Through e-mail

THE HIGH COURT OF ORISSA: CUTTACK

Letter No.: XXIX- 05/2020: **8643** / Date: 12.05.2025

From:

Shri Biswajit Nayak,
Special Officer (Administration)

To:

The District & Sessions Judge (All)

Sub.: Circulation of Judgement dated 23.04.2025 of the Hon'ble High Court of Orissa, passed in DSREF No. 02 of 2023 (State of Odisha –vs- Sanjeeb Kerketa)

Madam/Sir,

With reference to the subject cited above, I am directed to forward herewith a copy of Judgement dated 23.04.2025 of the Hon'ble High Court of Orissa, passed in DSREF No. 02 of 2023 (State of Odisha –vs- Sanjeeb Kerketa) for your reference and guidance with a further request to circulate the same among the Officers in the cadre of Sessions Judges working under your control for their reference and guidance.

This is for your information and necessary action.

Yours faithfully,

Encl.: As above

12/5/25

Special Officer (Admn.)

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

(Arising out of the Judgment & Order of Conviction dated 19th of October, 2023 passed by Shri Mahendra Kumar Sutradhar, Additional District Judge-cum-Presiding Officer, Special Court under POCSO Act, Sundargarh, in Special G.R. Case No.93 of 2016/Trial No.34 of 2020, for the offence under sections 450/366/376(2)(i)/376(A)/302/201 of the Indian Penal Code, 1860 and under section 6 of the POCSO Act)

DSREF No. 02 of 2023

State of Odisha ... ***Appellant***

Mr. P. S. Nayak, AGA

-versus-

Sanjeeb Kerketta ... ***Condemned Prisoner***

Mr. P. Mohanty, Advocate

JCRLA No. 142 of 2023

Sanjeeb Kerketta ... ***Appellant***

Mr. P. Mohanty, Advocate

-versus-

State of Odisha ... ***Respondent***

Mr. P.S. Nayak, AGA

CORAM:

THE HON'BLE MR. JUSTICE B. P. ROUTRAY

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 23.04.2025

Chittaranjan Dash, J.

1. The present reference under Section 366 of the Code of Criminal Procedure, 1973, has been submitted by the learned

Additional District Judge-cum-Presiding Officer, Special Court under the POCSO Act, Sundargarh (hereinafter referred to as "the trial Court"), in Special G.R. Case No. 93 of 2016 / Trial No. 34 of 2020, seeking confirmation of the death sentence imposed on the Condemned Prisoner/Accused, Sanjeeb Kerketta (hereinafter referred to as "the Convict"), by judgment and order dated 19.10.2023. Accordingly, DSREF No. 02 of 2023 has been registered.

The Convict, Sanjeeb Kerketta, has also preferred JCRLA No. 142 of 2023, assailing the self-same judgment and order of conviction passed by the learned trial Court, wherein he was found guilty and sentenced to death under Sections 376-A and 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). He was further sentenced to undergo rigorous imprisonment for twenty years and to pay a fine of Rs. 5,000/- each for the offences punishable under Section 376(2)(i) of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act"), and to undergo rigorous imprisonment for five years and to pay a fine of Rs. 3,000/- each for the offences punishable under Sections 201, 450, and 366 of the IPC.

2. The prosecution case in brief is that on 21.10.2016, at around 11:00 p.m., while the widow-informant and her 4-5-year-old younger daughter were asleep in their house, someone entered the house and abducted the informant's daughter. The informant chased the culprit, but he managed to escape into the darkness with the child. Upon the hue and cry raised by the informant, neighbours gathered and searched for the victim but were unable to trace them. Based on the written report of the informant, P.W.29, the Investigating Officer (I.O.)

registered Town P.S. Case No.184 dated 22.10.2016 vide Ext.11 and commenced the investigation.

3. In the course of investigation, after registration of the FIR on 22.10.2016, S.I. Binodini Naik initially took up the investigation. Recognising the gravity of the offence, P.W.29 assumed charge of investigation on 24.10.2016. During the investigation, the I.O. visited the place of occurrence and recorded the statements of material witnesses under Section 161 CrPC. On 25.10.2016, based on an information from a WESCO officer, a dead body suspected to be that of the missing child was discovered from an under-construction house, where the informer and his staff had been to provide electrical connection. The dead body was identified by the complainant and other witnesses, and an Identification Memo was prepared vide Ext.21. Subsequently, inquest was conducted in presence of an Executive Magistrate and witnesses vide Ext.2. During spot inspection, a brown colour Reebok money purse was recovered from the scene containing identity documents of the Accused-Convict Sanjeeb Kerketta, which was seized under seizure list in Ext.12. On 26.10.2016, the Accused-Convict was apprehended at his residence. His confessional statement was recorded under Section 27 of the Indian Evidence Act vide Ext.13. Based on the disclosure, a green T-shirt stained with blood was recovered and seized (M.O.-I, seizure list Ext.12). Medical examination of the deceased was conducted by P.W.5, who opined that the cause of death was neuro-hemorrhagic shock due to injuries to the genital tract. The post-mortem report is annexed in Ext.10. A subsequent query report was furnished clarifying the causative link between the injuries and the violent sexual assault vide Ext.40. Further, the biological samples of the deceased and the

Convict were collected and sent for chemical examination. A memory card containing the video recording of the accused's confession was seized and marked as Ext.3. A compact disc containing photographs and videography of the spot and post-mortem was seized through seizure list marked as Ext.6. The I.O. also seized the Paribar Bibarani Register (family register) from the Anganwadi Centre to establish the age of the deceased vide seizure list Ext.1. After collecting all the material evidence, and receiving reports from RFSL and Medical Officers, the charge sheet was submitted on 09.02.2017 under Sections 450, 366, 376(2)(i), 376(A), 302, 201 IPC and Section 6 of the POCSO Act against the Convict to face trial.

4. The case of the defence is one of complete denial and false accusations.

5. To bring home the charge, the prosecution examined 35 witnesses in all.

6. The learned trial Court found the prosecution to have proved its case beyond all reasonable doubt and held the Appellant guilty and convicted him awarding sentence as described above.

7. Mr. P. S. Nayak, learned AGA submits that the prosecution has successfully proved the guilt of the Convict beyond reasonable doubt by leading credible, consistent, and trustworthy evidence. He emphasised that the Convict was last seen together with the deceased child at about 11:00 p.m. on the night of occurrence, which was witnessed by P.W.1, the mother-Informant herself, as he fled away with the child. The immediate raising of alarm and the prompt lodging of the FIR excluded any possibility of concoction. He further argues that the wallet of the Convict recovered from the spot where the dead body was found, the confession made by the Convict, and the

recovery of the green shirt with blood stains, forms a strong incriminating circumstance against him. The Convict failed to offer any plausible explanation under Section 313 Cr.P.C. regarding how the victim came to be last seen in his company and subsequently recovered dead, thereby attracting an adverse inference against him. The learned AGA also contended that the medical as well as the scientific evidence supported the prosecution case. As to the issue of motive, Mr. Nayak submits that even though motive assumes lesser significance in cases based on direct or strong circumstantial evidence, the facts of the case reveal that the Convict, being acquainted with the informant, and the extra-judicial confession made to P.W.26, the elder sister of the deceased child, only points towards the hypothesis that the Convict had an opportunity and evil intent to commit the offence. Regarding procedural objections, Mr. Nayak asserted that the Convict had been provided with adequate legal representation throughout the trial. The fact that the Convict chose not to cross-examine certain witnesses during recall under Section 311 Cr.P.C. was his own tactical decision and cannot be used to allege any procedural unfairness. Mr. Nayak submits that relying on the unbroken chain of circumstances, such as last seen together, wallet of the Convict with his picture, recovery of the bloodstained green shirt at the instance of the accused, failure to explain incriminating circumstances, scientific and medical evidence, and the motive, the trial Court rightly convicted the accused-Convict. He finally concludes his argument by submitting that given the gruesome nature of the crime committed against a 5-year-old girl child, the case falls within the “rarest of rare” category, warranting the affirmation of the death penalty awarded by the learned trial Court.

8. Mr. P. Mohanty, learned counsel appearing on behalf of the Convict argues that the trial against the Convict was vitiated by grave procedural irregularities, violating his fundamental right to a fair trial under Article 21 of the Constitution. He submits that foremost, the Convict was deprived of adequate and effective legal representation during the trial. The accused-Convict could not engage a counsel for himself. Although on several occasions, counsels were appointed for him, the representation remained purely formal as there was no serious or meaningful defence conducted which was in clear violation of the guidelines passed by the Hon'ble Apex Court. He further argues that the appointed counsel failed to safeguard the Convict's interests by not cross-examining critical prosecution witnesses even when an opportunity was afforded under Section 311 CrPC. Mr. Mohanty contends that when P.W.6, P.W.7, and P.W.12 were recalled for further cross-examination, no questions were posed, and the chance to challenge the prosecution's case was effectively abandoned. Such non-representation at vital stages of trial rendered the proceeding unfair and caused irremediable prejudice to the Convict. Mr. Mohanty further points out that the accused statement recorded under Section 313 CrPC is defective, inadequate, and has divorced the sanctity of the above provision. The incriminating circumstances, including the DNA evidence, alleged recoveries, and the so-called last seen theory, were not properly put to the Convict, depriving him the opportunity to offer his explanation and defence. He asserts that, it is a settled principle of law that a conviction cannot be based on circumstances not explained to the accused during his examination under Section 313 CrPC. Mr. Mohanty argues that apart from these procedural infirmities, the circumstantial evidence is neither conclusive nor forms an unbroken chain leading only to the guilt of the accused, the last seen evidence is

shaky, with an unexplained gap between the time the child went missing and the recovery of her body, and the recoveries made at the instance of the accused are doubtful, lacking a proper chain of custody, and were neither spontaneous nor convincingly proved. He further highlights that the DNA report categorically records that there was no match between the blood sample of the Convict and the vaginal swab and clothes of the deceased, thereby negating the prosecution's version. Mr. Mohanty concludes his argument by stating that despite the glaring lapses, the learned trial Court proceeded to convict the accused-Convict on fragile and speculative evidence, and he is hence entitled to the benefit of doubt and deserves to be acquitted.

9. This Court has heard the learned counsel for the Accused-Convict as well as the learned AGA for the State at length and has carefully gone through the entire lower Court records (LCR) including the evidence of the prosecution witnesses, documents proved through exhibits, and the statement of the accused recorded under Section 313 of the Code of Criminal Procedure (CrPC). Upon such scrutiny, we find that serious procedural irregularities have occurred, which go to the root of the matter and have caused grave prejudice to the Convict.

10. At the outset, it is pertinent to address the Convict's contention that the trial proceedings were vitiated owing to the lack of effective and adequate legal representation. The right to a fair trial, a cornerstone of criminal jurisprudence, is intrinsically linked to the right of the accused to be represented by competent counsel. The Convict has asserted that the deficiencies in legal assistance have occasioned a miscarriage of justice, warranting interference by this Court.

11. A perusal of the trial Court record reveals that the Convict was initially represented by an advocate appointed through legal aid. However, the said counsel failed to appear consistently during material stages of the trial, including the cross-examination of key prosecution witnesses. It is further evident that no meaningful or substantial defence was put forth on behalf of the Convict. Witnesses were either not cross-examined at all, or cross-examined in a perfunctory and mechanical manner, failing to elicit contradictions or inconsistencies that could have aided the defence. No defence evidence was led, and no final arguments appear to have been made with the diligence expected of counsel entrusted with safeguarding the rights of an accused facing serious charges.

To elaborate, the order sheets of the trial Court starkly depict the persistent lack of proper legal representation:

- **21.10.2016** – Date of occurrence.
- **22.10.2016** – First Information Report (FIR) registered.
- **26.10.2016** – Appellant arrested.
- **02.03.2017** – Charge sheet received; cognizance taken by the learned Magistrate.
- **16.05.2017** – Police papers supplied to the accused.
- **28.08.2017** – Neither any Vakalatnama was filed on behalf of the accused nor any State Defence Counsel (SDC) appointed until this date. Advocate Smt. Kalpana Maity was appointed as SDC. On the same day, hearing on the question of charge was conducted, charges were framed, and subsequently, Smt. Kalpana Maity filed a withdrawal memo which was accepted by the Court.

- **22.09.2017** – Advocate J.K. Thakur appointed as SDC.
- **01.11.2017** – Advocate J.K. Thakur filed a withdrawal memo, which was accepted the same day.
- **08.03.2018** – Advocate D. Mohapatra appointed as SDC.
- **03.04.2018** – Advocate D. Mohapatra filed a withdrawal memo, which was accepted.
- **24.05.2018** – Advocate Rajiv Kumar Haider appointed as SDC.
- **01.08.2018** – Advocate Rajiv Kumar Haider did not appear and over telephone communication refused to conduct the defence.
- **04.12.2018** – Advocate K.L. Sen appointed as SDC.
- **28.02.2020** – Case record transferred to the Court of the learned Additional District Judge-cum-Special Court (POCSO), Sundargarh.
- **03.03.2020** – Prosecution witnesses (PWs) 1 and 2 examined.
- **01.03.2021** – On the appellant's application, the Court directed DLSA, Sundargarh to appoint a new SDC.
- **16.08.2021** – Advocate Smt. Kalpana Maity re-appointed as SDC; on the same day, PW-3 was examined. The appellant also prayed for supply of fresh police papers, having misplaced the earlier set.
- **20.03.2023** – Advocate Kalpana Maity filed a withdrawal memo, which was accepted. Advocate Raghunath Panda appointed as new SDC.
- **27.03.2023** – The appellant himself prayed for appointment of Advocate Raghunath Panda.

- **29.03.2023** – No prosecution witnesses available; matter adjourned to 25.04.2023 for hearing.
- **01.08.2023** – Learned Special Public Prosecutor filed an application under Section 311 CrPC to recall P.W.5 (Dr. Sarat Chandra Naik). Application heard on the same day; no objection raised by the SDC. P.W.5 was recalled, further examined, cross-examined and discharged.
- **01.09.2023** – Prosecution filed memo declining further evidence. Prosecution evidence closed. The appellant was examined under Section 313 CrPC.
- **19.10.2023** – Judgment pronounced in open Court and sentence awarded on the same day.

12. In the matter of ***Ashok vs. State of Uttar Pradesh*** reported in [**2024] 12 S.C.R. 335**, the Hon'ble Supreme Court laid down directives with regard to the responsibilities of Public Prosecutors and the appointment of defence counsel through legal aid, held as under –

> "**23.** Our conclusions and directions regarding the role of the Public Prosecutor and appointment of legal aid lawyers are as follows:
>
> **a.** It is the duty of the Court to ensure that proper legal aid is provided to an accused;
>
> **b.** When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;
>
> **c.** Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused;
>
> **c.** It is the duty of the Public Prosecutor to assist the trial Court in recording the statement of the accused under Section

313 of the CrPC. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;

d. An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;

f. At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the trial Court must ensure that a legal aid advocate is appointed to represent the accused;

g. As held in the case of ***Anokhilal***, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as *amicus curiae* or as a legal aid advocate. Even in the cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the newly appointed legal aid advocates to work with senior members of the Bar in a requisite number of trials;

h. The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the Court regularly and punctually when the cases entrusted to them are fixed;

i. <u>It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice</u>;

j. In the cases where the offences are of a very serious nature and complicated legal and factual issues are involved, the Court, instead of appointing an empanelled legal aid advocate, may appoint a senior member of the Bar who has a vast experience of conducting trials to espouse the cause of the accused so that the accused gets best possible legal assistance;

k. The right of the accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Article 21;

l. If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must be effective. Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated."

It is further held in ***Chaluvegowda & Ors. vs. State*** reported in **(2012) 13 SCC 538**:

"**18.** The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for an accused is presumed to be innocent until proved to be otherwise in a fairly conducted trial. This right would include that he be defended by a competent counsel. The provision of an amicus curiae for an accused, in case the accused is unable to engage an advocate to conduct his defence, is to ensure the goal of a fair trial which is a guarantee provided in the Constitution. We may recall the often quoted passage of Potter Stewart "Fairness is what justice really is".

19. The right to be represented by a lawyer must not be an empty formality. It must not be a sham or an eyewash. The appointment of an amicus curiae for the defence of an accused person must be in true letter and spirit, with due regard to the effective opportunity of hearing that is to be afforded to every accused person before being condemned. The due process of law incorporated in our constitutional system demands that a person not only be given an opportunity of being heard before

being condemned, but also that such opportunity be fair, just and reasonable."

13. Upon a holistic appreciation of the record and applying the principles laid down by the Hon'ble Supreme Court in **Ashok vs. State of Uttar Pradesh** (*Supra*) and **Chaluvegowda & Ors. vs. State** (*Supra),* it is manifest that the Convict was deprived of adequate legal representation since the very initiation of the trial, as well as at multiple critical stages thereof. Furthermore, on 28.08.2017, it was noted that neither any Vakalatnama had been filed by the accused nor had any State Defence Counsel (SDC) been appointed. Consequently, Advocate Smt. Kalpana Maity was appointed as the SDC to represent the accused-Convict. On the same day, the Court heard arguments from both sides on the question of charge, perused the case record, and formally framed the charge. However, later that day, the newly appointed SDC, Smt. Kalpana Maity, filed a withdrawal memo, which was accepted by the Court immediately.

The absence of counsel on significant dates, the mechanical manner of cross-examination, the failure to contest the prosecution's evidence, and the lack of any proactive defence strategy together cumulatively prejudiced the Convict's case. We note that the trial Court, although recording the absence or passivity of counsel on various dates, did not take any corrective measures to ensure that the Convict's right to a fair trial was safeguarded. Not only was the Convict deprived of effective and meaningful legal representation at various stages of the trial, but the record further reveals an even more disturbing feature that none of the orders of the trial Court reflect that the appointed SDCs were ever furnished with the complete case records for perusal or preparation. The Court's duty under Section 304 CrPC is not discharged by mere appointment; it must vigilantly

oversee that the legal assistance provided is real, that the counsel is given sufficient time and opportunity to understand the case, examine the materials on record, and prepare an effective defence. The absence of any record showing that the case materials were supplied to the successive SDCs appointed during the course of trial further reinforces the conclusion that the appellant was denied the substantive benefit of legal assistance, thereby rendering the trial wholly unfair and vitiated.

14. The Hon'ble Supreme Court in the matter of ***Anokhilal vs. State of Madhya Pradesh*** reported in **[2019] 18 S.C.R. 1196**, to this effect has observed the following –

> "In the present case, the Amicus Curiae, was appointed on 19.02.2013, and on the same date, the counsel was called upon to defend the accused at the stage of framing of charges. One can say with certainty that the Amicus Curiae did not have sufficient time to go through even the basic documents, nor the advantage of any discussion or interaction with the accused, and time to reflect over the matter. Thus, even before the Amicus Curiae could come to grips of the matter, the charges were framed. The concerned provisions viz. Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted therewith, and after '*hearing the submissions of the accused and the prosecution in that behalf*'. If the hearing for the purposes of these provisions is to be meaningful, and not just a routine affair, the right under the said provisions stood denied to the appellant.
>
> In our considered view, the trial Court on its own, ought to have adjourned the matter for some time so that the Amicus Curiae could have had the advantage of sufficient time to prepare the matter. The approach adopted by the trial Court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful.

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In V.K. Sasikala vs. State Represented by Superintendent of Police25 a caution was expressed by this Court as under:

"23.4 While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well- entrenched principles of law that have been laboriously built by illuminating judicial precedents are sacrificed or compromised. In no circumstance, can the cause of justice be made to suffer, though, undoubtedly, it is highly desirable that the finality of any trial is achieved in the quickest possible time."

18. Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice."

15. A further ground of prejudice arises from the ineffective representation by the SDC when key prosecution witnesses were recalled under Section 311 of the Code of Criminal Procedure, 1973. On 01.08.2023, upon the application filed by the learned Special Public Prosecutor, P.W.5, the doctor who conducted the post-mortem examination, was recalled and further examined. However, despite the opportunity being available, the learned SDC appointed to represent the accused failed to cross-examine the witness. This omission assumes serious significance, given that cross-examination is a vital safeguard of the accused's rights and an indispensable feature of a fair trial. It enables the defence to test the veracity and credibility of prosecution witnesses and to expose any inconsistencies or weaknesses in the prosecution's case. The Hon'ble Supreme Court has

time and again emphasised that the failure of defence counsel, particularly Court-appointed counsel, to discharge their duties diligently amounts to a violation of the accused's right to effective legal representation. In the present case, the inaction of the defence counsel deprived the accused of a meaningful and effective defence, thereby resulting in manifest injustice.

16. It is well-settled that an accused facing serious charges particularly one under Section 302 IPC and section 6 of POCSO Act, carrying the possibility of life imprisonment or death must be afforded the fullest opportunity to defend himself through competent and diligent legal representation. In the instant case, the conduct of defence counsel and the trial proceedings fall woefully short of this standard. The prejudice to the Convict is not speculative; it is borne out from the record. In our considered opinion, the Convict has demonstrated substantial prejudice arising from the inadequacy of legal representation. The trial, as conducted, cannot be said to have been a fair trial in the eyes of law.

17. Another irregularity pointed out by the defence is that the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, is neither exhaustive nor comprehensive. The opportunity provided under Section 313 CrPC is not a mere formality but a substantive and valuable right conferred upon the accused. It is intended to afford the accused a fair opportunity to offer an explanation against the evidence led by the prosecution. The omission to properly and fairly examine the accused under Section 313 CrPC constitutes a material irregularity which strikes at the root of a fair trial, thereby vitiating the proceedings to that extent.

18. The Hon'ble Supreme Court in the matter of ***Raj Kumar vs. State (NCT of Delhi)*** reported in **2023 SCC OnLine SC 609**, has laid down the principles concerning the examination of the accused under Section 313 CrPC, as under:

> "**17.** The law consistently laid down by this Court can be summarised as under :
>
> (i) It is the duty of the trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;
>
> (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;
>
> (iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;
>
> (iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;
>
> (v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;
>
> (vi) In case such irregularity is curable, even the appellate Court can question the accused on the material circumstance which is not put to him;
>
> (vii) In a given case, the case can be remanded to the trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC; and
>
> (viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the

delay in raising the contention is only one of the several factors to be considered."

19. As laid down above, the trial Court must specifically, distinctly, and separately put each material circumstance appearing in evidence against the accused. The purpose of such examination is not perfunctory; it is to provide the accused a meaningful opportunity to explain the circumstances against him. Failure to properly frame and put material circumstances constitutes a serious irregularity and can vitiate the trial if it has caused prejudice. Mere bulk questioning or vague aggregation of circumstances does not satisfy this requirement. Each incriminating circumstance must be individually addressed. The omission, unless shown to be curable without causing failure of justice, entitles the accused to appropriate remedial directions, including the possibility of remand. This principle underscores the substantive, rather than procedural, character of the right under Section 313 CrPC, firmly rooted in the guarantee of a fair trial under Article 21 of the Constitution.

20. Upon perusal of the case record in the instant case, we note this with concern that the questions put to the Convict under Section 313 CrPC were excessively lengthy, spanning pages after pages, and covered multiple factual circumstances in a single breath. The purpose of examination under Section 313 CrPC is to afford the accused a real opportunity to explain the evidence against him. In the present case, the manner of questioning deprived the accused of that substantive opportunity. It is also disgusting to note that the learned trial Court did not even make an endeavour to understand the predicament of the accused-Convict, whether he could rationally answer if the entire evidence were placed before him, not filtering out the specific pieces

of evidence to be utilised against him, including the entire evidence of the Investigating Officer.

21. It is further placed on record that pursuant to the order passed by this Court on 12.02.2025, that the mitigating circumstances of the Convict including his background, psychological condition, pre-conviction and post-conviction conduct have been furnished and are now part of the court record. This Court notes with concern that no such enquiry was undertaken by the trial Court at the stage of sentencing. In a case where the death penalty is under consideration, the law mandates that the sentencing Court must meaningfully weigh the aggravating and mitigating circumstances, and make an informed assessment of the possibility of the convict's reformation and rehabilitation, as held in ***Bachan Singh vs. State of Punjab*** reported in **(1980) 2 SCC 684**, and ***Machhi Singh vs. State of Punjab*** reported in **AIR 1983 SC 957**. The grievous nature of the offence, though highly relevant, cannot alone justify the imposition of the ultimate penalty without a genuine inquiry into the individual circumstances of the offender. The failure to undertake such a balancing exercise and the omission to consider the available mitigating materials constitute a serious irregularity, vitiating the sentencing process.

22. This Court further records its concern that the conviction and the hearing on sentence were both conducted on the same day. The defence was given no meaningful opportunity to prepare submissions on mitigation or to place materials relevant to sentencing before the Court. In trials involving the death penalty, it is a constitutional imperative, as laid down in ***Santa Singh vs. State of Punjab*** reported in **(1976) 4 SCC 190** and reaffirmed in ***Sovaran Singh Prajapati vs. State of Uttar Pradesh*** reported in **2024 SCC OnLine SC 402**, that a

separate, substantive hearing on sentence must be held, distinct from the stage of conviction. The right to a fair opportunity to present mitigating factors is not a matter of procedure alone but touches upon the right to life itself under Article 21 of the Constitution. By rushing the sentencing proceedings without granting adequate time or opportunity to the defence, the trial Court undermined this basic safeguard, vitiating the sentencing process. Such an approach not only violates the rights of the accused but also undermines the constitutional commitment to fair trial standards that all courts are bound to uphold.

23. Upon a cumulative evaluation of the record, this Court finds that the trial proceedings were afflicted by multiple and grave irregularities, including improper and inadequate examination under Section 313 CrPC, failure to consider mitigating circumstances at sentencing, and denial of a distinct and fair sentencing hearing. Each of these deficiencies, standing alone, would be sufficient to occasion serious prejudice. Taken together, they reveal a trial conducted in a perfunctory, mechanical, and constitutionally impermissible manner. The right to a fair trial is not the privilege of the accused but a right that is equally essential for the prosecution and, more importantly, for society at large, to ensure that justice is both done and seen to be done. The trial Court, therefore, was under an even greater obligation to ensure that the trial proceedings were conducted with the strictest regard to fairness and due process. Regrettably, the record reflects a complete abdication of that responsibility. In cases of such grave nature, perfunctory manner of conducting the cases not only undermine the faith of the public in the criminal justice system but also risk irreparable miscarriage of justice. Such lapses strike at the

heart of the right to a fair trial and cannot be countenanced. This Court is thus left with no alternative but to hold that the trial stands vitiated in its entirety.

24. In view of the serious procedural lapses noticed in the present case, this Court deems it appropriate to reiterate that trial Courts are under a binding duty to:

i. Appoint competent defence counsel at the earliest and ensure continuous, effective legal representation throughout the trial;
ii. Provide sufficient time and opportunity for the defence to prepare before framing charges and before recording evidence;
iii. Record in specific terms that defence counsel have been furnished the complete case records for preparation.
iv. Frame each material circumstance distinctly and simply during examination under Section 313 CrPC;
v. Hold an independent, substantive sentencing hearing, particularly where the death penalty is contemplated;
vi. Conduct a real and meaningful balancing exercise between aggravating and mitigating circumstances at the stage of sentencing;

The procedural safeguards are not ornamental; they are constitutional imperatives designed to ensure that justice is not only done but seen to be done.

25. This Court expects all the trial Courts to remain alive to the fact that the duty to conduct trials in accordance with the law becomes all the more heightened when dealing with allegations involving heinous offences punishable with death or life imprisonment. A cavalier or casual approach to such trials not only imperils the rights

of the accused but also erodes the legitimacy of the criminal justice system itself. Courts must remain ever vigilant to uphold the constitutional guarantee of fairness, diligence, and due process at every stage of the proceedings. Lapses of the kind noticed herein must be avoided at all costs.

26. We do not approve of the trial conducted by the learned Additional District Judge-cum-Presiding Officer, Special Court (POCSO), Sundargarh, in the instant case, with such fundamental lapses in dealing with matters of importance in a Sessions trial.

27. In view of cumulative effect of the serious procedural irregularities highlighted above, and placing reliance on the decision of the Hon'ble Supreme Court in ***Sovaran Singh Prajapati vs. The State of Uttar Pradesh***, reported in **2025 SCC OnLine SC 351**, where the Hon'ble Court emphasised that where grave procedural irregularities have vitiated the trial and have occasioned a miscarriage of justice, a de novo trial becomes imperative to uphold the sanctity of criminal proceedings, this Court is of the considered opinion that a fresh trial is the only course available in the present case.

28. Accordingly, the conviction and sentence passed against the Convict are set aside. The matter is remanded to the trial Court for a de novo trial from the stage of framing of charges. The trial Court shall ensure that the accused is afforded effective legal assistance, that all prosecution witnesses are examined afresh, and that the accused is properly examined under Section 313 CrPC, with each material circumstance put to him clearly, distinctly, and separately. In the event, the Court finds it necessary, may also make endeavour by attracting the notice of the prosecution agency for engagement of a

special prosecutor having adequate experience and acumen to represent the Condemned Prisoner/Convict.

29. The trial Court is further directed to conduct the trial expeditiously and conclude it within a period of six months from the date of receipt of a copy of this order, if there be no legal impediment. The trial Court shall at every stage be mindful of its solemn duty to uphold the rights of both the victim and the accused, ensuring that the administration of criminal justice does not suffer further indignity.

30. It is further clarified that the discussion undertaken by this Court has been strictly limited to the issue of procedural irregularity. Nothing stated herein shall be construed as an expression on the merits of the case, which shall be independently considered by the trial Court during the de novo trial, uninfluenced by any observations made in this judgment.

31. Accordingly, the DSREF is answered.

32. In view of the answer made to this DSREF and its disposal setting aside the impugned judgment and order, the JCRLA stands disposed of.

(Chittaranjan Dash)
Judge

(B. P. Routray)
Judge

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Reason: Authentication
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Date: 24-Apr-2025 16:53:13