A STATE OF ORISSA

v.

SIKHAR JENA AND ORS.

(Criminal Appeal No. 564 of 2002)

DECEMBER 1, 2008

B

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

Penal Code, 1860: s.302 r.w. s.149 – Attack by mob – C *Death of 5 persons – Conviction of six accused, based on evidence of eye-witness – High Court ordered acquittal, by discarding evidence of eye-witness – Propriety of – Held: Not proper – High Court by abrupt conclusions discarded the evidence of eye-witness – Merely stating that the evidence of* D *a witness was not believable was not sufficient – Matter remitted to High Court.*

Prosecution case was that on the fateful day, there was clash between the rival groups. Havaldar (PW-2) E **informed at the police station that the accused persons and their supporters were armed with weapons like lathis, bombs, farsas etc. The Officer-in-charge along with PW-2, other police personnel as well as personnel of APR Force proceeded towards the spot to tackle the situation.** F **After reaching the place of occurrence, mob became furious and started brick batting the police party. Officer-in-charge ordered for firing and himself fired from his revolver in self defence. The mob attacked the Officer-in-charge and the police personnel and snatched away the** G **revolver and rifles from them. Four police officers and a leader of opposite group succumbed to the injuries at the spot. Originally 114 accused persons were prosecuted and faced trial under twenty nine heads of charges. Out of the 114 accused persons, a few expired during the trial.**

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Ultimately, apart from the six respondents, all other accused persons were acquitted. The conviction of six respondents was based on evidence of PW-2 and 8. The High Court allowed the appeal discarding the evidence of PW-2.

Disposing of the appeal, the Court

HELD: The High Court discussed in major parts of its judgment the factual scenario as projected by the parties. Thereafter by abrupt conclusions PW-2's evidence was discarded. This certainly was not the proper way of disposing of an appeal involving accusations relating to death of five persons. On that limited ground, the impugned judgment is set aside and High Court is directed to re-consider the matter afresh dealing with various points highlighted by the prosecution and responses of the accused persons. If the High Court intends to differ from the conclusions of the trial Court it has to indicate reasons therefor. Merely stating that the evidence of a witness is not believable would not suffice. [Para 5] [849-G-H; 850-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 564 of 2002.

From the final Judgment dated 31.8.1999 of the High Court of Orissa at Cuttack in Crl. Appeal No. 190 of 1988.

Radha Shyam Jena for the Appellant.

Abhijit Sengupta for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.1. Challenge in this appeal is to the judgment of a Division Bench of the Orissa High Court directing acquittal of the respondents.

A 2. Background facts, as projected by prosecution, in a nutshell, are as follows:

The occurrence took place on 19.3.1984 between 9.30 A.M and 10.00 A.M. The FIR was drawn up by the Circle B Inspector of Police, Paradeep, purportedly on his own information on 19.3.1984 at 11.15 A.M. and was formally registered at the Paradeep Police Station at 12.15 P.M. on 19.3.1984. The informant (The Circle Inspector) who has been examined as P.W. 49 is admittedly not a witness to the C occurrence, but it is evident from the F.I.R. as well as his statement and statements of other witnesses that the F.I.R. was drawn-up on the basis of narration given by some of the police officials and others. In the FIR itself, it was mentioned that the informant had enquired into whole episode from the police D personnel and outsiders. Prior to 19.3.1984 there was some internal dispute between the groups of labourers working in the Paradeep Port area. It is further revealed that since tension was prevailing a section of the Orissa State Armed Police (OSAP) had been deployed since 14.3.1984 near Atharbank, popularly known as "Iron ore plot" to maintain law and order. In the F.I.R. E it was mentioned that in the previous night, that is to say, the night of 18.3.1984, a meeting had been held by accused Pandab Swain (acquitted), Bata Samal (respondent no.2), Bishnu Pradhan (respondent no.4), Sikhar Jena (respondent no.1), Sankar Sasmal (respondent no.3) and their supporters F wherein it was decided to finish Bhima Jena (one of the deceased). It was also stated that in the said meeting it was further decided to kill police personnel if they would come to the rescue of Bhima Jena, who was the leader of the rival group. In the FIR it was further recited that at about 9.00 A.M. on G 19.3.1984, Havaldar U.C. Jena (P.W.2) had informed at the police station that Pandab Swain and his supporters were contemplating to attack the rival members and they were armed with weapons like lathis, bombs, farsas etcetera and had attacked brick-bats. It is further indicated that in view of such H

development, the Officer-in-Charge of Paradeep Police Station Sub-Inspector A.K. Kanungo (one of the deceased), proceeded towards the Iron ore plot along with A.S.Is. K.T. Rao (P.W. 3), S.K.Rout (P.W. 8), Havaldar U.C. Jena (P.W. 2) and several other constables as well as personnel of APR Force in a Trekker being driven by D.K. Das (P.W. 9) to tackle the situation. After reaching near Iron ore plot, these police officials found Pandab Swain, respondents 1 to 4 and several others (named in the F.I.R.) and five hundred others (not named in the F.I.R.), all of whom had assembled near the area. It was further alleged that these people were armed with lathis, farsas, iron rods etc. and were shouting to murder Bhima Jena and his supporters and had already surrounded Bhima Jena. Seeing this, the police party rushed near the place of assembly, but the mob became furious and started brick-batting the police party. Immediately a group of the violent mob overturned the Trekker in which the police officials had gone and assaulted the driver and set fire to the Trekker. Sikhar Jena (respondent no.1) and hundred others chased the O.I.C. and party for assault and simultaneously set fire to the OSAP Tent. Lathi charges affected by the police party including the OSAP were over-powered by the turbulent mob and police personnel including Bhima Jena were brutally assaulted by Maheswar Swain (acquitted), Bipin Dalei (not an accused), GaganLenka (acquitted) and others by iron rod and farsas. It was further recited that the O.I.C. having no other alternative ordered for firing and himself fired from his revolver in the self-defence. The mob attacked the O.I.C. and the police personnel and snatched away the revolver from the O.I.C. and three rifles from OSAP Sepoys along with ammunition and themselves fired from it. Simultaneously certain members of the violent mob also inflicted fatal injuries on the head of the O.I.C. and other police personnel. As a result, O.I.C. A.K. Kanungo, APR Mustaque Mohammad, APR Constable Niranjan Sahu, OSAP Sepoy No. 3, P.K. Mohapatra and leader of the opposite group Bhima Jena succumed to the injuries instantaneously at the spot. Besides, A.S.Is, K.T.Rao, S.K.Rout,

A APR Constables, OSAP Sepoys and Havildar U.C. Jena sustained severe injuries. The unruly mob also set fire to the hutments of the rival labour group. Due to firing by the police, some of the members of the mob also received injuries. The police Trekker number OSU 2847 and OSAP Tent were B completely gutted by fire. The informant further recited that after having received the information regarding serious law and order situation involving loss of lives of police personnel he himself rushed to the spot and after arrival found the mob escaping in different directions and he saw the dead bodies of the police C personnel and Bhima Jena lying scattered on the road.

On the aforesaid allegations, after completion of investigation, charge sheet was submitted against all the accused persons who faced the trial and some others who had absconded. D

Accused persons pleaded innocence. Accused Pandab Swain took the plea of alibi as he claimed that he was attending a meeting in the office of the Chairman of Paradeep Port Trust at the relevant time. Forty nine witnesses were examined to E further the prosecution version. PWs 2, 3, 8 to 11, 14 to 16, 25, 28 to 31 and 36 were stated to be eye witnesses. Out of these witnesses PWs 2, 3, 8 to 10, 28 to 31 and 36 were police personnel whereas PW-11, 14, 15, 16 and 25 were stated to be supporters of the deceased. Ten witnesses were F examined by the accused persons primarily to prove the plea of alibi. As noted above, five persons lost their lives for which charges have been framed. The deaths took place at different spots but in the same area. The trial Court disbelieved some of the witnesses but convicted the respondents for having G caused the death of A.K. Kanungo, the officer-in-charge and in respect of other allied offences. The conviction of the said respondents was primarily based on the evidence of PWs 2 and 8. PW-2 was one of the Havaldars of Paradeep Police station. Respondents 1 to 5 were convicted under Section 302 H read with Section 149 of the Indian Penal Code, 1860 (in short

the 'IPC') and sentenced to undergo imprisonment for life. Those five respondents were also convicted under Section 307 read with Section 149 IPC for attempting to cause murder and sentenced to undergo RI for seven years; under Section 330 read with Section 149 I.P.C. and sentenced to undergo rigorous imprisonment for five years and under Section 9 (b) of the Indian Explosives Act, (in short 'Explosive Act') read with Section 149 IPC and sentenced to undergo RI for two years. Respondents 1 to 3 were further convicted under Section 148 IPC and respondents 4 and 5 were convicted under Section 147 I.P.C and sentenced to undergo rigorous imprisonment for three years and two years respectively. Respondent No.6 has been convicted under section 353 I.P.C. and sentenced to undergo rigorous imprisonment for two years.

Originally, 114 accused persons were prosecuted and faced trial under twenty nine heads of charges. Out of the 114 accused persons, a few expired during the trial. Ultimately, apart from the six respondents, all other accused persons have been acquitted. In the absence of any appeal against acquittal at the instance of the State, the acquittal of all other accused persons became final. The High Court by the impugned judgment allowed the appeal discarding the evidence of PW-2.

3. Learned counsel for the appellant submitted that by a cryptic practically non-reasoned order the acquittal has been directed.

4. Learned counsel for the respondents on the other hand supported the judgment of the High Court.

5. We find that the High Court has discussed in major parts of its judgment the factual scenario as projected by the parties. Thereafter by abrupt conclusions PW-2's evidence has been discarded. This certainly was not the proper way of disposing of an appeal involving accusations relating to death of five

A persons. On that limited ground, we set aside the impugned judgment and direct the High Court to re-consider the matter afresh dealing with various points highlighted by the prosecution and responses of the accused persons. If the High Court intends to differ from the conclusions of the trial Court it has to indicate
B reasons therefor. Merely stating that the evidence of a witness is not believable would not suffice. We make it clear that we have not expressed any opinion on the merits of the case.

6. The appeal is disposed of accordingly.

C D.G. Appeal disposed of.