HIGH COURT OF ORISSA ; CUTTACK

JCRLA NO.73 0F 2006

From an order dated 10.5.2006 passed by the learned Adhoc Additional Sessions Judge, Jajpur in S.T. Case No.660 of 2003.

Shyam Sundar Jena ... Appellant

Versus

State of Orissa ... Respondent

For Appellant : M/s. Ramani Kanta Pattnaik, B.C.Parija and R.R.Rout

For Respondent : Mr. Subir Kumar Pallit, Addl. Government Advocate.

P R E S E N T :

THE HONOURABLE MR. JUSTICE S.K.MISHRA
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO

Date of judgment: 16.12.2020

S.K.Mishra,J. In this appeal, the appellant-convict, Shyam Sundar Jena, has assailed his conviction under Section 302 of the Indian Penal Code, 1860(hereinafter referred to as the "Penal Code" for brevity) and sentence of imprisonment for life and to pay a fine of Rs.1000/- (rupees one thousand), in default to pay the fine, to

undergo rigorous imprisonment for one month, passed by learned Addl. Sessions Judge, Jajpur in S.T. Case No.660/2003 (arising out G.R. Case No.370/2003 of the court of learned S.D.J.M., Jajpur corresponding to Binjharpur P.S. Case No.50/2003).

2. Shorn of unnecessary details, the prosecution case in brief is that the deceased-Urmila had married the appellant-accused sometime in the year 1994. At the time of marriage, a sum of Rs.20,000/-, gold chain, ring etc., were given as per the demand made from the side of the appellant. After the marriage, the appellant further demanded a sum of Rs.10,000/- and he used to assault Urmila and force her to bring the said amount as dowry. The matter was settled on a number of occasions by the village gentries. It is alleged that on 7.7.2003 night the appellant forcibly opened the door of the room where Urmila had slept with her son. The appellant poured kerosene and set her on fire with a match stick. Thereafter Urmila screamed and her brother-in-law came. He abused and slapped the appellant. Urmila had sustained extensive burn injuries and implicated the appellant in the said manner before others who arrived at the spot. She was shifted to District Headquarters Hospital, Jajpur in a trekker. In

the same night one Lalu Jena @ Babaji came and informed Ghanashyam(brother of Urmila) about the shifting of Urmila to the said Hospital. Thereafter after advice of the Doctor, Urmila was shifted to S.C.B. Medical College and Hospital, Cuttack.

3. On 10.4.2003 Ghanashyam submitted F.I.R. before the Officer-in-charge, Binjharpur Police Station. In pursuance of the F.I.R. lodged, one Basanta Kumar Jena, Officer-in-charge of Binjharpur P.S. rushed to S.C.B. Medical College and Hospital, Cuttack and found Urmila to have sustained extensive burn injuries on her body. He took steps for recording the dying declaration of Urmila and Urmila expired on 13.4.2003.

4. During course of investigation, the Investigating Officer issued requisition for medical examination of the appellant and his son. He seized the wearing apparels of the deceased Urmila and a pillow. Sarat Kumar Nathasharma, S.I. of Police, Bijnjharpur P.S. (another Investigating Officer) took step for examination of those articles by the Director, State Forensic Science Laboratory, Rasulgarh. After completion of investigation, the Investigation Officer submitted charge sheet against the appellant.

5. In order to prove its case, the prosecution has examined 26 witnesses. P.W.1, Ghanashyam Jena, is the informant. P.W.2- Surendra, P.W.5- Kashi, P.W.12-Bijay, P.W.15-Narayan, P.W.16-Lalu, P.W.23-Baishnab P.W.19-Dhiren and P.W.20-Manoj are post occurrence witnesses. P.W.6-Pramila (sister of Urmila), P.W.9-Shyasundar(brother of Urmila), P.W.10-Dukhini(mother of Urmila) and P.W.11-Sanjib(another brother of Urmila) were examined to establish about the prosecution case. P.W.17-Pagal was examined to establish that he gave a sum of Rs.10,000/- and a gold chain as part of dowry on the request of P.W.1's father. P.W.-25-Dr. Pramod Kumar Mallik, Asst. Professor of Surgery, S.C.B. Medical College and Hospital, Cuttack, gave the certificate that Urmila was in a fit state of mind and P.W.16-Nigamananda Panda, the then Executive Magistrate posted at Cuttack Sadar, recorded the dying declaration of Urmila in presence of P.W.7-Prasanta and P.W.8-Pitambar. P.W.18-Dr.Niranjan Pati, O & G Specialist, Binjharpur P.H.C. examined the appellant and his son, P.W.24-Dr. Braja Kishore Das, Lecturer, F.M.T. Department of S.C.B. Medical College and Hospital, Cuttack conducted post mortem examination on the dead body of Urmila. P.W.3-Kusa, P.W.4-Kalandi, P.W.13-Golakhs and P.W.7-Sudhir are seizure

witnesses. P.W.21-Sarat Kumar Nathsharma and P.W.22-Basant Kumar Jena are the Investigating Officers.

6. Relying on the evidence led in this case, the learned Addl. Sessions Judge came to the following findings:-

(i) The death of the deceased was homicidal in nature.

(ii) The death is caused by extensive burn injuries.

(iii) The deceased was married to the appellant. This fact was not disputed by the appellant in his statement recorded under Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as the "Cr.P.C." for brevity)

(iv) Relying upon the evidence of P.Ws.1, 6,7,25 and 26 together with the evidence of P.W.22-the I.O., the learned Addl. Sessions Judge has come to the conclusion that there is no eye witness to the occurrence and the prosecution has solely relied upon the dying declaration of the deceased-

Urmila, which has been established beyond all reasonable doubt.

Hence he proceeded to convict the appellant as aforesaid.

7. Mr. Ramani Kanta Pattnaik, learned counsel appearing for the appellant, submits that the appellant does not dispute that the death of the deceased is homicidal in nature or the fact he had married the deceased. Mr. Pattnaik, further submitted that the appellant disputes the veracity of the dying declaration i.e. Ext.4 recorded by the Executive Magistrate, P.W.26. As per the learned counsel for the appellant, the dying declaration cannot be accepted as the F.I.R. in this case, which has been lodged by P.W.1, implicates six persons including the appellant. But in the dying declaration no such implication has been made out against five other persons, who happen to be the relations of the appellant. It is also submitted by the learned counsel for the appellant that in the F.I.R., P.W.1 has categorically mentioned that after some days of her admission to the Hospital, the condition of the deceased improved and she stated the name of six persons whereas in the dying declaration made before the Executive Magistrate she has named only one person, i.e. the appellant, to be the

perpetrator of the crime. It is also argued that the dying declaration has not been recorded by the Executive Magistrate in question answer form. Hence, it should not be accepted as gospel truth. Additionally, it is argued that the doctor, who has certified about the mental condition of the deceased to give a statement before the Magistrate, i.e. P.W.25, has stated that he has not examined the deceased before declaring her to be in a proper state of mind to give any statement before the Magistrate. Laying emphasis is on the statement of P.W.25, the doctor-P.K.Mallik, in paragraph-2 of his examination-in-chief that after recording of the dying declaration he has made an endorsement to that effect in the dying declaration, learned counsel for the appellant submits that it runs contrary to the evidence of P.W.26-Nigamananda Panda, the Executive Magistrate, in the sense that Dr. P.K.Mallik stated before him that the deceased-Urmila was mentally and physically fit to give the dying declaration prior to the recording of the dying declaration.

8. Learned counsel for the appellant also argued that as there is no independent corroboration of the dying declaration, it cannot be the sole basis of conviction. Therefore the learned counsel argued that

this is a fit case where the dying declaration should be rejected by the appellate court and the appellant be set at liberty holding that the prosecution has not proved its case beyond all reasonable doubt.

Alternatively, it is argued that there is an inordinate delay in disposal of the appeal. After 17 years and 6 months from the date of his arrest the appeal is being taken up for hearing. So, this is a fit case where sentence of imprisonment of life should be remitted to the period already undergone. This is more so because there is no motive for committing the murder of the deceased and only due to drunkenness, the appellant has committed the crime. Learned counsel for the appellant has relied upon the reported case of ***State of Orissa Vs. Parsuram Naik***; 85 (1998) C.L.T. 105 (S.C.). However, the judgment of the Hon'ble Supreme Court in the case of ***State of Orissa Vs. Parsuram Naik*** (supra) is distinguishable in the sense that in the reported case the alleged oral dying declaration made before the mother of the deceased and the High Court did not find the same to be credible. So that is not applicable to this case.

9. Mr. Subir Kumar Pallit, learned Addl. Government Advocate, on the other hand, submits that if the dying

declaration is accepted to be true and voluntary, conviction can be upheld on the basis of the uncorroborated testimony and uncorroborated dying declaration of the deceased. He relies upon the case of ***PANIBEN (SMT) VS. STATE OF GUJURAT***; (1992) 2 SCC 474, and submits that there are three safeguards and ten principles that have to be kept in mind and on the basis of the same conviction can be made. He also relied upon the reported case of ***SURINDER KUMAR VS. STATE OF PUNJAB***; (2012)12 SCC 120, and argued that the Hon'ble Supreme Court has rejected an objection terming the same to be a technical objection regarding the non-availability of the certificate and endorsement from the Doctor regarding the mental fitness of the deceased. It is held that it is a mere rule of prudence and not the ultimate test as to whether or not the dying declaration was truthful or voluntary. It was also argued that no format has been prescribed for recording a dying declaration. Therefore, it is not obligatory that the dying declaration should be recorded in a question-answer form.

As regarding the alternative submission of remission of the sentence to be already a period undergone from life imprisonment, learned Addl. Government Advocate submits that the remission of

sentence is in the exclusive jurisdiction of the executive and the Court should not in such a situation interfere with the same. He also relies upon the reported case of ***UNION OF INDIA VS. V.SRIHARAN ALIAS MURUGAN AND OTHERS***; (2016) 7 SCC 1, which is a Constitution Bench judgment regarding the scope of the power of remission of the State.

10. Keeping in view the aforesaid submissions, let us examine whether the judgment of conviction recorded by the learned Addl. Sessions Judge only on the basis of the dying declaration stands scrutiny or not. At the outset, we take note of the reported case of ***KHUSAL RAO VS. THE STATE OF BOMBAY***; [1958] S.C.R. 552; AIR 1958 SC 22; which is quoted herein below:-

> "On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, (*Guruswami Tevar, I.L.R. (1940) MAD 158*), (*1*) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (*2*) that each case must be determined on its own facts keeping in

view the circumstances in which the dying declaration was made; (*3*) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (*4*) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (*5*) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (*6*) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement,

by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any

> inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case."

11. Thus, it is clear that dying declaration can be accepted as the sole material available recording a conviction of the appellant. In the case of ***PANIBEN (SMT) VS. STATE OF GUJURAT*** (supra), the Hon'ble Supreme Court has held as follows:

> "Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to

observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Mannu Raja v. State of M.P; 1976 (3) SCC 104).

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of M. P. v. Ram Sagar Yadav, Ramavati Devi v. State of Bihar; 1985 (1) SCC 552).

(iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (Ram Chandra Reddy v. Public Prosecutor; 1976 AIR SC 1994).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. Sate of Madhya Pradesh; 1974 (4)SCC-264)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(Kake Singh v. State of M. P.; 1981 (Supp)SCC 25)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P.; 1981 (2) SCC 654)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurthi Laxmipati Naidu; 1980 (Supp) SCC - 455).

(viii) Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar; 1980(Supp) SCC 769)

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram and another v. State of M.P.AIR 1988 SC 912).

(x)) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. V. Madan Mohan; 1989 (3) SCC 390)."

In the later judgment of ***SURINDER KUMAR VS. STATE OF PUNJAB*** (supra), the ratio decided by the Hon'ble Supreme Court, in ***PANIBEN (SMT) VS. STATE OF GUJURAT*** (supra), has been applied and the Supreme Court upheld the conviction of the appellant

solely on the basis of dying declaration without any corroboration.

12. On the basis of the aforesaid settled principles of law, while assessing the evidence regarding the reliability of the dying declaration, the Court has to judge;

(i) whether the dying declaration is true and voluntary,

(ii) whether it has been made as a result of tutoring, prompting or imagination, and

(iii) whether the deceased had the opportunity to observe and identify the assailants and was in a fit state to give the declaration.

13. In this case, the evidence of P.W.26-Nigamananda Panda, the Executive Magistrate, is of much importance. He has categorically stated on oath that he proceeded to the S.C.B. Medical College and Hospital on being directed by the Collector, Cuttack. He consulted Dr. P.K.Mallik-P.W.25, who informed the Magistrate that the deceased-Urmila is mentally and physically fit to give dying declaration. Thereafter the Executive Magistrate put questions to the deceased

about her name, her father's name, her native village, the marital village, her age and as to when her marriage was performed. The Magistrate further stated that she gave rational answers to the questions. Therefore, he was satisfied that the deceased was in fit state of mind. Thereafter, the Magistrate started questioning the deceased about the occurrence as to how she got the burn injuries and then recorded verbatism, the answer given by the deceased in his own hand. He read over the contents of the dying declaration recorded by him and had questioned the deceased if it was correctly written to which she had replied in affirmative. She was not in a position to append signature on the statement and her left hand palm was burnt. So he took the right hand thumb impression of the deceased on the statement, i.e. Ext.4. Though cross examined at length, in our opinion, no major contradiction has been pointed out by the defence. Though, it appears that there are some difference between the evidence of P.Ws.25 and 26 as to when the opinion of the Doctor was given, it is a very hyper technical argument, which cannot be given much weightage.

14. The learned counsel's submission is that the Doctor-P.W.25 has not examined the deceased medically

to come to a conclusion that she is mentally and physically fit to give a statement before the Magistrate. However, in cross examination, he has denied the suggestion that the deceased was not in fit state of mind to give dying declaration, but he has admitted that he has not mentioned what type of examination, he had undertaken to satisfy himself about the mental and physically condition of the victim. Only a suggestion has been given that she was not mentally and physically fit to give a declaration without stipulating exactly what is the factual aspect of the case which lead to such a conclusion.

15. The submissions of the learned counsel for the appellant that the dying declaration is not in question answer form and hence it is not properly recorded are also of no value. The ratio laid down by the Hon'ble Supreme Court is that there is no format prescribed for recording of dying declaration and it depends on facts of each case whether the dying declaration has been properly recorded or not and whether it can be relied upon as the sole basis for conviction. We are of the opinion that the evidence of P.Ws.6,7,22,25 and 26 read together leaves no doubt in the mind of the Court that the dying declaration is true and voluntary and these

five witnesses have not been cross examined to show that they have faulted while recording the declaration by P.W.26 or that these witnesses are not reliable. P.W.26, the Executive Magistrate recorded the dying declaration of the deceased on 10.4.2003 on the requisition made by P.W.22, the I.O., on being certified regarding the mental and physical fitness of the deceased-declarant by P.W.25 Dr. P.K.Mallik in presence of P.Ws.6 and 7, namely Pramila Jena and Prasant Kumar Parida, who are also signatories to the dying declaration. So in all fitness of things, we do not think this is a case where the dying declaration should be viewed with suspicious and the conviction should be over turned into a judgment of acquittal.

16. Moreover, this dying declaration has been relied upon by the learned Addl. Sessions Judge, who had the opportunity of observing the demeanor of the witnesses when he recorded the evidence of those witnesses. His subjective findings of reliability on P.Ws.6,7,22,25 and 26 should not be lightly brushed aside by the appellate court.

17. The learned counsel for the appellant submitted that P.W.1 is the informant in this case. He has stated in the F.I.R. that on 09.4.2003 when the

condition of her sister became better he could learn from her that the above mentioned accused (named in the FIR) has tortured her both physically and mentally and then put kerosene on her body and set her on fire. In the F.I.R. he referred the names of six accused persons including the present appellant. He has admitted in the cross examination that he has mentioned the name of the appellant along with five others of his family members, but he denied the suggestion that he has done it deliberately to harass the accused persons.

18. In our considered opinion this will not adversely effect the probative value of the dying declaration as admittedly P.W.1 was not present at time of recording of the dying declaration. Secondly, he had talked to the deceased on 10th and from whatever impression he has got he lodged the F.I.R. So it cannot be taken as a major lacuna in the prosecution evidence to throw out the dying declaration, which has been recorded by an Executive Magistrate, with a medical certificate regarding the mental and physical fitness of the declarant and which has been accepted as good evidence of the murder of the deceased by the learned Addl. Sessions Judge. In that view of the matter, we are not inclined to allow the appeal.

19. The alternative submission that the appellant is in custody for more than 17 years and six months and, therefore, the sentence should be remitted to the period undergone. In the case of ***UNION OF INDIA VS. V.SRIHARAN ALIAS MURUGAN AND OTHERS*** (supra), the Hon'ble Supreme Court has held that the sentence of imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for rest of the life of the prisoner subject, however, to the right to claim remission etc. as provided under Articles 72 and 161 of the Constitution of India to be exercised by the President and the Governor of the State and also as provided under Section 432 of the Cr.P.C.

20. As far as remissions are concerned, it consists of two types. One type of remission is what is earned by a prisoner under the Prison Rules or other relevant rules based on his/her good behaviour or such other stipulations prescribed therein. The other remission is the grant of it by the appropriate Government in exercise of its power under Section 432 of the Cr.P.C. Therefore, in the latter case when a remission of the substantive sentence is granted under Section 432 Cr.P.C., then and then only giving credit to the earned remission can take place and not otherwise. Similarly in the case of a

life imprisonment, meaning thereby the entirety of one's life, unless there is a commutation of such sentence for any specific period, there would be no scope to count the earned remission. In either case, it will again depend upon an answer to the second part of the first question based on the principles laid in ***Swamy Sraddananda (2) Vs. State of Karnataka***; (2008) 13 SCC 767. The Hon'ble Supreme Court has further held that convict undergoing the life imprisonment can always apply to the authority concerned for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 of the Cr.P.C. and the authority would be obliged to consider the same reasonably subject to the principles laid down in the case of ***Swamy Sraddananda (2)*** (supra). The right to apply and invoke the powers under these provisions does not mean that he can claim such benefit as a matter of right based on any arithmetical calculation. All that he can claim is a right that his case be considered. Ultimate decision whether remissions be granted or not is entirely left to the discretion of the authorities concerned, which discretion ought to be exercised in a manner known to law. The only right of the convict i.e. recognized is a right to apply to the competent authority and have his case considered in a fair and reasonable manner.

21. We examined the notification issued by the State Government in this regard. The Government of Odisha in Law Department issued a notification bearing No.4817/L./IVJ.7/08(pt) Dt.5.5.10 regarding resolution of reconstituting the Board to review of sentence awarded to a prisoner and to recommend his premature release. The State Sentence Review Board has been constituted which is to meet at least once in a quarter at Bhubaneswar. The eligibility for premature release is quoted here in below:

> "Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A Cr.P.C. shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions.
>
> It is, therefore, clarified that completion of 14 years in prison by itself would not entitle a convict to automatic release from the prison and the State Sentence Review Board shall have the discretion to release a convict at an appropriate time in all cases considering the circumstances in which the crime was committed and other relevant factors like;
>
> (a) Whether the convict has lost his potential for committing crime considering

his overall conduct in jail during the 14 years incarceration;

(b) The possibility of reclaiming the convict as a useful member of the society; and

(c) Socio-economic condition of the convicts family.

Section 433A was enacted to deny premature release before completing 14 years of actual incarceration to such convicts as stand convicted of a capital offence.xxx"

22. However, certain categories are mentioned in the said notification by way of the exceptions to the 14 years rule, in such cases, their cases shall be considered only after 20 years including remission. The period of incarceration inclusive of remission even in such cases should not exceed 25 years. These cases include cases of convicts imprisoned for life for murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act, murder of a child below 14 years of age, multiple murder, cases of gangsters, contract killers, smugglers and convicts whose sentence has been commuted to life imprisonment.

23. Thus, we are of the opinion that though the Courts do not have jurisdiction to pass an order for a remission of imprisonment of life to any other kind of

sentence, but it is open for appellant to make an application to the proper authority in the State of Odisha, the Principal Secretary, Department of Home, Government of Odisha. So, we give liberty to the appellant to make an application to that effect to the concerned authority for remission of his sentence to the period already undergone. In this connection, the correctional authorities, more particularly the Prison Welfare Officer, shall render effective service to the appellant to make a proper representation before the proper authority designated by the State of Odisha. We also hope and trust that if any such application is made by the appellant, the authority shall take a decision as early as possible preferably within a period of sixty days of the receipt of the application regarding remission in terms of the principles laid down by the Hon'ble Supreme Court in the case of ***Swamy Sraddananda (2)*** (supra) and in the case of ***UNION OF INDIA VS. V.SRIHARAN ALIAS MURUGAN AND OTHERS*** (supra) and the notification issued by the State Government.

24. As regarding the delay in disposal of the appeal is concerned, we are constraint to observe that because of things or matters not in the hands of the judiciary, the appeals are being taken up at a belated stage for

which we consider all the stake holders including the judiciary responsible for the same. But at the same time we do not say that judiciary is alone responsible for delay in disposal of the cases. We also rely upon the observations made by brother Hon'ble Shri Justice Sangam Kumar Sahoo in the case of ***Managobinda Mohapatra Vs. State of Odisha***; (2020) 79 OCR 787 (Para-1) and in the case of ***Nitya @ Nityananda Behera Vs. State of Odisha;*** (2020) 80 OCR 89 (para-15).

25. With such observation, the JCRLA is dismissed.

26. However, we hope and trust that appropriate measures should be taken by the State of Odisha and the High Court of Orissa for expeditious disposal of the Criminal Appeals in which the appellants are still in custody.

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S.K.Mishra, J

Savitri Ratho,J.

I agree

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Savitri Ratho, J

Orissa High Court, Cuttack
Dated December 16, 2020/A.K. Behera.