

# In the High Court of Judicature at Patna.

Criminal Jurisdiction.

1942.

SESSIONS DIVISION OF

*Koya pnt*

3 Files of Record, and one Police Diary.

DISTRICT

## PART I.



( THIS FILE MUST BE PRESERVED FOR EVER. )

### Reference under Section 374, Code of Criminal Procedure.

No. 4

and Appeal No. 27 + 28 of 1942.

Letter No. S.E. 187/42, dated the 13. 11. , 1942 from the Sessions Judge of *Koya pnt*

*Lakshman Naik* son of *Podalain Naik*

Prisoner.

Crime Established.

Murder, Section-302, I. P. C.

Proposed Sentence.

DEATH

Date of trial 13. 11. , 1942

Received 21. 11. , 1942

Date of decision of High Court, 13<sup>th</sup> January, , 1942.

To Magistrate :- No. 164 Cr., dated the 23. 11. , 1942 Informs that the case is set down for hearing on the 8. 12. 1942

To Advocate General :- No. 164 Cr. A., P. P. for Orissa dated the 23. 11. , 1942 Forwards copy for information.

From Magistrate :- No. 2. 12. 42, dated the 10. 12. , 1942 Submits return of the service of notice.

Lay before the Criminal Bench.

*M. J. Patil*

Assistant Registrar.

# In the High Court of Judicature at Patna.

## Criminal Jurisdiction.

### TABLE OF CONTENTS.

Criminal NR. No. 4 of 1943 (O. 1222)

Empress  
versus  
Lakhan Naik

Appellant  
Petitioner

Respondent  
Opposite-party

Serial No. of paper.	Description	Page.
1	Order-sheet	1
2	<del>Formal order</del> Judgment of the High Court	<del>2-3</del> 4-25
3	Letter of Reference Petition of appeal Application	26-27
4	Lower Court Judgment	
5	Explanation	<del>26-27</del>
6	Paper-Books	28-33

I. D. S. J.  
Signature of Officer of Court.

Date 6/5/43. 194

Compared and found correct.

[Signature]  
Record-keeper.

In the High Court of Judicature at Patna.

ORDER-SHEET.

SA

Appeal No.

4

1942 (Orissa)

Appellant,

King Emperor

versus

Lakshman Mukh

Respondent.

Serial No of Order.	Date of Order.	ORDER WITH SIGNATURE.	Office note as to action (if any) taken on Order.
1	8/1/43	Heard in part with the 8 appeals nos: 27 & 28/42 by the Hon: Mr: Justice Meredith & the Hon: Mr: Justice Brough	No. <u>APB</u>
2	11/1/43	Hearing continued —	No. <u>APB</u>
3	12/1/43	Hearing concluded. In judgment tomorrow —	No. <u>APB</u>
4	12/1/43	Heard further & then hearing concluded & Judgment delivered. Reference accepted & sentence confirmed & appeal 27/42 dismissed	No. <u>APB</u>

IN THE HIGH COURT OF JUDICATURE AT PATNA.

Criminal Jurisdiction. 2

Death Reference No. 4 of 1942 (Orissa)

and

Criminal Appeals Nos. 27 and 28 of 1942 (Orissa).

-----  
The 13<sup>4</sup> January, 1943.

-----  
P R E S E N T.

The Hon'ble Mr. Justice Meredith.

The Hon'ble Mr. Justice Brough.

Death Reference 4:

In the case of

The King-Emperor

-versus-

Lakhan Naik, accused.  
-----

Cr. Appeals 27 and 28:

1. Lakhan Naik,
2. Balaram Pujari,
3. Arjuno Naiko, of Tentuligumma,
4. Arjuno Naik of Udayagiri,
5. Sombaru Naiko,
6. Kendu Naik,
7. Bhima Naiko,
8. Jagannath Naik,
9. Udainath Odi,
10. Nityananda Ghasi,
11. Chaitan Pujari,
12. Deenabandhu Pujari,
13. Chandra Pujari,
14. Bula Bhumia,
15. Bagna Pujari,
16. Raghunath Bhumia.
17. Arjuno Pujari,
18. Sonu Domb,
19. Padalam Naik,
20. Balaram Bhumia,
21. Bhika Bairagi,
22. Dhanurjayo Naiko,
23. Sombaru Naiko,
24. Gopinath Pujari,
25. Bansingh Bhumia,
26. Guru Kotia,
27. Narasingh Challan,
28. Krishna Pujari,
29. Bhalu Domb,
30. Guru Goudo,
31. Kosa Madkami,
32. Hatiram Kotia,
33. Somaru Bhumia,
34. Hatiram Chandal,
35. Kondisunna Johoria,

36. Songasi Bhumia,
37. Mongala Madakami,
38. Budhu Kumar,
39. Somanath Bhumia of Udayagiri,
40. Krishnachandra Bissoi,
41. Somanatha Bhumia,
42. Hannasomar Naik,
43. Hori Pujari,
44. Mongaraja Naik,
45. Bhaga Naik of Kotapalli,
46. Balaram Bhumia,
47. Guru Naiko of Rangavada,
48. Kalakora Arjuna,
49. Narasingh Dhurva,
50. Motiram Singh Madkami.

3

In support of the reference )  
 and for the respondent in ) The Public Prosecutor for Orissa.  
 Cr. Appeal No. 27 )

Against the reference and )  
 for the appellants ) Mr. Pitamber Misra.

We direct that the reference be accepted, appeal No. 27 be dismissed, and the sentence of death passed on Lakan Naik be confirmed.

We further direct that the convictions and sentences of Dinabandhu Pujari (accused no. 13), Bagana Pujari (accused 16), Dhanurjoy Naik (accused 26), Sambaru Naik (accused 27), Mangara Naik (accused 48), Bhaga Naik (accused 49), Guru Naik (accused 51), Kalakura Arjun (accused 52), Narsingh Durva (accused 53) and Motiramsingh Modkami (accused 54) under all the charges be set aside and they be set at liberty forthwith.

We also direct that the convictions and sentences of the remaining appellants be affirmed and their appeal be dismissed.

*W. L. M. S.*  
*P. M. B.*

Judgment follows.

The 13th January, 1943.

Memo. No. 4 Cr.

Copy forwarded to the Additional Sessions and Judge of Koraput for information and necessary action with reference to this letter No. S.C. 18/42 C<sub>1</sub> and in continuation to this office memo. no. S.C.T.R. 5/42 179 Cr.A. dated the 21st December 1942.

By order of the High Court,

*M. Yabz*

High Court:

Assistant Registrar.

The 13th January 1943.

Nandi.

In the High Court of Judicature at Patna.

( CRIMINAL JURISDICTION. )

4

Memo. No. 19 Cr.

Dated, Patna, the 13. 2. 1943.

Serial Reference No 4 of 1942 (Orissa)

4 Criminal App. Nos 27+28 of 1942 (Orissa)

Two copies of judgment in the above case are forwarded to the

*Adl* Sessions Judge of Koraput for information and  
District-Magistrate

necessary action in continuation of the Court's <sup>letter</sup> memo. No. 7

dated the 21. 1. 1943 and for communication to the <sup>appellant</sup> <sub>trying-Magistrate</sub>

concerned.

The record of the case is returned <sup>herewith</sup> <sub>separately</sub>.

6  
13/2/43

By order of the High Court,

*re*

Assistant Registrar.

*9c*

*M*

**In the High Court of Judicature at Patna.**  
**( CRIMINAL JURISDICTION. )**

5

Memo. No. 7 Cr.

Dated, Patna, the 21. 1. 1943.  
~~Death Reference No 4 of 1942 (Orissa)~~  
Criminal App. No. 27428 of 1942. (Orissa)

Two copies of judgment in the above case are forwarded to the

*Addl* Sessions Judge of Koraput for information and  
District Magistrate

necessary action in continuation of the Court's <sup>letter</sup> memo. No. 4

dated the 13. 1. 1943 and for communication to the <sup>appellant-</sup>  
~~trying Magistrate~~ concerned.

The record of the case is returned <sup>herewith</sup> ~~separately~~.

*6*  
21/1/43.

By order of the High Court,

*[Signature]*

Assistant Registrar.

*[Signature]*

*[Signature]*



6

Death Reference No. 4 of 1942 (Orissa)

and

Criminal Appeals Nos. 27 and 28 of 1942 (Orissa).

---

D.R. 4:

Reference made by V. Ramanathan, Esq., I.C.S., Additional Sessions Judge, Koraput, in his letter No. S.C. 18/42, dated the 13th November, 1942,

In the case of

The King-Emperor                      -vs-                      Lakhana Naik, accused.

---

In support of the reference: The Public Prosecutor  
for Orissa.

Against the reference: Mr. Pitamber Misra.

---

Cr. Appeal 27:

Lakhana Naik, accused, ..... Appellant,

Cr. Appeal 28:

1. Balaram Pujari, 2. Arjuna Naiko,  
3. Arjuna Naik, 4. Sombaru Naiko,  
5. Kendu Naik, 6. Bhima Naiko,  
7. Jagannath Naik, 8. Udainath Odi,  
9. Nityananda Ghasi, 10. Chaitan Pujari,  
11. Deenabandhu Pujari, 12. Chandra Pujari,  
13. Bula Bhumia, 14. Bagna Pujari,  
15. Raghunath Bhumia, 16. Arjuna Pujari,  
17. Sonu Domb, 18. Padalam Naik,  
19. Balaram Bhumia, 20. Bhika Bairagi,  
21. Dhanurjaya Naiko, 22. Sombaru Naiko,  
23. Govinath Pujari, 24. Bansingh Bhumia,  
25. Guru Kotia, 26. Narasingh Challan,  
27. Krishna Pujari, 28. Bhalu Domb,  
29. Guru Goudo, 30. Kosa Madkani,  
31. Hatiram Kotia, 32. Somaru Bhumia,  
33. Hatiram Chandan, 34. Kondisunna Johoria,  
35. Sonyasi Bhumia, 36. Mongala Madakani,  
37. Budhu Kumar, 38. Somanath Bhumia,  
39. Krishnachandra Bissoi, 40. Somanatha Bhumia,  
41. Sannasomar Naik, 42. Hori Pujari,  
43. Mongaraja Naik, 44. Bhaga Naik,  
45. Balaram Bhumia, 46. Guru Naiko,  
47. Kalakora Arjuna, 48. Narasingh Dhurva, and  
49. Motiram Singh Madakani, accused, .... Appellants,

versus

The King-Emperor, ..... Respondent.

---



For the appellants: Mr. Pitamber Misra.

For the respondent: The Public Prosecutor for Orissa.

---

P R E S E N T.

The Hon'ble Mr. Justice Meredith.

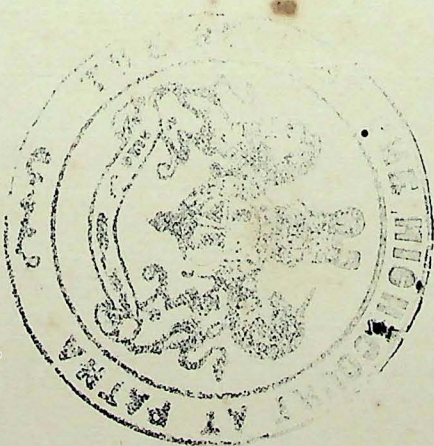
The Hon'ble Mr. Justice Brough.

---

Brough, J.

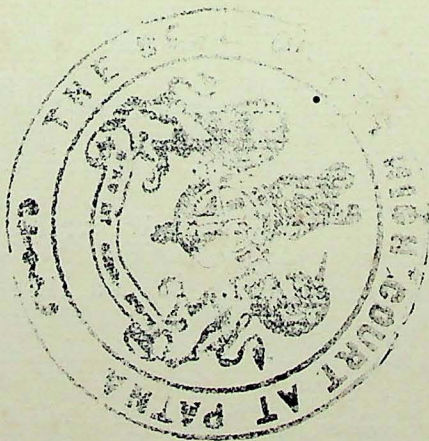
This is a death reference and connected appeal by one Laxhan Naik, who was sentenced to death and an appeal by 49 other accused who were sentenced to transportation for life by the Additional Sessions Judge, Koraput, for the murder and complicity in the murder of a man named Ramayya in the course of a riot which occurred at Mathili in August, 1942.

In the latter half of August, 1942, Mr. B. S. Nanda, the Divisional Inspector of Police at Malkanagiri, received information that an attack was likely to be made on the police station at Mathili. He, therefore, collected such force as he could, and went to the police station to deal with the expected attack. On the morning of August 21st, he had present at the police station himself, Jagannaikulu Dora, Sub-Inspector of Mathili, K. Ramamurthy, Sub-Inspector of Venkatapalam, two Assistant Sub-Inspectors and seven constables, making twelve police in all. There were also present with him an Excise Sub-Inspector and four peons, the Revenue Inspector and forest guard, the deceased Ramayya, both in the service of the Jeypore Raj, with two peons, the local doctor and compounder and the Veterinary Stock-man and nine villagers. During the morning, the Sub-Deputy Magistrate and an Inspector of the Public Works Department came to the police station. I may say that <sup>out of</sup> this party of 35 people one was killed and twenty-one were injured in the



course of the riot that eventually took place, and 28 of them have given evidence before the Sessions Judge.

At about 9.30 a.m., a mob, led by Lakhan Naik (accused no. 1), of about a thousand people carrying Congress flags and armed with lathis advanced from the village to the police station. They were shouting slogans: "We are warriors. We have brought Gandhi Raj. The British Government is no more. We will burn the police station, and kill all officers who oppose us. If we succeed, ~~we will proceed~~ we will proceed to Malakanagiri, and loot the Government treasury there." The Divisional Inspector with a part of his party met the mob about 200 yards east of the police station on the road, and barred their way. After some argument, the mob withdrew to the market nearby to decide their future action. They were followed by the Divisional Inspector and his party who remained to observe their actions. A procession with music was formed round the market, and speeches were delivered including a speech by Lakhan Naik, a note of which was made by the Divisional Inspector at the time. The speech was much to the same effect as the slogans which had already been shouted. It was: "Brethren, we are warriors. The British Government is gone, and Mahatma Gandhi is our King. Maharajah of Jeypore is dead. Proceed on. Let us first loot and burn the police station. Let us kill the Government officials, and then proceed to Malkanagiri and loot the treasury." After the speech, the mob were worked up to a sufficient state of enthusiasm to resume their march to the police station, and at about 12 o'clock they again went to the police station. The Divisional Inspector and his party ~~returned~~ returned



to the police station before them, and he took such measures as he could for its defence. The police station is a thatched building standing in a small compound, about 130 feet square, with gates on each side, surrounded by a drainage ditch and a low flimsy fence. It stands back on the north side of the road, about 70 feet from ~~the way~~, and is again surrounded by a clearing made in the forest, about 200 yards square. It is not clear whether this clearing is fenced or not, but there is a ditch along the roadside. The Divisional Inspector posted four constables at the gate of the inner compound armed with ~~bullets~~ muskets and bayonets and ten rounds of ammunitions each, and he drew up the remainder of his force close to the road by the culvert going across the roadside ditch. The remainder of his small police force were in front, and the others of his party in the second rank. The police ~~were~~ and some one, at any rate, of the others had lathis. He himself had a revolver, and it appears that Sub-Inspector Dora had a single ~~barrel~~ 12 bore gun of his own which he got hold of subsequently and used to good effect. When the mob arrived at the entrance to the compound, the police obstructed them, holding their lathis out as a barrier but without using them, and endeavoured to persuade them not to enter the compound. By this time, the Sub-Deputy Collector, Mr. Majibur Rahman, had arrived, and he declared the assembly an unlawful assembly and ordered the crowd to disperse. The crowd did not do so, but led by Lakhan Naik (accused no. 1) and Balaram Pujari (accused no. 2) pushed the police and their helpers backwards towards the inner compound. While this was going on, some members of the crowd who, as I have already said, were armed with lathis





which were short heavy lathis of green bamboo, assaulted Sub-Inspector Rammurty and constable Mahanty, and injured them severely. Upon this, the Divisional Inspector on instructions from the Magistrate ordered his force to use their lathis, or, as the witnesses put it, ordered lathi charge. This proved ineffective. The police force and their helpers being completely outnumbered were overpowered and forced further back. It was during this stage of the riot that most of the police party received their injuries. The Divisional Inspector himself received a slight injury on the hand which had the effect of damaging the action of his revolver so that it could not be fired. The Magistrate and others of the party were injured, and the forest guard, Ramayya, was killed. He received two blows, one on the neck and shoulder and the other on the head which fractured his skull and drove the fragments into his brain and must have killed him instantly. He fell into the drain surrounding the inner compound just to the west of the entrance. While this exchange of lathi blows was going on between the police and the leaders of the mob, others of the mob had got round the sides, and some of them had got into the inner compound. Sub-Inspector Dora had ~~was~~ with a constable gone towards his quarters which were to the west of the compound and got his own gun. The Magistrate seeing the death of Ramayya and the injuries that were being inflicted on the others of his party, told the Divisional Inspector to open fire. He did so, and the armed constables at the gate opened fire, and used their bayonets. They fired 18 rounds in all. At the same time Sub-Inspector Dora used his gun, and fired three rounds with one of which he killed a man who had climbed on to the



verandah of the police station and was in the act of setting fire to the thatch, and with another of which he killed another man. Besides these two men ~~which~~, three others were killed and seventeen injured mostly by the armed police. Shortly after fire was opened, the mob began to disperse, and the Divisional Inspector immediately gave orders to cease fire, and the position seems to have been restored about half past twelve.

At half past one, in the police station itself Sub-Inspector Dora wrote a report which was the First Information Report in this case. He gives substantially the account of the occurrence that I have set out above. He adds that Ramayya was beaten to death by Lakhan Naik and Balaram Pujari, and he states that 35 named persons and many others of certain named villages took active part in the mob. The persons he named included accused nos. 1 to 26 and 28.

On that Information Report charges were brought against 54 people before the Additional Sessions Judge at Koraput. Lakhan Naik accused no. 1 was charged under section 302 of the Indian Penal Code with the murder of Ramayya. He was also charged with making a prejudicial speech contrary to Rule 38 of the Defence of India Rules. Balaram Pujari was also charged under section 302 with Lakhan Naik of the murder of Ramayya. The remaining 52 accused were charged under section 302 read with section 149, Indian Penal Code, of being members of an unlawful assembly in the prosecution of the common object of which Ramayya was murdered. All the accused were also charged under section 147 of the Indian Penal Code with rioting, and under Rule 35 of the Defence of India Rules with



12

committing prejudicial act by attempting to burn the police station. At the trial the learned Sessions Judge convicted Lakhan Naik of the murder of Ramayya under section 302 of the Indian Penal Code, and sentenced him to death. He also convicted him under section 147, Indian Penal Code, and Rules 35 and 38 of the Defence of India Rules, but imposed no separate sentence. He acquitted Laichan Bhumia (accused no. 11), Arjun Bhumia (accused no. 18), Sombaru Bhumia (accused no. 20) and Sonia Bhumia (accused no. 21). He convicted all the remaining accused (the appellants in Cr. App. No 28) under section 302 read with section 149 of the Indian Penal Code, and sentenced them to transportation for life, under section 147 to two years' rigorous imprisonment and under Rule 35 of the Defence of India Rules to seven years' rigorous imprisonment, the sentences to run concurrently.

Before the learned Sessions Judge and in the petition of appeal the principal line of defence was that Lakhan Naik was an apostle of the doctrine of non-violence and that the other members of the assembly also adhered to that doctrine, and that they had no intention of assaulting or killing any Government servants, but rather that they wished to court arrest and that the riot that transpired was due to the action of the police in voluntarily assaulting the mob. Mr. Pitamber Misra, who has appeared for the appellants in this Court and who has taken every possible point and said all that can be said on behalf of his clients, very properly did not think fit to add to his difficulties by taking that point before us. It is perfectly clear that the intentions of the mob were to assault, if not to kill, the Government servants present and to burn the police station, and that the first resort



to force was by the mob and that the police only acted in self-defence, and that in fact it is quite clear that it was only due to the fact that the Divisional Inspector and his policemen and other helpers and in particular Sub-Inspector Dora kept their heads and displayed great courage and discipline that a very serious tragedy was averted with a comparatively small loss of life. If the police had failed to display the resolution and courage which they did display, I have no doubt that the whole or most of the party would have been murdered.

Before us Mr. Misra has made four points. In the first place he has submitted that the evidence before the Court as to the fact that Lakhan Naik (accused no. 1) was the actual assailant of Ramayya is not such as to warrant a conviction on the charge of murder, and, secondly, in support of that contention he submits that an inference adverse to the prosecution should be drawn from the failure of the prosecution to call six persons who were present at the incident ~~but~~ who did not give ~~their~~ evidence, particularly the Excise Sub-Inspector, the officer of the Public Works Department and one ~~Milkantha~~ <sup>Neela Kantham</sup>, a villager. Thirdly, he says that having regard to the circumstances of the case and the form of charge under section 147 a conviction of the accused generally under section 302 read with section 149 of the Indian Penal Code is not warranted. Fourthly, he has submitted that in the case of ten of the accused the evidence that they took part in the riot is not sufficiently conclusive to warrant a conviction on any charge. He very properly did not attempt to argue that the conviction of Lakhan Naik under Rule 38 of the Defence of India Rules for making a prejudicial speech, or of the





accused generally under section 147 of the Indian Penal Code for rioting and under Rule 35 of the Defence of India Rules for doing a prejudicial act in attempting to burn the police station could be challenged.

With regard to the first point as to the evidence directly implicating Lakhan Naik in the murder of Ramayya, it is necessary to examine <sup>in detail</sup> the evidence ~~in detail~~ of the 28 eye-witnesses. Nine have given evidence describing the death of Ramayya. The Divisional Inspector himself (p.w. 33) states that Ramayya was killed, but he does not attempt to give any description of how he died, or name his assailant. It appears in fact that at the time of Ramayya's death he was somewhere away to the east of the entrance to the compound. Sub-Inspector Rammurty (p.w. 1) states that Ramayya was hit by Balaram Pujari on the right side of the neck with a lathi and was hit by a stick (but later corrected to a lathi) by accused no. 1 Lakhan Naik. Ramayya fell down and died. Mr. Misra pointed out in criticism of the evidence of this witness that apart from the general difficulty of observing details in a riot such as this, ~~that~~ he had himself been previously injured by a lathi wound on the head which, according to the medical evidence, would have rendered him unconscious. The medical evidence also was that he would have recovered rapidly, and he himself, although not directly asked as to whether he did at any moment lose consciousness or not, leaves the impression that he lost consciousness, if at all, for a very short time, but that after his wound he was standing leaning on the fence, a little distance to the west of the entrance. It is, however, perfectly just to say that the evidence of this witness on a point of



detail although given in good faith is <sup>in the circumstances</sup> not very reliable.

The next important witness is Sub-Inspector Dora (p.w. 9). This officer was injured but not seriously, and a general consideration of the course of the incidents makes it perfectly clear that he kept his head to a remarkable degree throughout the incident, and I have little doubt that it was <sup>largely</sup> due to his courage and presence of mind with that of the Divisional Inspector that the mob was dispersed with so little serious injury to the police party. He prepared the First Information Report immediately after the occurrence, and his evidence as a whole shows that he observed accurately what came within his vision, and did his best to report it faithfully to the Court. On this subject he states: "I had seen Lakhan Naik and Balaram Pujari attacking Ramayya. He was given a lathi blow by Balaram Pujari on the right side of neck. Lakhan gave a blow on the head. Ramayya fell dead."

The next witness of importance on this point was Narasimham, the Revenue Inspector of the Jeypore Raj (p.w. 14). He also, in my judgment, kept his head and was a careful witness. He states: "I observed Ramayya being beaten with lathis by the accused Lakhan Naik and Balaram Pujari. He fell down to the ground and died instantaneously." He does not state which accused struck which blow. It has been pointed out to us that Sub-Inspector Dora was a police officer and p.w. 14 was an officer of the Jeypore Raj and, therefore, they are interested witnesses. I have, therefore, scrutinized their evidence with great care. With regard to Sub-Inspector Dora I observe that although he names these two accused in the First Information Report as being the assailants of Ramayya he does not there state which of them struck which blow. It may be, therefore,



that his evidence on this point should not be taken as conclusive. On the other hand, having regard to his evidence as a whole and that of p.w. 14 I see no reason to reject their statements that Lakhan Naik and Balaram Pujari were the assailants of Ramayya.

There are six other witnesses who in fact speak to this point, and I will refer to their evidence shortly. Firstly, there is p.w. 13, a peon of p.w. 14. He states that he saw Balaram Pujari dealing a blow with a lathi on the neck of Ramayya, and Lakhan Naik striking him on the head. To some extent this witness is not such a satisfactory witness as the more responsible officers, and his evidence does not add very much to theirs.

Three further witnesses (p.w.s 15, 16 and 17), who were inhabitants of Mathili, the last being in the employ of Jeypore Raj, state that they saw Lakhan and Balaram assaulting Ramayya, but none of them state which of them delivered which blow, except p.w. 15 who in cross-examination, but not in his evidence in chief, states that Lakhan was the one who hit him on the head. I think their evidence does corroborate the evidence of the Sub-Inspector and p.w. 14 that these two accused were Ramayya's assailants, though it throws no real light which of them struck the fatal blow. Two other witnesses also depose to these facts. *One is* p.w. 18, a villager and arrack vendor, but it is clear that this witness has allowed his imagination to run away with him, and his evidence is not to be relied on. The last witness is p.w. 19, police constable Mahanty. He is in the same position as Sub-Inspector Ramamurty (p.w. 1) in that he had himself been injured before Ramayya was assaulted, and in those circumstances it is doubtful how far he was capable of accurate



observation afterwards. The general criticism made by Mr. Misra that it is not possible in a confused fight of this kind for witnesses to observe individual incidents correctly I must reject. It is a matter of notoriety that it is possible even in the most confused circumstances and in the state of the greatest mental stress for a person, who keeps his head, to observe accurately circumstances within his range of vision. It may well be that in such conditions a person would not observe every ~~aspect~~ <sup>incident</sup>. In fact, it is most unlikely that he would, but it is quite possible and extremely likely that he should observe certain incidents, either because they are brought particularly to his notice, or simply by accident. Now, it is to be observed that Ramayya was the only man killed on the police side in this riot, and it is clear that he must have been killed instantaneously. That is a circumstance which is likely to have attracted the attention of any one who happened to be looking in his direction at the time when he was killed. The witnesses, in my judgment, are reliable on this point and were all capable of observing what happened. Sub-Inspector Dora was then retiring from the entrance to the police clearing from the roadside towards his quarters to the west of the enclosure, and states that he was to the right of Ramayya and to the west of him when Ramayya was killed. Prosecution witness no. 14 was not very far away, and p.w.s 15 and 16 were said to be quite close. In those circumstances I see no reason to reject their evidence.

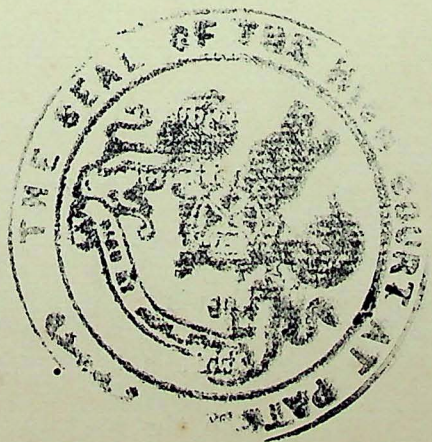
I find it, therefore, ~~as~~ proved that Ramayya was killed by a combined attack by accused nos. 1 and 2, Lakhan Naik and Balaram Pujari. I do not consider that





there is sufficient evidence to show which of the two struck the fatal blow, but, in my opinion, that does not make any difference to the decision which ought to be come to by this Court. It is open to us to pray in aid section 34 of the Indian Penal Code. The murder was committed by the two accused in furtherance of their common intention, and each of them is liable for the murder as if he alone had done it. Accordingly, in the case of the accused Lakhan Naik I would convict him of the murder of Ramayya under section 302 read with section 34 of the Indian Penal Code.

I should say that with regard to the submission made by Mr. Misra as to the failure of the prosecution to call the Excise Sub-Inspector and the officer of the Public Works Department and the other eye-witnesses, <sup>that</sup> I do not think that in this case the prosecution have acted improperly. I fully appreciate that <sup>in certain</sup> ~~there are~~ cases, in fact in most cases it is the duty of the prosecution to call all persons who are alleged to have witnessed the occurrence, and the defence are entitled to draw a conclusion adverse to the prosecution from their failure to call any witnesses. But every case must depend upon its own circumstances. In the first place, there must be a limit to the number of witnesses which the prosecution is required to call. In this case they called 28 eye-witnesses, and they may well have thought that no useful purpose would be served by calling six more. Secondly, having regard to the general nature of the evidence led in this case, it is impossible to draw any conclusion adverse to the prosecution from their failure to call these witnesses, except the conclusion that these witnesses had



nothing useful to say on this particular point. Only nine of the twenty-eight witnesses examined were able to say anything on this point, and the other nineteen were merely ~~silent~~; no single witness <sup>suggested</sup> ~~accused to~~ any one other than one of these two accused <sup>as</sup> being the assailants. In these circumstances the most that could be said is that these six witnesses if called would not have supported the prosecution on this point, but their <sup>failure to do so</sup> ~~absence~~ would not have affected the credibility of the witnesses who did depose to the circumstances in which Ramayya met his death and whose evidence, I consider, should be accepted.

The next point is the charge under section 302 read with section 149 of the Indian Penal Code against the accused generally other than Lakhan Naik. Section 149, so far as it is material for this purpose, reads as follows:- "If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence." It was submitted by Mr. Misra that the common object of the unlawful assembly alleged in the charge was to overawe by criminal force certain public servants and to commit the offence of mischief and assault, and he argued that the murder of Ramayya was not committed in prosecution of that common object. He also attempted to argue that the members of the assembly must not be taken to have known that murder was likely to be committed in prosecution of that object. In my judgment, however, his contention cannot prevail in



place of the very clear evidence in this case. In the first place, the mob was a very large mob of a thousand at least, armed with very formidable weapons, green heavy lathis. The party opposed to them was small but, as they ~~saw~~, armed with fire-arms. They were twice met and re-monstrated with by the police, once by the market before the assembly was held and again later at the entrance to the police enclosure. The ~~speech~~ speech that was made to them and the slogans that were shouted by the members of the mob made it perfectly clear that injury which might result in death, or death was intended against the Government officials. I have already stated the substance of the speech made by Lakhan Naik in the market. All the prosecution witnesses state that when the mob came to the police station they were shouting slogans. The general substance of the slogans is <sup>in every case</sup> ~~clearly~~ the same. I will take the evidence of the Magistrate, Mr. Majibur Rahman (p.w. 8), as a sample. He gives the slogan as follows:- "That they were warriors. They would kill all Government servants and burn police station". His evidence is amply corroborated by other witnesses. Some of them, it is true, use the word "beat" instead of the word "kill", but they all emphasise "We are warriors", and the fact is that the police station was to be burnt and Government officials were to be killed or beaten. I am afraid that in a case of this kind with a mob of a thousand men attacking a party of thirty-five with heavy lathis I am unable to draw any substantial distinction between being killed and being beaten. It is material to observe that the Divisional Inspector in cross-examination expressly states that he heard the mob using the word "pujo" (kill). In



my judgment, therefore, it is impossible to contend that persons who were members of the assembly and joined in the assault on the police station were not aware that murder was likely to be committed in the course of that assault, and they are all, therefore, in my judgment, liable to conviction for the commission of murder under the provisions of section 149 of the Indian Penal Code.

The last point in the case is the question of the identification of the various accused. Mr. Misra has gone through the case very carefully, and has drawn our attention to all the cases in which the identification is open to doubt. They are ten in number, and I will refer to them in detail in a moment. With regard to the other accused, the identity cannot be questioned. To start with the mob suffered casualties to the extent of five killed and seventeen injured, and many of those injured are before the Court. When they have been clearly identified by witnesses and are shown to have been injured, it is impossible for them to contend that they were not present. Another class ~~the accused~~ including a number of the accused besides being identified by witnesses admit that they were present, but state that they were only going to court arrest. In view of the evidence, which cannot be disputed, it is, as I have already said, impossible, in my judgment, for any member of this assembly to say that he was only going to court arrest. I find it clearly established that the members of the assembly must have known that they were proposing to burn the police station and assault the Government servants, and must have intended to take part in the assembly with that object. ~~Another~~ third section of the accused are identified specifically by





particular prosecution witnesses who name them as their assailants. Such identification cannot be challenged. There is one accused no. 6, Kondu Naik, who does not fall into any of these classes, but he was identified by no less than eight witnesses, against only one of whom can any serious suggestion be made and, therefore, I hold that his presence in the assembly is proved.

The remaining accused are no. 13, Dinabandhu Pujari. He was only identified by the Revenue Inspector (p.w. 14) and the local arrack vendor (p.w. 18). Prosecution witness no. 18 is a witness, who, as I have already said, has allowed his imagination to run away with him. I cannot, therefore, accept his identification. Prosecution witness no. 14 is, in my judgment, a careful and truthful witness, but this man admits that he was at the market where the Revenue Inspector went, and he may well have failed to distinguish as to what time in the morning he saw him. In any case, in a case of this kind I would not care to convict on the evidence of one witness alone.

Accused no. 16, Bagana Pujari - His case is the same as that of accused no. 13.

Accused no. 26, Dhanurjaya Pujari or Naik. He was identified by p.w.s 14, 18 and two other witnesses, villagers in the police party (p.w.s 28 and 31). It does not appear that, except p.w. 14 and p.w. 18 who as I have said is not a reliable witness, these witnesses knew this man previously, or had any special reason to remember him. On the whole, therefore, in a case of this kind I think that the better course is to hold that his presence in the assembly has not been established beyond a reasonable doubt.

The next is accused no. 48, Mangaraj Naik. He is



identified by Sub-Inspector Dora and p.w. 14. The Sub-Inspector, however, did not name him in the First Information Report, and in the absence of any explanation as to why this was done and of any overwhelming body of corroborative evidence implicating him in the assembly I do not think that it would be proper to hold that his presence has been established without all reasonable doubt.

Accused no. 49, Bhaga Naik - He is also only identified by p.w. 14 and one other witness, p.w. 17, who is in fact the attendant of p.w. 14. I, therefore, think that there is not sufficiently independent testimony in this case to corroborate the identification by p.w. 14, and in this case too I hold that the presence of this accused has not been proved.

Next there are accused 51, Guru Naik, no. 52 Kalakura Arjun, and no. 53, Narsingh Dhurva. All these are identified by Sub-Inspector Dora, but not named in the First Information Report, and by another witness as in the case of accused no. 48, and for the same reasons I do not think it would be proper to uphold the conviction in these three cases.

Lastly, we have accused no. 54, Motiram Singh Madkani, who is also not named in the First Information Report and is identified by the Divisional Inspector (p.w. 33) and constable (p.w. 23). But the Divisional Inspector failed to recognize this accused in Court, so that in substance his inclusion depends on the evidence of the constable alone. I do not think it would be right in this case to convict him on his evidence alone. I, therefore, hold that this accused has not been satisfactorily proved to be present in the mob.



With regard to the question of sentence, in the death reference, in my judgment, it has been proved beyond a shadow of doubt that Lakhan Naik led this mob and it has been proved to my satisfaction that the mob did intend to commit murder or such serious injury that death was likely to result to a number of policemen and other Government officials. He knew that the police were going to defend the police station, and he encouraged the mob to attack the police and the station, and he led the attack in ~~person~~ *person*. This much is perfectly clear from the evidence. In the course of this attack he is proved to have assaulted Ramayya with a lathi. If he did not strike the blow that caused his death, it is only an accident, though it is clear that both blows were aimed at the head, and if Lakhan's was the blow which only hit his neck and shoulder that was not any fault of Lakhan's. It was only due to the exceptional presence of mind and courage of the police and their helpers which prevented murder being committed on a very much larger scale and, in my judgment, there is no reason for not passing the extreme sentence in this case. I would accordingly accept the death reference, dismiss the appeal no. 27, and direct the sentence of death to be confirmed and carried into execution.

With regard to appeal no. 28, as I have said, except in the case of the ten accused I have named, I would affirm the conviction under section 302 read with section 149 of the Indian Penal Code, and it is not open to this Court even if we so desire to do otherwise

Rm



25

than confirm the sentence of transportation for life. I would also confirm the conviction and sentences on the other charges. In the case of the ten accused I have mentioned I would ~~admit~~<sup>allow</sup> their appeal and set aside the convictions and sentences against them on all charges.

*Peter H. Z. Brown*

Meredith, J.

I entirely agree.

*W. Meredith*

Patna High Court,

Patna, the 13th January, 1943.

It has been brought to our notice that by accident we have omitted any discussion of the reasons which led us to acquit accused no. 27, Sambaru Naik. These reasons were as follows ~~and~~<sup>and should be read as part of the judgment</sup>

"Accused no. 27, Sambaru Naik - This accused was identified only by p.w.s 14 and 18 and by p.w. 13 who could not identify him in Court. He is not named in the First Information Report, and his case is not unlike that of accused nos. 13 and 16. Having regard to the view we have taken of the evidence of p.w. 18, there remains one witness who identified him, and, as I have said, this is not a case in which conviction should be recorded on the evidence of one witness."

Patna, the 12th February, 1943.

O.P.A.

*W. Meredith*  
*Peter H. Z. Brown*





URGENT.

OFFICE OF THE ADDITIONAL SESSIONS JUDGE K OR A PUT.

REF. Dn. S.C. 18/42 C1  
S.C.T.R. 5/42

From

V. Ramanathan, Esqr., I.C.S.,  
Additional Sessions Judge,  
Koraput.

To

The Registrar, High Court of Judicature  
at Patna.

Sir,

Sub:-- Courts-Sessions-Addl. Sessions Judge's  
Court-Koraput-S.C.18/42/S.C.T.R.5/42  
Death Reference u/s 374 Cr.P.C. Records  
etc., submitted.

I have the honour to submit herewith the records in S.C.No.18/42/S.C.T.R.5/42 on the file of this court as well as those of the committal court as detailed in the margin, to the High Court of Judicature at Patna under Section 374 Cr.P.C. The accused (Lakhan Naik) was convicted of the offence of murder u/s 302 I.P.C. for causing death of one G. Ramayya and was sentenced to death subject to confirmation by the High Court at Patna. The case of murder against this accused is dealt

Enclosures:--

1. English part of the Sessions Record.
2. Vernacular part of the -do-
3. English part of the Committal Record.
4. Police case diary in a sealed cover in 119 sheets

ted of the offence of murder u/s 302 I.P.C. for causing death of one G. Ramayya and was sentenced to death subject to confirmation by the High Court at Patna. The case of murder against this accused is dealt

dealt with in pages 11 to 17 of my judgment. He was tried along with 49 others who were convicted for the offence of murder u/s 302 I.P.C. read with section ~~141~~149 and sentenced to transportation for life by me on the 13th day of November 1942.

2. A warrant of commitment under sentence of death has been issued against the accused who has been committed to the District Jail, at Berhampur (Ganjam).

3. The Police case diaries of the case (Nathili Police station case No.58/42) are sent herewith in a separate sealed cover.

4. The properties concerned in this case are being sent separately.

I have the honour to be,  
Sir,  
Your most obedient servant,

*V. Ramanathan*  
ADDITIONAL SESSIONS JUDGE  
KORAPUT.

AVS/13-11.

C 32 (a).

REVENUE

Department

Received

Registered

From (Name) J.S. Wilcock, Esquire.,  
 Designation O.R.E., I.C.S.,  
 Agency Sessions Judge,  
 Station Koraput.

To  
 The  
 Registrar, High Court of  
 Judicature at Patna.

Enclosures:

Ref on S.C. No. 18/S.C.T.P.5/42 dated the 31st January 1943.

Sir,

Subject:--Death reference No.4/42 (Crissa) and Cr. Appeal  
 Nos.27 and 28 of 42 (Crissa) in the High  
 Court of Judicature at Patna.

Reference:--Your Asst. Registrar's memo No.4 Cr. dated  
 13th January 1943.

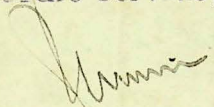
ii.-do -do- Memo No.7 Cr. dated 21-1-43.

In inviting a reference to the memos cited above,  
 I have the honour to state that from the extract of  
 the order received with reference No.1 above, it appears  
 that the convictions and sentences of ten accused persons  
 including accused No.27-Sambaru Naik on all charges  
 have been set aside and they have been ordered to be  
 set at liberty but the name of accused No.27--Sambard  
 Naik does not appear in the body of the judgment,  
 copy received with reference to No.2 above, though it

14  
N

it has been mentioned that the appeal of ten accused persons has been allowed and the convictions and sentences against them on all charges have been set aside. It appears the name of accused No.27 - Sambaru Naik is an omission from the judgment. I have issued release warrants in respect of the ten accused persons named in the extract of the order received with reference No.1 above.

I have the honour to be,  
Sir,  
Your most obedient servant,



AVS/1-2.

AGENCY SESSIONS JUDGE KORAPUT.