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**(1999) 03 OHC CK 0052**

**In the Orissa High Court**

**Case No :** Jail Criminal Appeal No's. 137 and 243 of 1994 and Criminal Revision No. 260 of 1994

Johan Bagh, Sarat Chandra Takri, Johan Bagh and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

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**Date of Decision :** 17-03-1999

**Acts Referred:**

Explosives Act, 1884 — Section 9, 9(B)

Penal Code, 1860 (IPC) — Section 395, 457

**Citation :** (1999) 03 OHC CK 0052

**Hon'ble Judges :** A. Pasayat, J

**Bench :** Single Bench

**Advocate :** Deepali Mohapatra, in J. Cr. A. 137/94, D.K. Mishra, in J. Cr. A. 243/94 and S.K. Pradhan, in Cr. 260/94, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

A. Pasayat, J.—These are interlinked as they are directed against a common judgment passed by learned C.J.M.-cum-Assistant Sessions Judge, Jeypore. Appellant Sarat Chandra Takri who has filed Jail Cd. Appeal No. 243/94 had faced trial along with Petitioner in Criminal Revision No. 260/94 in the Court of learned Assistant Sessions Judge, Jeypore in S.C. Case Nos. 33/92 and "33-A/92. Both the Sessions Cases were heard together and each of the accused was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500/- in default to undergo rigorous imprisonment for one month for the charge u/s 457 of Indian Penal Code, 1860 (in short, "I.P.C."), seven years rigorous imprisonment and to pay a fine of Rs. 1000/- in default to undergo rigorous imprisonment for two months u/s 395 read with Section 457, I.P.C. and rigorous imprisonment for one year u/s 9-B of the Indian Explosive Act (in short, "Explosive Act"). Sentences were directed to run concurrent. Judgment of conviction and sentence was assailed in Criminal Appeal No. 88 of 1993 in the Court of learned Addl, Sessions Judge, Joypore. Appellate Court was of the view that the ingredients of Section 397, I.P.C. and Section 9. B of Explosive Act were

not made out. However, he maintained conviction u/s 395, I.P.C. and sentence imposed therefor.") 2. Accusations which led to trial of accused persons six in number along with several others essentially are as follows:

On the mid-night of 6-3-1992, six accused persons who faced trial after their cases were split up, being armed with lathi, knife and bamboo broke open the house of the informant Pratap Kumar Chetty at village Kunthesh. They assaulted and threatened at the point of knife and after exploding bombs committed dacoity. Valuable articles like cash, silver ornaments, sarees and wrist watch were taken away. Thereafter, accused persons threatened one Naba Kumar Sahu by a tangi and on the threat of breaking open his house, took away cash and then they chased wife one Mohan Subudhi took away her gold earrings and decamped exploding bomb after threatening the villagers, who wanted to apprehend them. Next morning a written report was submitted by the informant at Dasamantapur P.S. law was set into motion. Two of the injured persons viz., informant and Naba Kumar Sahu were medically examined. During investigations, a portion of articles taken away were recovered, T.I. parade was conducted in respect -of the suspected accused persons and some of recovered properties. Chance prints in the exhibits i. e. certain articles seized were sent for comparison to the Director of State Finger Print ",Bureau and charge sheet was, placed "against the accused persons, who pleaded their innocence.

2. Ten witnesses were examined to substantiate the prosecution case. Placing reliance on evidence of the eye witnesses who were victims and had sustained injuries viz, the informant and Naba Kumar Sahu and one Mohan Subudhi and factum of recovery, accused persons were found guilty and convicted and sentenced as aforesaid. Appeal was disposed of in.the manner indicated above.

3. In support,of appeals and revision, learned Counsel for accused persons submitted that evidence brought on record is scanty and therefore courts below were not justified in holding the accused persons guilty. Learned Counsel for State on the other hand supported judgment.

4. Courts below have carefully analysed evidence on record. They placed reliance on the evidence of the eye witnesses i.e. p. ws. 1 to 3 who had sustained injuries in course of the alleged assaults. Their evidence is of great value because they apart from being eye witnesses, had sustained injuries because of the alleged acts. Nothing has been shown as to how" their evidence suffers from any infirmity. They have graphically described the incident, identified accused persons and in addition, recoveries were effected. As has been observed by the Apex Court in Jamuna Chaudhary and Others Vs. State of Bihar, , an injured person in any case, would not substitute a wrong person for his actual assailant. That being the position, I find no reason to interfere with the conviction as done. Sentence awarded also does not appear to be unreasonable and perverse.

5. Jail Criminal Appeals and Criminal Revision fail and are dismissed.

Appeals & Revision dismissed.