ORISSA HIGH COURT,
CUTTACK

DSREF NO.4 OF 2013 & JCRLA NO. 29 OF 2013

DSREF No.4 of 2013

In the matter of a reference under section 366 of the Code of Criminal Procedure arising out of judgment dated 14.05.2013/15.05.2013 passed by Sri K.C.Mohapatra, Sessions Judge, Nabarangpur in C.T. No.74 of 2011.

State of Orissa ..... Complainant

Versus

Sukru Majhi ..... Respondent

For Complainant : Mr. Sk. Zafarulla,
Addl. Standing Counsel

For Respondent : Mr. Biswajit Nayak,

JCRLA No. 29 of 2013

From the Judgment dated 14.05.2013/15.05.2013 passed by Sri K.C.Mohapatra, Sessions Judge,.Nabarangpur in C.T. Case No.74 of 2011.

Sukru Majhi ..... Appellant

Versus

State of Orissa ..... Respondent

For Appellant : Mr. Biswajit Nayak

For Respondent : Mr. Sk.Zafarulla,
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY
AND
THE HONOURABLE SHRI JUSTICE D.DASH

Date of hearing: 03.12.2013 : Date of judgment: 20.12.2013

D.DASH,J The proceeding for confirmation of death sentence and the Jail Criminal Appeal having arisen out of the judgment of conviction and order of sentence dated 14.05.2013 and 15.05.2013 respectively passed by the learned Sessions Judge, Nabarangpur in C.T. Case No. 74 of 2011 have been heard together and are therefore disposed of by this common judgment.

2. The prosecution case is the followings :

On 16.07.2011 around 3.30 P.M. the accused Sukru Majhi holding a Barchhi (Spear) suddenly came out of his house situated at village Bhagatguda in a violent mood without paying any heed to the protest from the side of his wife and his other relations as if in a human haunting spree. It is alleged that he first pierced the spear into the chest of one Dasai Majhi, who was standing in front of her house, causing instantaneous death and then continued with the mission of murder of one after another. One Dinamani and Pitamber when intervened were severely injured with the said spear. It is next alleged that the accused thereafter ran to the nearby field of

Kumari Majhi who was working there. Seeing her, the accused inflicted injury on her back with the spear that he was holding and it also resulted in her instantaneous death. Thereafter with the said spear, the accused ran towards village Maidalpur. Dinamani and Pitamber, who had sustained serious injuries in the hands of the accused, being shifted to the hospital, finally succumbed to the said injuries. It is the case of the prosecution that the accused by inflicting fatal injuries on the person of Dasai, Dinamani, Pitamber and Kumari caused their death.

Information being lodged by one Bhagirathi Majhi, P.W.1 before the I.I.C., Papadahandi Police Station under Ext.1, case was registered and as per the direction of the I.I.C., the A.S.I. of Police then attached to Papadahandi Police Station took up investigation.

In course of the investigation, he examined the complainant and then deputing constable to guard the dead bodies, proceeded to the village Bhagatguda, where he held inquest over the dead bodies of Kumari Majhi and Dasai Majhi in the Maize field where those were lying in presence of the witnesses under Ext.2 and Ext.9 respectively. He collected the blood stained and sample earth from both the places under seizure lists Exts. 3 and 4. The dead bodies were sent to the District Hospital, Nabarangpur for postmortem examination through the escort party. Receiving the official information from Maidalpur Police Out-Post that the accused had surrendered there, he

rushed to the Out-Post, where he found the accused to be present holding the Barchhi (Spear) (M.O.I) and on his production seizure of that weapon was made under Ext.23. Spot map was also prepared under Ext.24. Some time after, receiving the information about death of Pitamber in the hospital, he having deputed a constable to guard the dead body there, rushed down. On his arrival, he also held inquest over the dead body of Pitamber in presence of the witnesses under Ext.8 and then sent the dead body for post mortem examination vide dead body challan under Ext.25. Wearing apparels of the deceased Dasai, Dinamani, Kumari and Pitamber were also seized under Ext.6 and those were sent for chemical examination. The accused was sent for medical examination with request for collection of his blood sample and nail clippings which were collected. This P.W.20, the I.O., then seized the sealed bottles containing nail clippings and sample blood of the accused on production by the Police Constable under seizure list Ext.5. On 18.07.2011 he received information about death of Dinamani in the hospital. So in a similar manner he held inquest over the dead body in presence of the witnesses and prepared the inquest report at the hospital. While sending the dead body of Dinamani for post mortem examination under Ext.26, he later on seized one yellow colour saree of Dinamani, under seizure list Ext.7. The weapon of offence (M.O.I), which was seized on production by the accused, was also sent to the doctor. A query being made as to whether the injuries resulting the death of the four persons could have been caused by M.O.I., the

answer came in the affirmative. The Station Diary book containing relevant entry made in the Police Out Post where the accused surrendered holding the barchhi (spear) was seized under seizure list Ext.20 and given in zima of another S.I. of Police. On completion of the investigation, charge sheet was submitted placing the accused to be tried in the court below for the offence under Sections 302/324 and 326 IPC.

The learned S.D.J.M., Nabarangpur, in turn, committed the case to the Court of Session for trial. The learned Sessions Judge upon examination of twenty prosecution witnesses and after having admitted series of documents as stated above, on analysis of the same has held the appellant guilty of the offence under Section 302 IPC for committing murder of Dasai, Kumari, Dinamani and Pitambar and has convicted him there-under, while sentencing him to death. It may be mentioned here the accused having been called upon has neither examined any witness on his behalf nor has proved any document. However, in his statement recorded under Section 313 Cr.P.C. he has expressed his ignorance about all the developments while flatly denying his complicity in such crime, for which he faced the trial. That is how the reference under section 366 of the Code of criminal Procedure, 1973 for confirmation of death sentence and also the appeal at the instance of the accused challenging the conviction and sentence as aforesaid have arisen.

3. Mr. Zafarulla, learned Additional Standing Counsel placing before us the depositions of the eye witnesses P.Ws. 1,2,3,4 and 13, submits that the prosecution case has been well established beyond reasonable doubt. According to him the finding of guilt based upon the evidence of all these witnesses, can not be found fault with. In addition to that, he having further drawn our attention to the evidence of P.Ws. 5 to 7 and 19, the seizure witnesses; P.Ws.8, 11 and 12, the post occurrence witnesses; and P.W.18, the wife of the accused, injured in the incident urges that their evidence have gone unshaken and those provide ample support and corroboration in all material particulars to the evidence of eye witnesses. So when there is no dispute that all those four persons named above met homicidal death which has also been well proved through the evidence of P.Ws. 14,15,16 and 17 as well as P.W.20, the judgment of conviction calls for no interference and the criminal appeal on that score thus merits no acceptance.

His next submission is that the court below having drawn the balance sheet of the aggravating and mitigating circumstances, which are apparent in facts and circumstance of the case, has rightly gone to place the case in hand in the category of "rarest of rare cases", keeping in mind the settled principles regarding the selection of appropriate sentence in the case of ***Bachan Singh v. State of Punjab***, AIR 1980 SC 898, ***Machhi Singh***

v. State of Punjab, (1983) 3-SCC 470 and ***Allauddin Mian v. State of Bihar***, AIR 1989 SC 1456. So he urges for confirmation of the death sentence.

4. Learned counsel for the accused-appellant, Mr. Nayak at the out-set submits that here is a case where the order of conviction and sentence cannot stand in the eye of law as the accused has been deprived of a fair trial being not properly defended. Placing the depositions of each of the prosecution witnesses, he contends that except throwing bald suggestions to the eye and other witnesses examined on behalf of the prosecution that they were deposing falsehood, neither any such specific plea has been taken in the defence nor any sort of attempt has been made to bring out even some materials for testing the veracity of the evidence and their reliability. It is his further contention that the defence in the case has rather in course of cross-examination gone to patch up lacunae, those were left by the prosecution.

In this connection, with great pain, he has taken us through the evidence of P.W.3 in submitting that when the prosecution had not brought out from the lips of this eye witnesses as to how he could see the incident, it is the defence in cross-examination has covered it up by bringing as to how he appeared as an eye witness. That apart having placed the deposition of P.W.3, he submits that the cross-examination has been directed to bring further evidence from this witness in providing greater support to the

prosecution case instead of directing it to ascertain the fact as to if the witness is a truthful one or not. It is also his submission that when the defence has drawn the attention of P.W.2, to his statement recorded under section 161 Cr.P.C. that he had stated that the accused has inflicted the blow to the chest of his mother Kumari Majhi where as in trial he states about infliction of blow on her back, the same has not been even proved, though P.W.20, the I.O. who had recorded the statement and thus not-withstanding its impact as regards the acceptance of the evidence of P.W.2, even the scope to advance that aspect to discredit his version if any has thus stood foreclosed. At the same time he has highlighted as to how the trial court has failed in its duty in ensuring the fair trial by remaining as a mute spectator althrough. Thus he urges that the trial has not been a fair one. According to him therefore the evidence on record ought not to be taken into consideration for the purpose of arriving at a finding of guilt or otherwise of the accused. Therefore, he contends that it is a fit case for retrial.

With regard to the sentence, he alternatively contends that in the back drop of the settled principles of law as enumerated in the decisions of the Apex Court referred to by the trial court right from Banchan Singh's case onwards, on proper weighment of mitigating and aggravating circumstances appearing in the instant case, the trial court has not made appropriate choice of sentence by imposing the death penalty upon the accused. According to him, the trial court has simply been swayed away by

the facts that it was a case of multiple murders. On these aspects, he has placed before us one by one the aggravating circumstances as well as mitigating factors while further describing the remoteness of the place where from the accused hails, his family background, financial status and status in the society as well as the volatile state of mind, in the absence of any material whatsoever emanating from evidence regarding the motive which although stand as a mitigating factor have not been taken into consideration by the trial court and in consideration of all those his submission is that it is not falling within the category of "rarest of rare cases". Thus he submits that in case his first submission gets repelled, then the death sentence calls for modification to the sentence of imprisonment for life.

5. On such rival submissions, it is felt apposite to first proceed to consider as to whether the accused has faced a fair trial or not, with proper opportunity to defend himself. Before coming to the facts and circumstances of this case on above aspect, it is profitable to place few decisions of Hon'ble Apex Court as to the fair trial, what it means and the role of all concerned therein.

6. In the case of ***Zahira Habibulla H. Sheikh and another vrs. State of Gujarat and others***, (2004) 4 SCC 158, the Apex Court have held:

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> 30. "Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of courts of justice. The operating principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences."

It has been further held therein:

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> "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 are not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an overriding 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". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. 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".

7. Next coming to the consequences of denial of a fair trial, it has been prophetically said -

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"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".

xx xx xx xx xx

38. "A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling

> question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not about over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny".
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> 39. "Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial".
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> 40. "The fair trial for a criminal offence consists not only in technical observance of the frame and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice"

8. Keeping the aforesaid in mind, let us have a cursory have glance at the records of the present case.

On perusal of the depositions of all the witnesses, it reveals that no such plea on behalf of the accused has been taken. It has simply been suggested to the witnesses examined on behalf of the prosecution that they are deposing falsehood. In the statement under Section 313 Cr.P.C. the accused while expressing ignorance on all those incriminating materials emanating from the evidence when put to him, has lastly denied his role in causing death of the four persons while further saying as to how could he do so. The evidence of P.W.2 reveals that during the cross-examination attention of this witness has been drawn to his previous statement under Section 161 Cr.P.C. where he had stated that the accused inflicted Barchhi blow on the chest of his mother, which he has denied. But surprisingly enough during cross-examination of P.W.20 (I.O.) who had recorded P.W.2's statement under Section 161 Cr.P.C., the learned defence counsel has not taken care to prove the same that P.W.2 had stated before him that the accused had inflicted Barchhi blow on the chest of his mother. So that contradiction has not been duly proved for the court to take it into consideration that P.W.2 had earlier stated that the accused gave Barchhi blow to the chest of the deceased-Kumari whereas now he says that blow was given at the back of Kumari. The trial court has thus not considered the same in judging its impact on the acceptance of the said evidence. It was in that event incumbent on the part of the defence counsel to prove it through P.W.20. For further verification, the statement of P.W.2 recorded under Section 161

Cr.P.C. when is perused it is found that actually such is the state of affairs there-in. Thus such contradiction remains un-established. Even without going to consider it's impact on the reliability of the evidence of P.W.2, it can well be said that there has been failure of performance of duty here not only by the learned defence counsel but also the trial Court. The Court has not played its role in a manner as it ought to have been while trying such an important case bearing in mind that in case of the finding either way its consequences are likely to be serious and far reaching and that it may call upon the court for imposing the capital punishment. In such situation, the trial court within its competence to exercise the power to elicit the material particulars from P.W.20, either at the time of examination or even at a later stage in exercise of vast wide power conferred under Section 165 of Evidence Act and Section 311 Cr.P.C. by playing an active role in the process of collection of all those material evidences for arriving at the truth despite failure on the part of the learned defence counsel as it was necessary for the just and proper decision of the case and up-holding the truth. So here the role of the trial court has not been participatory and instead has become that of a tape recorder. The trial appears to have not been monitored in aid of justice to arrive at ultimate objective, i.e., truth.

Next going to the evidence of P.W.3 who has stated about the accused giving a barchhi blow at the back of Kumari, it is found that absolutely no cross-examination has been directed in any manner to test the

veracity of the witness even at the minimal level. It is further astonishing to see from the evidence of P.W.4 that rather the defence has patched up the lacunae by bringing clarification as to how he came to be present at the relevant time at the village during the occurrence when he had not stated during his examination-in-chief, more particularly at the place of occurrence at the relevant time.

Next it is seen that the prosecution has cited the wife of the accused as a witness examined in the trial as P.W.18. She had stated that the accused did such occurrence out of madness. On being cross-examined, she has stated that the madness of the accused was there for 8 to 10 days stretching behind the time of occurrence. She has also stated that accused was not looking after them and was also not taking his food etc. Ordinarily in this case the behaviour of the accused does not appear to be that of a normal human being even accepting the fact that he came out from his house with the weapon, i.e., barchhi and went on to cause murderous assault on persons one after the other. It assumes more importance when no material remains as regards motive. So the learned defence counsel ought to have directed himself to collect the information in this regard if any for proper defence if it was so since it has the consequential effect on the continuance of trial and the Court should have been on guards to decide it more particularly when I.O. (P.W.20) although having said that the accused was medically

examined, has not proved the medical examination report giving rise to a suspicion in the mind.

The entire record does not reveal that either the learned defence counsel or the court have directed the examination in that regard. So this aspect ought to have been over ruled by the learned counsel for the defence and even after the fact came out during the cross-examination of P.W.18, the wife of the accused, steps should have been taken either by him or by the court to further delve into that aspect instead of lightly brushing it aside in order to exclude the said part concerning the accused altogether.

9. The purpose of cross-examination of a witness has been succinctly explained by the Constitution Bench of the Apex Court in **Kartar Singh v. State of Punjab**, (1994) 3 SCC 569 at para 278,

> "278. Section 137 of the Evidence Act defines what cross-examination means and Section 139 and 145 speak of the mode of cross-examination with reference to the documents as well as oral evidence. It is the jurisprudence of law that cross-examination is an acid-test of the truthfulness of the statement made by a witness on oath in examination-in-chief, the objects of which are:
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> (*1*) to destroy or weaken the evidentiary value of the witness of his adversary;
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> (*2*) to elicit facts in favour of the cross-examination lawyer's client from the mouth of the witness of the adversary party;
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> (*3*) to show that the witness is unworthy of belief by impeaching the credit of the said witness;

> and the questions to be addressed in the course of cross-examination are to test his veracity; to discover who he is and what is his position in life; and to shake his credit by injuring his character."

The absence of proper cross-examination here appears to have resulted in miscarriage of justice and the Court has also failed to guard against such eventuality. In the case in hand it reveals that the accused did not get a fair trial as the learned defence lawyer has performed his duty in namesake only with the Court's role remaining as a mute spectator.

From all these aforesaid discussion, it appears that in the trial of the case concerning offence of such gravity and seriousness, where there remains likelihood of the accused facing serious consequences even of deprivation of life, the defence has been conducted in a very casual manner and the trial court has not bestowed due attention during the trial in discharging its role properly in arriving at the truth so as to have minimal examination as regards truthfulness or otherwise of the prosecution witnesses and their acceptability of their evidence which is of paramount importance. The oft quoted saying is that the justice must not only be done but it must also appear to have been done. So as per the cardinal principles of criminal jurisprudence when the accused is presumed to be innocent till he is found guilty by a court of law in a fair trial, the fair trial is not only to take place but it must also appear to have been so faced by the accused.

On going through the records of the present case as discussed in detail, we are constrained to say the minimum effective measures as provided under the law have not been taken during the trial in order to arrive at the truth regarding examination on the point of reliability of the prosecution witnesses and acceptability of their evidence in arriving at the truth which is the goal of a fair trial that cannot be denied to an accused.

10. At this juncture, it is necessary to refer to the provision of Section 304 of the Code of Criminal Procedure. If we trace the history that led for engrafting of such a provision in Code, it is seen that the same sprouts from Articles 21 and 22 of the Constitution which confers a fundamental right and provide a fundamental guarantee in the matter of defence of a person accused of an offence of the type. It is, therefore, the duty of the Courts to see that the right is kept fundamental and that the fullest scope is given to the said guarantee. Clause 1 and 2 of Article 22 of the Constitution lay down the procedure that has to be followed when a man is arrested.

Article 22(1) of the Constitution of India guarantees a fundamental right that no person shall be denied the right to consult, and to be defended by, a legal practitioner of his choice. Article 39-A which is in part IV of the Constitution dealing with directive principles of State policy lays down that the State shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing

justice are not denied to any citizen by reason of economic or other disabilities. Section 304, Cr.P.C. provided that where in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State. These provisions show that not only the accused has a fundamental right to be defended by a counsel of his choice but it is also an obligation of the State to appoint a counsel for the defence of an accused who does not have sufficient means to engage a counsel for himself.

The requirement of providing counsel to an accused at the State expense thus cannot be taken to be 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. An accused facing charge of murder may be sentenced to death or imprisonment for life and consequently his case should be handled by a competent person having sufficient professional expertise looking at the nature and gravity of the offences and consequential effect of trial finally ending against. A duty is cast upon the Judges before whom such indigent accused faces trial for serious offence and who is not able to engage a counsel, to appoint competent persons for their defence. It is needless to emphasize that a Judge is not a

prosecutor and his duty is to discern the truth so that he is able to arrive at a correct conclusion and the defence lawyer plays an important role in bringing out the truth before the Court by cross-examining the witnesses and placing relevant materials or evidence by serving the objective of the very purpose of cross-examination. Thus role of both are of equal importance to ensure a fair trial and satisfactory performance of the role of both only assures a fair trial in arriving at the truth.

The accused in this case appears to be a poor Adibasi hailing from a remote Scheduled Area of the State having no media no means to express the pain and agonies, and therefore is with impunity. So in such situation, where every person has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty, the Code of Criminal Procedure also provide measures to the effect that an accused gets a fair trial when the role of the court remains in arriving at the truth at the end. The Court in this case in view of glaring deficiencies in defence as pointed out in the foregoing para ought to have intervened in the matter in getting the response of accused for being provided with further assistance of a legal practitioner to the learned counsel for the defence already on legs so as to achieve the goal of arriving at the truth at the conclusion of the trial. In our considered view in the present case such a measure at the instance of the court in the facts and circumstances of the case and the glaring deficiencies in the defence was absolutely necessary to secure the ends of justice.

In our considered view, thus the provision under Section 304 of the Code of Criminal Procedure can also be pressed into service in the peculiar facts and circumstances of the case as above during the trial by engagement of the competent counsel at the expenses of the State to assist the defence counsel on appearance being engaged by accused subject to the acceptance of the proposal of the accused. Measure to the above effect in appropriate cases where is taken by the Court, the same can only be said to be in the direction of serving not only the legislative intent behind the provision of Section 304 of the Code but also the Constitutional mandate of not depriving any person of his life and liberty except according to the procedure established by law. The Court in that event can only be said to have duly discharged its role in this case and any view to the contrary in our humble opinion may render the right of the accused as wholly illusory. The present case as per our discussion was required to be dealt accordingly. In the back drop of above, we hold that the trial against the accused was flawed.

11. This now takes us to the question as to what course is then required to be adopted in this case.

The court while hearing the criminal appeal has the power of retrial of the accused under Section 386 of the Code. Though such power exists, it has been held in several decisions that the same should not be

exercised in a routine manner. A de novo trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes indispensable to avert failure of justice. The guiding factor for retrial must always be the demand of justice. The exercise of power of retrial under Section 386(b) of the Code of Criminal Procedure will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appellate court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked. (***Mohd. Hussain alias Julfikar Ali vrs. State (Government of NCT of Delhi***), (2012) 9 SCC 408.

In so far as the present case is concerned having held that there was denial of a fair trial to the accused, retrial of the accused in our considered view in the facts and circumstances therefore is indispensable.

12. In what we have discussed above, thus the judgment of conviction and sentence is hereby set aside and the matter stands remitted to the trial court for de novo trial. The Sessions Judge shall proceed with the trial of the accused in C.T. No. 74 of 2011 from the stage of the prosecution evidence and shall further ensure that the trial as per law and keeping out

observations in mind is concluded as expeditiously as possible and in no case later than three months from the date of communication of this order.

10. Resultantly, the JCRLA stands allowed as indicated above and the proceeding under Section 366 of the Code of Criminal Procedure stands accordingly discharged.

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D.DASH, J.

PRADIP MOHANTY, J. I agree.

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PRADIP MOHANTY, J.

High Court of Orissa, Cuttack,
dated the 20th of December, 2013/Routray