

STATE OF ORISSA

v.

PRAMOD KR. KODAMSINGH & ORS.
(Criminal Appeal No. 1271 of 2004)

APRIL 15, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ]**

Penal Code, 1860/Explosives Act, 1884 – s. 302 r/w ss. 149, 148 and 326/s.9 – Prosecution – Conviction by trial court on the basis of dying declaration and evidence of injured eye-witnesses – Acquittal by High Court – On appeal, held : High Court was wrong in discarding the conclusion of trial court without indicating any reason – Conviction confirmed.

Respondents-accused were prosecuted u/s. 302 r/w s. 149, 148 and 326 IPC and u/s. 9 of Explosives Act, 1884. Trial court convicted them for the offences charged, placing reliance on the dying declaration and on the ocular evidence of injured eye-witnesses. High Court passed order of acquittal. Hence the present appeal.

Allowing the appeal, the Court

HELD: It was not open to the High Court to discard the evidence by observing in very generalized terms that the evidence lacks credibility and cogency. The trial Court had analyzed the evidence of the injured eye-witnesses in great detail and had come to the conclusion about its acceptability. Without indicating any basis as to how the conclusion of the trial Court, was in any manner, erroneous, the High Court should not have interfered with those conclusions. [Para 9] [373-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1271 of 2004.

A From the Judgment & Order dated 05.02.2002 of the High Court of Orissa at Cuttack in Criminal Appeal No. 9 of 1991.

Janaranjan Das, S. Mishra and P.P. Nayak for the Appellant.

B Satish Vig (NP) for the Respondent.

The Judgment of the Court was delivered by

C **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of a Division Bench of Orissa High Court allowing the appeal filed by the thirteen respondents who faced trial for alleged commission of offence under Section 302 read with Sections 149, 148 and 326 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 9 of the Indian Explosive Act, (for short 'the Act').

D 2. Respondent Nos. 1 and 2 were found guilty of offence punishable under Section 302 IPC. All the thirteen accused persons were sentenced to undergo imprisonment for life for the offence relatable to Section 302. Separate sentence was imposed for offences punishable under Sections 148, 326 IPC and Section 9 of the Act.

E 3. Detailed reference to the factual aspects is unnecessary. Primarily the prosecution version rested on dying declaration purported to have been made by the deceased and the evidence of the injured witnesses, that is, PWs. 6,7,8,9,10
F and 12. The High Court found that the evidence relating to dying declaration (Ex.4) is not acceptable as it cannot be said to be true and voluntary. So far as the evidence of the eye witnesses is concerned, the High Court discarded the same on the ground that they were similar in nature and it was to be discarded as
G there was party faction. Accordingly, the High Court directed acquittal.

H 4. Challenge in this appeal is to the judgment of the High Court directing acquittal. During the pendency of the appeal respondent No.9 Kalpataru Paikray has died and therefore the appeal has abated so far as he is concerned.

5. Learned counsel appearing for the appellant-State submitted that without indicating any deficiency in the evidence of the injured eye witnesses by merely observing that their evidences appeared to be parrot like, the High Court was not justified in discarding their evidences.

6. There is no appearance on behalf of the respondents when the matter is called.

7. The trial Court by an elaborate judgment had considered the evidence about the eye witnesses and held the accused persons guilty. The said Court noted that remnants of the exploded bombs seized on the spot were sent for chemical examination and the report indicated that the bombs contained postium chlorate and sulphite. It also analysed the evidence of the injured eye witnesses, keeping in view the fact that some of them were related to the deceased. The evidence was held to be cogent and credible. After referring to the various aspects of the case, trial court held the accused persons guilty.

8. The High court, as noted above, came to the conclusion that the evidence of so called injured eye witnesses does not inspire confidence because they were similar and there was party faction.

9. It was not open to the High Court to discard the evidence by observing in very generalized terms that the evidence lacks credibility and cogency. The trial Court had analyzed the evidence of the injured eye witnesses in great detail and had come to the conclusion about its acceptability. Without indicating any basis as to how the conclusion of the trial Court, was in any manner, erroneous, the High Court should not have interfered with those conclusions. That being so, we set aside the impugned judgment. The judgment of the Trial Court stands restored. The respondents to surrender to custody forthwith to serve the remainder of sentence.

10. The appeal is allowed accordingly.

K.K.T.

Appeal allowed.