GOBIND SINGH

v.

KRISHNA SINGH AND ORS.

(Criminal Appeal Nos. 30-31 of 2003)

DECEMBER 3, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860 – ss. 302 r/w s. 149 – Conviction and sentence under as also under other Acts – Award of death sentence to one of the accused – Appeal by accused persons – Reference for confirmation of death sentence – Disposal of, by High Court – On appeal, held: Conclusions arrived at by High Court are not clear and contrary to the evidence on record – They are based on surmises and conjectures – Thus, order of High Court is set aside – Matter remitted to High Court for afresh consideration – Code of Criminal Procedure, 1973 – s. 366.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 30-31 of 2003.

From the Judgment dated 15.2.2002 of the High Court of Judicature at Patna in Death Reference No.1 of 2001 with Crl. A. Nos. 61 and 139 of 2001.

S.B. Sanyal and S.K. Sinha for the Appellant.

Neeraj Shekhar, Rajesh Kumar, Ambhoj Kumar Sinha and Gopal Singh for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the judgment of a Division Bench of the Patna High Court, accepting the appeals filed by the accused persons who had

A filed two appeals before the High Court, one was by the respondents 1 to 11 in Criminal Appeal No.61 of 2001 and other by respondent No.1 in Criminal Appeal No.139 of 2001 before the High Court, which by the impugned judgment disposed of the two appeals filed by the accused persons and B the reference made under Section 366 of the Code of Criminal Procedure, 1973 (in short the 'Code') for confirmation of death sentence awarded by the trial Court which was numbered as Death Reference No.1 of 2001. The present appeals have been filed by the informant. The respondents in the present two C appeals excluding respondent No.1-Krishna Singh were convicted for offence punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo life imprisonment and were also convicted under section 17 of the criminal law amendment Act, D 1998 and sentenced to undergo simple imprisonment for six months. Respondent Suresh was further convicted under Section 27 of the Arms Act, 1959 (in short 'Arms Act') and was awarded 3 years of rigorous imprisonment. Respondent No.1-Krishna Singh was convicted for offence punishable under Section 302 IPC and was sentenced to be hanged till death.. E

2. The allegations on the basis of which law was set in motion read as follows:

A fardbayan of Gobind Singh (Exh.3) recorded on F 6.8.1997 at 9.45 p.m. at the place of occurrence itself was that about twelve to thirteen days ago informant had received a letter from respondent-Brahmdeo Paswan, a member of M.C.C. Committee imposing ban upon him from cultivating his field but no action was taken as the informant had no enmity with the G said organization and again on 5.8.1997 at about 9.30 p.m., four accused persons had come to the house of the informant and asked him to come to the orchard to have a talk with the party members which, however, was avoided by the informant. On 6.8.1997 while the informant with his brother Madam Singh (hereinafter referred to as the 'deceased') was returning on the H

same bicycle after having made some purchases at Aurangabad and reached near Rampur bridge at 5.00 p.m. the informant got down and started talking to a labourer but deceased Madan Singh moved ahead slowly on bicycle. As soon as deceased Madan Singh reached the eastern portion of the bridge upon river Adari, the accused persons who have been named and who were sitting in ambush, stood up and surrounded Madan Singh and caught hold of him. Accused-respondent Suresh Singh fired from revolver and accused-respondent No.1 Krishna Singh started cutting the neck of Madan Singh with a 'Pasuli', an instrument used for tapping toddy, catching hold of the hair of deceased. The informant seeing that ran away and reached Karma Village shouting where he told the people about the occurrence and came back to the place of occurrence with the people of that village only to find his deceased brother lying in a pool of blood at the bridge with the bicycle lying beside him and the accused persons fled away. The informant claimed that persons working in the nearby field had also witnessed the occurrence.

Giving out the motive behind the occurrence, it was claimed that his relative Shanker Dayal Singh of Karma Village, a Mukhiya was on inimical terms with the M.C.C. party members and his 'katchery' in village Unthoo, some days back was demolished by the party members for which two co-villagers of the informant were sent to jail for which the party members blamed that the informant side had given out their names to the police. After investigation, charge sheet was submitted and ultimately the trial was held and the accused persons were convicted as noted above.

The trial Court relied on the evidence of the eye-witnesses and recorded the conviction and awarded the sentences as noted above. In view of the imposition of death sentence a reference was made to the High Court for confirmation.

3. Stand of the appellants-accused persons before the

A High Court was that none of the so-called two eye-witnesses namely, Gobind Singh (PW-2) nor his father Ramraj Singh (PW-4) could have seen the occurrence but finding the dead body of the deceased they fabricated a story to implicate the accused persons. It was pointed out that letter Ext.-4 which was B stated to be the motive of the crime has been created for the purpose of the case. It was stated that none of the accused persons could be said to have any grudge against the deceased so as to kill him and it was not proved by cogent evidence that the accused were members of the banned C organization M.C.C. On the other hand the Public Prosecutor referred to the evidence of PWs 2 and 4 and stated that the conviction was in order.

4. Though the High Court has in a number of pages of the judgment purportedly analysed the evidence, the conclusions, D to say the least, are sketchy. Some of the conclusions are also contrary to the evidence on record. To illustrate, the High Court had observed that neither PW-2 nor PW-4 for a long time till recording of the FIR had told anybody the details of the occurrence or the names of the assailants though they met large E number of people. Further, the High Court held that the informant's claim that he and the deceased were returning on a cycle after purchase of juggery tied with carrier of cycle and potatoes were kept in a bag which were scattered did not find support from the evidence of the investigating officer. This F conclusion is patently wrong as the investigating officer merely said that he did not seize those articles. The High Court also noted that in Court the cycle was found without a carrier. This conclusion is also wrong as in para 15 the trial Court noted that the cycle was produced as material Ext.I and it had a carrier. G Almost all the conclusions are essentially based on surmises and conjectures. We do not think it necessary to go into them in detail. Even in respect of the letter the conclusions are contrary to the evidence on record. The letters Exts. 15 to 17 were proved by PW-2. One of the conclusions for doubting the H prosecution version was that the main assailants and two others

were arrested on the same night from the village and claimed innocence. This can be hardly a ground to doubt the prosecution version and to discard it. In view of the aforesaid unsatisfactory nature of the disposal of the appeal and the Death Sentence, we set aside the impugned order and remit the matter to the High Court for a fresh consideration. We make it clear that we have not expressed any opinion on the merits of the case except referring to some of the circumstances which apparently could not have formed the foundation of the High Court's impugned judgment.

5. The appeals are allowed.

N.J. Appeals allowed.