shown or supplied to the appellant by her APP, which put her in a condition that she lacked knowledge of her case and remained in the dark. Apart from this, she was also not given the charge sheets and the supporting documents by the Learned Prosecution. Hence, she remained in the dark regarding the investigations carried out by the state in her case. Hence, she applied to the Learned Magistrate under Section 302 of CrPC¹³, who wrongly rejected her application in the order dated 29 January, 2018, on the ground that the learned advocate (whom she wanted to represent her case) had just consented to assist the APP and hence, he had limited involvement in the trial. Then, again, she applied to the order given on 29 January, 2018, before the court under Section 397 read with Section 399 of CrPC¹⁴ (now Section 438 read with Section 440 of Bharatiya Nagarik Suraksha Sanhita¹⁵), in which her revisional application was dismissed by an order dated 29 September, 2019. Therefore, the appellant seeks criminal revision in this criminal revision petition to quash the impugned judgment given on 29 September 2019.

ISSUE

1. Whether the advocate, whom the petitioner wanted to represent her case, under Section 302 of CrPC (now Section 339 of BNS¹⁶) Can she be permitted to represent herself in her case (which initiated in 2011)?
2. Whether the role of the advocate in the trial limited to the trial or not?
3. Whether the order dated 29 September 2019 is an impugned judgment or not?
4. Whether the present criminal revision be granted or not?

¹³ The Criminal Procedure Code 1973, s 302

¹⁴ The Criminal Procedure Code 1973, s 397, 399

¹⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 438, 440

¹⁶ Bharatiya Nagarik Suraksha Sanhita 2023, s 339

RELEVANT PROVISION

Section 339 of Bharatiya Nagarik Suraksha Sanhita (earlier Section 302 CrPC)-

“ (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission.¹⁷:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence concerning which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by an advocate¹⁸.¹⁹

APPELLANT’S CONTENTION

1. The appellant has lost all faith in the public prosecutor, or APP, who represented her in the case, which was started by her in 2011:
 - due to no opposition made by her APP in her case on the adjournments given on flimsy grounds.
 - The copies of the petitions filed by the accused before the Trial Court on many occasions were also not being shown or supplied to the appellant by her APP, which put her in a condition that she lacked knowledge of her case and remained in the dark.
 - She was also not given the charge sheets and the supporting documents by the Learned Prosecution. Hence, she remained in the dark regarding the investigations carried out by the state in her case.
2. The appellant wanted the Court to set aside the order dated 29 September 2019, given by the Learned Additional Sessions Judge.
3. The appellant under Section 302²⁰ CrPC want to be represented by the Learned Advocate in her case, not by her APP.

RESPONDENT’S CONTENTION

1. The role of the Learned Advocate is just to assist the APP and hence, he has limited involvement in the trial.

¹⁷ The Criminal Procedure Code 1973, s 302

¹⁸ The Criminal Procedure Code 1973, s 302

¹⁹ Bharatiya Nagarik Suraksha Sanhita 2023, s 339

²⁰ The Criminal Procedure Code 1973, s 302

2. An advocate appointed by the petitioner cannot be allowed to conduct the prosecution case.
3. The order dated 29 January 2018 and the order dated 29 September 2019 are proper and in accordance with law, and hence, the revision should be dismissed.

JUDGMENT

1. The petitioner was permitted to conduct her case through an independent lawyer, and hence, a miscarriage of justice was prevented.
2. The rights of the victim cannot be construed restrictively; these rights are independent and not auxiliary to the State under the CrPC. Moreover, the presence of 'State' in the prosecution does not tantamount to a hearing for a 'victim' of the crime²¹.
3. Court referred to the judgment given by the Hon'ble Supreme Court in Jagjeet Singh & Ors v Ashish Mishra²² And concluded that a victim is legally vested with the right to be heard at every step post-occurrence of the offence.
4. The Court dealt with the definition of victim given under various international instruments, like in UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power²³, etc, and it also dealt with some victims' rights recognised in various international instruments as well as in the 154th Law Commission Report of India²⁴. References from Indian laws regarding the victim's rights were also taken.
5. The CRC 3813 of 2019 was allowed by the Hon'ble High Court of Calcutta.

CONCLUSION

This case presents the relevance of the victim's right and the condition faced by them when such right is vitiated. Moreover, the case presents the struggle of a lady to achieve justice for so many years. The decision taken by the Hon'ble High Court in this case prevented the miscarriage of justice and thereby prevented her right to be represented by a lawyer of her own choice. The Court took into consideration various judgments given by the Supreme Court and international instruments to grant this criminal revision petition. Finally, the petitioner's criminal revision petition was granted by the Court, i.e. CRR 3813 was granted.

²¹Indian Kanoon, 'Sangita Ghosh (Sengupta) vs The State Of West Bengal & Ors on 20 January, 2023' (Indian kanoon) <<https://indiankanoon.org/doc/13003298/>> accessed 25 July 2025

²² Jagjeet Singh & Ors v Ashish Mishra (2022) SCC OnLine SC 453

²³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985

²⁴Advocate Khoj, '154th Report of the Law Commission (1996)' (Advocate Khoj) <[https://www.advocatekhoj.com/library/lawreports/witnessidentityprotection/21b.php?Title=Witness%20Identity%20Protection%20and%20Witness%20Protection%20Programmes&STitle=154%20th%20Report%20of%20the%20Law%20Commission%20\(1996\)](https://www.advocatekhoj.com/library/lawreports/witnessidentityprotection/21b.php?Title=Witness%20Identity%20Protection%20and%20Witness%20Protection%20Programmes&STitle=154%20th%20Report%20of%20the%20Law%20Commission%20(1996))> accessed 24 July