

Report on Amicus Curiae/Legal Aid Counsel Interaction Program

Organised by **Studio Nilima: Collaborative Network for Research and Capacity Building**

in collaboration with

Assam State Legal Services Authority and Gauhati High Court Legal Services Committee

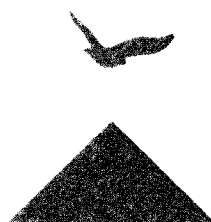
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Resource Persons:

1. Hon'ble Justice (R) B.P. Katakey, Former Judge, Gauhati High Court.
2. Hon'ble Justice (R) C.R Sharma, Former Judge, Gauhati High Court.
3. Mr. Nilay Dutta, Senior Advocate, Gauhati High Court and President, Studio Nilima: Collaborative Network for Research and Capacity Building.
4. Mr. Anan Kumar Bhuyan, Advocate, Gauhati High Court.

Name of Advocates:

1. Mr. Hareesh Gupta
2. Mr. Bijoy Chetia
3. Syed Burhanur Rahman
4. Mr. Debabrata Banerjee
5. Mr. Malabya Pathak
6. Ms. Bandana Deka Sharma
7. Mr. Nabajyoti Choudhury
8. Mr. Anup Ranjan Tahbildar
9. Mr. Nayan Moni Dutta



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10. Mr. Satya Gobinda Bhattacharjee
11. Mrs. Runumi Dutta Bhuyan
12. Ms. Pratima Saha
13. Mr. Rupam Jyoti Sarma
14. Ms. Anna K.P.
15. Ms. Dulu Moni Das
16. Ms. Sneha Saikia
17. Ms. Niyar Mani Deka
18. Ms. Manashi Talukdar
19. Ms. Nilakshi Barman

At the inception, Mr. Nilay Dutta welcomed all present, to the third session of the *Amicus Curiae*/Legal Aid Counsel Interaction Programme. The session started with the introduction of the resource persons to the members present. In providing the context for organizing such an interaction in collaboration with the Assam State Legal Services Authority (hereinafter referred to as 'ASLSA') and the Gauhati High Court Legal Services Committee (hereinafter referred to as 'GHCLSC'), Mr. Dutta discussed the recent judgement of the Hon'ble Supreme Court in ***Reena Hazarika v. State of Assam*** as reported in **2018 SCC Online SC 2281**. With respect to this case, the Supreme Court pointed out two vital observations regarding legal services. Firstly, the fact that there exists a lacuna when it comes to communication of dismissal of jail appeals to correctional homes and secondly, the inapt performance of *amicus curiae* in certain cases, especially in Gauhati High Court.

Subsequently, the matter was discussed with the Hon'ble Chief Justice and this present programme for interaction between advocates involved in providing legal services under the ambit of the Legal Services Authorities Act, 1987 as *amicus curiae*/ Legal Aid Counsel (LAC) and resource persons has been organised. The ultimate objective of this programme is therefore to enhance and facilitate the effort of the amicus/ LACs to provide better justice delivery to disadvantaged sections of society.

Justice (Retd.) Brojendra Prasad Katakey greeted everyone present for the interaction. He started the discussion by saying that there is a reason for appointing amicus/ LACs for people who do not have sufficient means for representation- 'delivery of justice to all'. But this reason is defeated when LACs fail to give their best in providing justice to the underprivileged. He then talked about the responsibilities of an *amicus*/ Legal Aid Counsel.

After the introduction, the session was carried forward as follows:

The panel started by explaining how to study a case.

- Firstly, the judgement should be read and the circumstances upon which conviction is based should be found out.
- Then, the statement of the accused u/s 313 Cr.P.C. should be checked, whether the aforesaid circumstances were put to accused. If not, then that can be established as a strong argument for defence.
- Next, the FIR, inquest report, statement u/s 161, Sketch Map, Post Mortem Report, Charge Sheet, Evidence of witnesses should be read. And the records of the case should be together with the statement u/s 161 should be read thoroughly.
- Then, whether the conviction is based on the evidence of eye witness or circumstantial evidence should be understood. If based on Circumstantial Evidence, then the law which governs such matters should be cultured. The essentials to be fulfilled to establish a case against an accused under the law of Circumstantial Evidence is that the circumstances from which the conclusion of guilt is to be drawn should be fully established, beyond any reasonable doubt. The events should be linked as an unbreakable chain. Hence, the *amicus* must try to find a breakdown in this link.
- If conviction is based on eye witness, then the *amicus* must try to find out whether the witness is wholly reliable or not. The reliability of the witness can be eliminated by finding out if the witness is an Interested witness, Chance witness and if there is any Omission, Contradiction or Improvement in the Statement of the witness u/s 161 Cr.P.C.

- Next, Confession of the accused must be read. (An elaborated discussion regarding 'Confession' was held that is mentioned later in this report.)
- Lastly, the Dying Declaration of the deceased (if any) should be studied thoroughly. (An elaborated discussion regarding 'Dying Declaration' was held and is mentioned later in this report.)

Points discussed in details:

- Dying Declaration: The law of Dying Declaration is based on the theory that 'a dying person never lies', but a conviction based on Dying Declaration can be challenged by establishing such circumstances of the case that are contradictory to that of the Dying Declaration and by proving its unreliability. Owing to this point, Justice (R) C.R. Sharma quoted the saying "Men may lie but circumstances never lie."

Here comes the question of reliability of a Dying Declaration. Advocate Anan Kumar Bhuyan said that the reliability of a Dying Declaration depends on the physical and mental fitness of the person while giving the statements. Hence, following are the essentials to prove the reliability of a Dying Declaration:

- i) Mental fitness supported by medical records.
- ii) Awareness of the person that he/she is about to die; so time of recording the Dying Declaration and time of death are crucial.

A Dying Declaration may be written or unwritten. Value of the Dying Declaration does not decrease if unwritten, but if written then it is more reliable. Its reliability also depends on the basis that to whom was the statement given. If the witness is a Chance or an Interested witness, then the reliability can be questioned. Moreover, if there are multiple witnesses and their statements contradict then also the reliability can be questioned.

At this point, Senior Advocate Nilay Dutta said that the Head Ticket of Doctor (if the deceased expired in a hospital) must be checked to find out the medical history of the patient.

Advocate Anan Kumar Bhuyan stated that knowing the medical science involved in a case is very important to nullify the reliability of a Dying Declaration. He also asked a question to the House, whether a suicide note written by a depressed person will be

regarded as a Dying Declaration? He clarified that a suicide note cannot be accepted as a Dying Declaration as the same should be based on the immediate cause that amounts to death. Here the question of a minor being the witness of receiving a Dying Declaration arose. To which Mr. Nilay Dutta replied that the reliability of a minor witness depends on two factors- whether the minor has the capacity to understand what he/ she is talking about, and was there any chance of tutoring the child. He also emphasized on the need to read about Child Witness.

- Confession: The discussion on Judicial Confession began, with reference to the case *Wasim Rafique and Anr. v. The State of Assam* (Crl. Appeal No. 89 of 2014) (paperbook circulated among resource persons and advocates). Justice C.R. Sharma questioned the advocates, whether the Judicial Confession made by the accused in the above mentioned case is admissible. Before clarifying the doubts, he discussed the law governing Confession. Firstly, a Confession should be made voluntarily; secondly, a reasonable time for reflection should be given to the accused; thirdly, he/she should be made aware of the consequences to be faced in lieu of the confession. Then, the panel commented on the inadmissibility of the Judicial Confession in the above mentioned case, as the duration of reflection (three hours) given to the accused by the Magistrate was inadequate comprehending the fact that the accused was kept in police custody for a week. In addition to that two accused persons were kept together in the Magistrate's chamber together with a peon that creates chances of external influence affecting the voluntariness of the Confession.
- Improvement: To eliminate the credibility of an eye witness, the improvements made in the statements of the witness must be established by the *amicus*. To prove improvement, Statement u/s 161 Cr.P.C. must be read thoroughly. If there are material improvements made in the Statements then it is not reliable.
- Statement u/s 313 Cr.P.C. : The statement recorded u/s 313 Cr.P.C. must be backed by proper explanations. Only objective (yes/no) answers are not preferable. The Hon'ble Supreme Court in *Reena Hazarika v. State of Assam* as reported in 2018 SCC Online SC 2281, pointed out that the accused gave an explanation in the statement u/s 313 Cr.P.C, that could have brought a reasonable doubt, breaking down the chain of events inferred by the Circumstantial evidences. But the Appellate court

overlooked the explanation, owing to which the accused got a benefit of doubt and was finally acquitted by the Hon'ble Supreme Court.

The panel advised the *amicus* present that if in any case there is an explanation in the Statement u/s 313 Cr.P.C. and the trial court have overlooked the same while giving the verdict then they should bring that to the notice of the Appellate Court.

- Motive and Intention: On being asked by a member of the interaction to explain the concept of motive and intention, Mr. Nilay Dutta explained the same with illustrations. He simplified the terms and said that motive is why an act is committed and intention means with what objective was the act committed, for instance, to kill or to injure.

Questions raised by the advocates:

- Why Statement u/s 161 Cr.P.C. is not mentioned in paperbook?

Mr. Nilay Dutta replied that Statement u/s 161 Cr.P.C. cannot be used as evidence and is not admissible in the Court. It can only be used for contradiction. So, the High Court Paper Book does not include it. Moreover, it is the responsibility of the defence to collect the records and study it, even if is not mentioned in the paperbook.

- How can an accused be defended in case Dying Declaration is used as a tool of revenge?

Mr. C. R. Sharma said that although the law of Dying Declaration is based on the theory that 'a dying person never lies', but there are exceptions to every theory. So, it is the responsibility of the defence side to study the facts of the case thoroughly and establish doubts. Further, he quoted the saying "Men may lie but circumstances never lie".

- Is there any fixed procedure established in law to accept or reject a Dying Declaration as evidence?

Mr. Nilay Dutta answered that there is no fixed procedure for the same, as a generalised law cannot be made for cases with differing facts.

Suggestions:

- A specific format should be designed for the chart that should be prepared to record specific points, like important dates, contradictions, etc. after studying a case. This format should be circulated amongst the *amicus*. This would bring accountability on the part of the *amicus*/ Legal Aid Counsels.
- Ratings of the judges for every *amicus*/ Legal Aid Counsel should be made public.

Throughout the session the panel of resource persons have been advising the *Amicus Curie*/ Legal Aid Counsels regarding how to make the practise more effective. Coming to the end, they told the *amicus* to become an effective practitioner of law one should first know the law, argue confidently and must never try to mislead the court. The session concluded with a wonderful saying "Law can develop by the brilliance of a lawyer".

Prepared by-
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