



IN THE HIGH COURT OF ORISSA AT CUTTACK

DSREF Nos.3/2024 & JCRLA No.141/2024

(From the judgment and order dated 30.7.2024 passed by learned 2nd Addl. Sessions Judge, Bhubaneswar in C.T. Case No.322 of 2022)

In DSREF No.3/2024

State of Odisha

... Appellant

-versus-

Sanjeet Dash @ Banku

... Respondent

Advocates appeared in the case through hybrid mode:

For Appellant

**: Mr.P.S.Nayak,
A.G.A.**

-versus-

For Respondent

**: Mr. S.Ch. Mohapatra,
Sr. Advocate
Mr. P. Mohapatra, Advocate**

In JCRLA No.141/2024

Sanjeet Dash @ Banku

... Appellant

-versus-

State of Odisha

... Respondent



Advocates appeared in the case through hybrid mode:

For Appellant : Mr. S.Ch. Mohapatra,
Sr. Advocate
Mr. P. Mohapatra, Advocate

-versus-

For Respondent : Mr.P.S.Nayak, A.G.A

CORAM:
THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

ORDER
19.2.2026.
(Hybrid Mode)

This order arises out of the objection raised by the accused-appellant on the question of fair trial. Since this issue goes to the root of the matter, it was heard as a preliminary point.

2. Be it noted that the accused has been convicted for the offence under Section 302 I.P.C. for committing the murder of his wife and for the offences under Sections 324/326/307 I.P.C. for attempting to commit murder, voluntarily causing grievous hurt and voluntarily causing hurt to his minor daughter. As such, he has been



sentenced to death for the offence under Section 302 I.P.C., imprisonment for life under Section 307 I.P.C., imprisonment for life for the offence under Section 326 I.P.C. and rigorous imprisonment for three years for the offence under Section 324 I.P.C. The proceedings have been submitted to this Court for confirmation under Section 366 of Cr.P.C. and registered as DSREF No.3/2024. Additionally, the accused has also preferred an appeal from jail, registered as JCRLA No.141 of 2024.

3. Heard Mr. S.Ch. Mohapatra, learned Senior counsel (Amicus Curiae) with Mr. P. Mohapatra learned counsel for the accused-appellant and Mr. P.S. Nayak, learned Addl. Government Advocate for the State.

4. Mr. Mohapatra commences his argument by submitting that it is the constitutional mandate to ensure fair trial to a person accused of committing a crime. Unless this basic requirement is satisfied, the trial would stand vitiated. Coming to the case at hand, Mr. Mohapatra submits that the accused engaged a lawyer of his choice from the beginning, who conducted the case perfunctorily by declining to cross-examine some of the prosecution



witnesses, including the I.O. Instead, he abruptly filed a memo of 'no instruction' on the date the I.O.(P.W.4) was examined. Though the Court appointed a lawyer as State Defence Counsel (SDC) yet, there is nothing on record to show that the rules prescribed for such appointment under the GRCO (Crl.) and the guidelines framed by this Court in this regard were followed. According to Mr. Mohapatra, the copy of the brief and records were not supplied to the SDC. Moreover, the accused was mostly produced through V.C. and the SDC was deprived of opportunity to consult with him resulting in lack of proper instructions being given to him. Though the SDC conducted the case thereafter till the last yet, it cannot be said that he did so effectively. As a result, the trial must be held to have been conducted unfairly. Mr. Mohapatra, cites the judgments of the Supreme Court in the case of **Anokhilal v. State of M.P.**¹, **Bashira v. State of U.P.**² and of this Court in the case of **Habil Sindhu vs. State of Odisha**³. He concludes his argument by submitting that the accused having been

¹ (2019) 20 SCC 196

² 1968 SCC OnLine SC 84

³ 2021 (1) ILR –CUT-767



deprived of his fundamental right to a fair trial, the matter needs to be remitted to the trial Court for *de novo* trial.

5. Mr. P.S. Nayak, learned Addl. Government Advocate, on the other hand, would argue that the contentions raised by learned Senior counsel for the accused-appellant are without any basis as the record clearly reveals that the trial Court was alive to the requirement of ensuring fair trial to the accused. The accused had engaged his own counsel, who withdrew his power on 11.12.2023, i.e. at the fag end. On being asked by the Presiding Officer, the accused himself sought for time to engage another counsel. On the next date, however, he having expressed his inability to engage a lawyer, the trial Court engaged a lawyer as SDC. Being thus appointed, the SDC filed a petition to recall the I.O. (P.W.14) and thereafter petitions to recall the other witnesses (P.Ws.1,3 and 4), who had not been cross-examined. In fact, such petitions were allowed and the witnesses were cross-examined on recall. The SDC again sought recall of P.W.14, which was also allowed. From the trend and manner of cross- examination of the witnesses on recall by the SDC, it would be evident that he



was well-conversant with the facts of the case, which in turn implies that he had not only access to the case record but also had consulted with the accused. Moreover, no objection was raised at any point of time of being deprived of the records of the case.

6. We have carefully considered the rival contentions noted above and have also perused the lower court record in its entirety, being fully conscious that the accused before us is facing death penalty. Undoubtedly, Article 21 of the Constitution which guarantees right to life and liberty provides that no person shall be deprived of life and liberty except according to procedure established by law. Giving an extended meaning to the expression “except according to procedure established by law”, the Supreme Court in the case of ***Zahira Habibullah Sheikh (5) v. State of Gujarat***⁴ held that the same includes the right to fair trial. It thus, being a fundamental right cannot be violated under any circumstances.

7. Turning to the facts of the case, it is seen that the case was committed by learned S.D.J.M., Bhubaneswar on

⁴ (2006) 3 SCC 374



28.10.2022. On that date the learned Sessions Judge noted in the order as follows:

“xxx xxx xxx xxxxx
The committing Magistrate reports that the accused is
(sic) in Jail and he has got means to engage lawyer(s)
to conduct his case in the Court of Sessions.
xxx xxx xxx xxx.”

8. We further find that on 10.6.2022, learned S.D.J.M., accepted the Vakalatnama filed by the lawyers engaged on behalf of the accused. The lawyer so engaged appears to have conducted the case during trial though some of the witnesses were not cross-examined for reasons unknown. The I.O. was examined as P.W.14 on 11.12.2023. Instead of cross-examining him, learned counsel for the accused filed a memo stating that he has not received any instruction to conduct the case. The trial Court therefore, passed the following order;

“11-12-23

UTP is produced through VC. Witness namely Bijay Kumar Das is present. He is examined as P.W. 14. Ext-P-3², P-3³, P-1⁴, P-1², P-12¹, P-11³, P-13, P-13¹, P-7², P-7³, P-4², P-4³, P-6², P-6³, P-6⁴, P-2³, P-8², P-8³, P-10⁴, P-14, P-14¹, P-15, P-16, P-17, P-17¹, and M.O. 6 to 8 are marked for prosecution. Ld. Counsel for accused files a memo stating therein that he has not received any instruction from the side of accused to



conduct the case. Perused the same. On being asked accused stated for time to engage another counsel. Put up on 12-12.23 for trial and for further order. UTP is remanded to jail custody till the date fixed."

9. It would be apposite to reproduce the orders passed by the trial Court on a few relevant dates thereafter i.e. on 12.12.2023, 19.12.2023, 04.1.2024, 5.1.2024, 8.1.2024, 9.1.2024 and 10.1.2024;

"12-12-23

UTP is produced through V.C. On being asked accused expressed his inability to engage a lawyer to conduct his case and prayed to engage State Defence Counsel. Accordingly, Sri S.P.Rout is engaged as SDC to conduct case for accused. Ld. SDC orally prayed for time for cross examination of P.W. 14. Put up on 19-12-23 for cross examination of PW-14. UTP is remanded to jail custody till the date fixed.

19.12.23

UTP is produced through V.C. No PW present Issue summons to PW-14 fixing 4-1-24 for cross examination. UTP is remanded to jail custody till the date fixed.

4-1-24

UTP is produced through V.C. Ld. SDC is present and files a petition u/s 311 of CrPC praying to recall PW No.14 for Cross-examination. Copy served. Heard. In the interest of justice petition is allowed. Witness Bijay Das is present. He is cross-examined and discharged. Put up of 5-1-24 for trial. UTP is remanded to jail custody till the date fixed.

5-1-24

UTP is produced in custody. CE report is received from I.O. of this case. Tag the same with case record. Ld. SDC is present and files a petition u/s 311 of CrPC. Praying to recall the PW-1, PW-3, PW-4 AND PW-5 for cross- examination... Copy served. Heard the Ld. Counsels for both sides. On perusal of case record, it is noticed that PW No. 1, 3 and 4, have not been cross-examined. Hence for the ends of justice, petition u/s 311 of CrPC is allowed. Put up on 8.1-24



for cross examination of PW-1 and 3 and 9-1-24 for cross-examination of PW -4 and 5. UTP is remanded to jail custody till the date fixed.

8-1-24

UTP is produced through V.C. Ld. SDC is present and files hazira. No P.W present. Ld. Addl. PP files a petition u/s 292 of CrPC praying to mark the Chemical examination report as exhibit. Copy not served. Put up on 9-1-24 for service of copy and hearing petition. UTP is remanded to jail custody till then.

9-1-24

Utp is produced through V.C. Ld. SDC is present and files hazira. Copy of petition served on ld. SDC. Heard the Ld. Counsels for both sides. In the interest of justice, the petition is allowed. Chemical Examination report is marked as Ext—P 18. Witness namely P.W-5 Sujata Dash is present. She is further cross-examined and discharged. Put up on 10-1-24 for cross examination of P.W-1,3 and 4. UTP is remanded to Jail custody till then.

10-1-24

UTP is produced through V.C. Ld. SDC is present and files hazira. Witness namely Tapan Dash and Kanakalata Dash are present. They are further cross-examined and discharged. Ld. SDC files a petition u/s 311 CrPC praying to recall P.W-14 on the ground stated therein. Copy not served. Put up on 22-1-24 for service of copy, objection and hearing on petition. UTP is remanded to jail custody till the date fixed.”

Thus, on filing of no instruction memo by the defence counsel, the trial Court afforded opportunity to the accused to engage a lawyer for which he sought time. When the accused expressed his inability on the next date, the trial Court promptly appointed a State Defence Counsel (SDC). The SDC has endorsed ‘seen’ and signed in the margin of order dtd.12.12.2023. The SDC appears to have examined



the case record to find that some of the materials witnesses had not been cross-examined for which he filed petitions for their recall. Said petitions being allowed, the witnesses (P.Ws.1, 3 and 4) were cross-examined as evident from order dtd.9.1.2024 and 10.1.2024. In view of non-availability of P.W.3 in India, prosecution could not procure his attendance for which his evidence was expunged by order dtd.23.2.2024. The I.O. (P.W.14) was recalled and further cross-examined on 02.3.2024 as evident from order dtd.2.3.2024 reproduced below:

“2-3-24

UTP is reduced in custody. Witness namely Bijay kumar Das is present He is further cross-examined on recall and discharged. As evidence from the side on prosecution has already been closed, put up on 4-3-24 for recording statement of the accused. UTP is remanded to jail custody till the date fixed.”

10. After examination of the accused, under Section 313 of Cr.P.C. and closure of defence evidence, when the matter was posted for hearing arguments, the SDC again filed a petition to recall the I.O. for further cross-examination on the ground that some contradictions had surfaced after cross-examination of P.Ws.1, 4 and 5 on recall. Said petition was allowed as evident from the order dated



21.6.2024. The I.O. was further cross-examined on 28.6.2024 as evident from the order passed on that date, which is reproduced below:

28-6-24

"UTP is produced in custody. Witness namely Bijay kumar Das is present. He is further cross- examined on recall and discharged. Ld. Addl. P.P. files a petition u/s 311 of CrPC praying to issue summons to CSW No. 12 Jyoti Prakash Das for his examination. Copy served. Put up on 1-7-24 for objection and hearing on petition. UTP is remanded to jail custody till the date fixed."

11. Significantly, after examination of another witness i.e. P.W.15 on 2.7.2024, the trial Court having observed that some incriminating materials having come out from the evidence of the witnesses, he was required to be further examined under Section 313 Cr.P.C. Accordingly, his additional statement under Section 313 Cr.P.C. was recorded. Orders dtd.02.7.2024 and 03.7.2024, reproduced below reveal the above:

"2-7-24

UTP is produced through V.C. Witness namely Jyotiprakash Dash is Present. He is examined, cross-examined and discharged. As some incriminating materials came out from the evidence of the witness, the accused should be produced to answer those questions. Put up of 3-7-24 for recording statement of the accused. UTP is remanded to jail custody till the date fixed."

3-7-24

UTP is produced in custody. His additional statement is recorded u/s 313 of CrPC. Put up on 8-7-24 for



arguments. Ld. SDC is present. UTP is remanded to jail custody till the date fixed.

12. The above sequence of events, coupled with the fact that the SDC extensively cross-examined the witnesses on recall, shows that he left no stone unturned in defending the accused. It has not been demonstrated as to how the accused was prejudiced thereby. The accused himself being produced before the Court either physically or virtually never raised any grievance of being prejudiced. The SDC also never raised any objection with regard to the procedure adopted by the trial Court. Another important aspect flagged by Mr. Mohapatra, is that the accused being produced through V.C. mostly, the SDC did not have the opportunity of a meaningful consultation with him. We do not accept the above contention for the reason that the case record shows that the SDC, at least on two occasions sought for time to seek instructions from the accused. On 04.4.2024, the SDC filed a petition as follows:

*“In The Court of the 2nd Addl. Session Judge,
Bhubaneswar*

C.T. No.-322/22

State

vs.

Sanjeet Dash

....Accused



Petition for time for argument

The accused most respectfully sheweth:-

That the case is posted today for argument.

That accused facing trial as an UTP and comes to Court with escort for a limited period and unable to instruct the SDC hence 15 days time may kindly be allowed.

Prayer

It is therefore prayed that this Hon'ble Court may graciously be pleased to allow the petition for time and for such act of your kindness the accused shall as in duty bound remain ever pray.

4.4.24

By the Accused through the SDC"

Again on 11.3.2024, the SDC filed similar petition, which is quoted below:

"In The Court of the 2nd Addl. Session Judge,
Bhubaneswar

C.T. No.-322/22

State

vs.

Sanjeet Dash

....Accused

Petition for time to adduce defence evidence

The petitioner

most respectfully sheweth:

That the case is posted today for adducing of defence evidence.

That the accused is facing trial as an UTP and unable to contact the witness from the jail custody hence 15 days time may be allowed for the defence evidence.

Prayer

It is therefore prayed that this Hon'ble Court may graciously be pleased to allow the petition for time and for such act of your kindness the accused shall as in duty bound remain ever pray.

11.3.24

By the Accused through the SDC"



13. On both occasions, the matter was adjourned acceding to the request of the SDC as above. It cannot therefore, be said that the SDC was prevented from consulting with his client and whenever he requested, time was granted to allow him to do so.

14. From the above narration, it would be amply clear that the trial was conducted in a fair manner and that no prejudice whatsoever was caused to the accused.

15. Having said that, we would briefly refer to the specific objections raised by learned Senior counsel. The argument that the counsel engaged by the accused initially conducted the trial in a casual and superfluous manner, no longer holds good in view of the fact that the SDC, after his appearance took all possible steps to patch up the lacune, if any, in conducting the trial. It has not been demonstrated as to what further he could have done, which not being done has prejudiced the accused.

16. The argument that the accused was financially weak and being without any assistance from any quarter was in a distressed condition is unable to be accepted for the reason that for most part of the trial, he had engaged his



own lawyer. And when his lawyer decided not to represent him further, he took time to engage his own lawyer, though ultimately he expressed his inability for which the SDC was appointed. We fail to see as to how the accused was prejudiced thereby.

17. As regards following of the Rules regarding appointment of SDC, Rule 65 occurring in Chapter-IX of GRCO (CrI.) (Vol.1) is relevant. Clause-9 of the Rule reads as follows:

“(9) The State Defence Counsel shall be furnished with a brief of the case free of cost at least seven days before the commencement of the trial. If after appointment of State Defence Counsel, the accused appoints another counsel, the appointment of State Defence Counsel shall cease and the brief prepared for the State Defence Counsel shall be made available to the Counsel privately engaged by the accused.”

18. We have already held that the SDC was fully conversant with the facts of the case and cross-examined the witnesses, particularly P.W.14 extensively, which he could not have done, had he not have had access to the brief. There is also an endorsement in the margin of order dtd. 9.1. 2024 that copy of the C.E. report was supplied to him.



19. Coming to the case laws cited by Mr. Mohapatra, it is seen that in the case of **Anokhilal** (*supra*), the Amicus Curiae was not afforded sufficient opportunity to study the matter. The Court held as follows:

“In our opinion, no hard-and-fast rule can be laid down as to the time which must elapse between the appointment of the counsel and the beginning of the trial, but, on the circumstances of each case, the Court of Session must ensure that the time granted to the counsel is sufficient to prepare for the defence. In the present case, when the counsel was appointed just before the trial started, it is clear that there was failure to comply with the requirements of the rule of procedure in this behalf

(emphasis supplied)”

20. In the case of **Bashira** (*supra*), relied upon in the case of **Anokhilal** (*supra*), the counsel was appointed for the accused on the date fixed for starting the trial and the trial started after his appointment on that very day. Therefore, the Court held that sufficient time was not allowed to him to prepare for the defence of the appellant. In the case of **Habil Sindhu** (*supra*), a division Bench of this Court, after examining the order sheet of the case in question found that the accused was not given proper legal assistance and there was no material to show that the SDC appointed was competent in the assessment of the trial Judge to defend the accused in a complex case of triple murder. The Court



therefore held that the trial Judge should have granted at least 7 days' time to the counsel appearing for the accused to prepare the case.

21. From what has been narrated in the preceding paragraph relating to appointment of SDC and conduct of the case by him thereafter, it is evident that the facts of the present case stand on different footing than the cited cases. As regards competence of the SDC, not a whisper of objection was raised by the accused at any point of time that he was not being properly defended. That apart, no other material has been placed before us to take such a view. There is no reason for us to hold that the SDC appointed in the case lacked competence to conduct a case of this nature. The trial Judge, being a senior judicial officer was apparently satisfied by the conduct of the trial by the SDC and that the accused was being properly defended. We are persuaded to say so because the case record clearly reveals that she presided over the trial fully alive to the constitutional mandate of ensuring a fair trial.



22. Thus, from a conspectus of the analysis of facts, law, the contentions raised and the discussions made herein above, we are of the considered view that the trial was conducted in a fair and proper manner and that no prejudice whatsoever was caused to the accused at any stage. The objection raised on his behalf by Mr. Mohapatra, learned Sr. Counsel that the trial was conducted unfairly, is therefore, rejected.

23. The preliminary point being answered as above, list this matter for hearing on merits on 26.02.2026.

.....
(Manash Ranjan Pathak, J)

.....
(Sashikanta Mishra, J)

Ashok Kumar Behera