

(2024) 01 JH CK 0025

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 760 Of 2023

Sunder Sao @ Sunder Kumar Gupta And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 12-01-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 147, 148, 149, 302
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(i)(v)
Code Of Criminal Procedure, 1973 — Section 313, 319

Citation : (2024) 01 JH CK 0025

Hon'ble Judges : Ratnaker Bhengra, J

Bench : Single Bench

Advocate : Hemant Kr. Shikarwar, Manoj Kr. Mishra, N. K. Sinha

Final Decision : Partly Allowed

Judgement

Ratnaker Bhengra, J

Heard learned counsel for the parties.

1. This criminal Appeal is directed against the order dated 05.10.2023 passed by Additional Sessions Judge – VI cum Special Judge under SC/ST Act, Hazaribag in Keredari P. S. Case No. 1 of 2000, corresponding to G. R. No. 37 of 2000, SC/ST Case No. 30376 of 2001 registered under sections 147, 148, 302/149 IPC read with Section 3(i)(v) of the SC/ST Prevention of Atrocities Act and Section 120B IPC, pending in the court of learned District and Additional Sessions Judge – VI cum Special Judge SC/ST Act, Hazaribag, whereby and whereunder, the prayer for regular bail of the appellants were refused.

2. The present case is based on fardbayan of informant-Savitri Kumari recorded on 06.01.2000 alleging therein that her father Deonath Paswan had gone to Ranchi in connection with some court work promising to return back by night. The informant, her mother and aunt (phuwa) were waiting for his arrival holding

lantern in their hands near the house of one Gurucharan Sao where Deonath Paswan got down from the bus at around 8:30 p.m. It is further alleged that the accused persons are of her village among whom Sundar Sao armed with sword, Pritivi Singh armed with Farsa, Karu Sao armed with lathi, Chotan Singh armed with knife, Narsingh Singh armed with lathi, Degan Mahto armed with farsa, Rajesh Singh armed with Gandasa, Manger Mahto armed with Bhala, Gurucharan Sao armed with Bhujali, Sitan Paswan armed with Gandasa, Mahabir Paswan armed with lathi, Kauleshwar Yadav armed with lathi, Gugeshwar Mahto armed with farsa and Prayag Singh armed with lathi, reached there and surrounded Deonath Paswan, caught him and started assaulting him. It is further alleged that the informant, her mother and Phuwa asked the assailants to leave him but they did not listen. Accused Sunder Sao asked the other accused persons to cut Deonath Paswan on which accused persons started assaulting him with lathi in their hands, accused Chhotan Singh indiscriminately stab Deonath Paswan by knife due to which he fell down on the ground. Again, the informant, her mother and phuwa requested these accused to leave Deonath Paswan but of no effect. Thereafter, the informant raised alarm, hearing which the witnesses Suresh Mahto, Dashrath Mahto, Nakul Mahto and other villagers rushed to the place of occurrence. On seeing the witnesses one of the accused Sunder Sao gave threatening to the witnesses of dire consequences. It has further been alleged that all these 15 accused persons dragged Deonath Paswan towards north side at Domgarha Ghati about 500 yards, who were followed by the informant, her mother and phuwa who continuously requested the assailants to leave Deonath Paswan but at the instigation of accused Rajesh Singh, all the accused persons caught hold of Deonath Paswan then Prithvi Singh cut off the neck of Deonath Paswan with a sharp weapon resulting his death. After committing murder of Deonath Paswan, these accused threatened them not to report the matter before the police so the matter was not reported to the police just after the incident, moreover, it was night. After committing the murder of Deonath Paswan, these accused fled away. It has been alleged in the FIR that the deceased Deonath Paswan was social worker who used to protest against the atrocities committed by the wrong doers in the village. Earlier, being the member of Panchayat, deceased Deonath Paswan asked, Ambika Singh, Manager Mahto and other not to dispose Budhni Devi from her land for which a case was lodged by Amrica Singh, Manager Mahto and Ramdeo Sao, implicating her father as an accused, which was pending in the court therefore, he had an inimical term with those persons. It has also been alleged that one month prior to the occurrence, deceased Deonath Paswan was fishing in his raiyati pond and accused Sunder Sao, Bhola Gurucharan, Sitan, Kauleshwar Sao and other restrain him from fishing then due to intervention of the police, the matter was settled. Further the case of the prosecution is that on 29.12.1999 deceased Deonath Paswan was on hunger strike in front of the Block Head Quarter against the corruption practiced in the allotment of Indira Awas and accused Sunder Sao, Bhola Karu and Gurucharan requested the block official not to take care over the conduct of Deonath Paswan hence because of aforesaid reasons, these accused under

conspiracy, committed murder of Deonath Paswan.

3. During investigation on the direction of the Dy. S. P. and the Superintendent of Police, in their supervision found that the appellants were not present at the place and time of occurrence, therefore the allegation against the appellants were found untrue and accordingly final form was submitted against the appellants vide Supplementary Charge Sheet No. 53 of 2002 dated 23.09.2002. The learned Chief Judicial Magistrate, by order dated 27.09.2023 accepted the final form submitted in favour of the appellants and the case was disposed of through Lok Adalat.

4. In the meantime, the Chief Judicial Magistrate committed the case to the Court of Sessions on 28.06.2001 and thereafter Sessions Trial was numbered as 376 of 2001 which was transferred to the court of learned Special Judge, Schedule Caste and Schedule Tribe (Prevention of atrocities Act) for disposal. Learned Special Judge delivered judgment in connection with five accused persons vide judgment delivered in S. T. No. 376 of 2001 dated 02.07.2007. There was split up record being S. T. No. 376A of 2001 arising out of S. T. No. 376 of 2001 against Kauleshwar Yadav who was shown as absconder in the charge sheet who surrendered in the court on 24.08.2006 and he faced trial, Kauleshwar Yadav was convicted vide judgment dated 04.09.2017 in split up record bearing S. T. No. 376A of 2001. The accused-Kauleshwar Yadav preferred Criminal Appeal (D.B.) No. 1786 of 2017 and he was released on bail by this Court vide order dated 09.02.2018. One another accused namely Sitan Paswan who faced trial was convicted by the learned court preferred Criminal Appeal (DB) No. 352 of 2018 and he was released on bail by this Court order dated 18.06.2018.

5. Other five accused persons namely Jugeshwar Mahto, Mahavir Paswan, Manager Mahto, Degan Singh and Chotan Singh were acquitted by the learned court in Sessions Trial No. 376 of 2021 and against the order of their acquittal the informant filed Criminal Revision No. 791 of 2007 in which the accused persons were noticed and they appeared before the Court. The said revision application against the acquittal of the five accused persons was dismissed by this Court.

6. The trial faced by the accused persons concluded and the statement of the accused persons under Section 313 Cr.P.C. was also recorded even the arguments on behalf of the prosecution was heard in part thereafter prosecution filed an application under Section 319 Cr.P.C. on 23.07.2005 in which the appellants filed their rejoinder. The appellants were summoned in this case by learned 1st Additional Sessions Judge, Hazaribag in S. T. No. 376 of 2001 by order dated 29.08.2005, whereby the prayer made on behalf of the prosecution under Section 319 Cr.P.C. was allowed and the learned court issued non-bailable warrant of arrest against the appellants.

7. The appellants preferred Cr.M.P. No. 1219 of 2005 before the Court

challenging the order dated 29.08.2005. In the said Cr.M.P. there was order for no coercive action against the appellants but was finally dismissed by this Court vide order dated 24.07.2019. During the pendency of the Cr.M.P. there was order for stay of the warrant of arrest against the appellants which continued till final disposal of the Cr.M.P.

8. The judgment of acquittal dated 02.07.2007 passed in S. T. No. 376 of 2001 the learned trial court observed that there were vital contradiction in the statement of the interested witnesses on material points creating doubt over the genuineness of the prosecution case, when the independent witnesses of the case turned hostile and not supported the defense and not supported the case resulted in the acquittal of the five accused persons namely Chotan Singh, Manager Mahto, Degan Mahto, Jogeshwar Mahto and Mahavir Paswan.

9. The order dismissing the Cr.M.P. No. 1219 of 2005 was challenged before the Hon'ble Supreme Court of India vide Special Leave to Appeal (Criminal) No. 620 of 2020. The said Special Leave to Appeal was pending before the Hon'ble Apex Court for more than three years during the said period also there was stay of the proceeding but on 26.09.2023 the said Special Leave to Appeal was dismissed and the appellants were granted two weeks' time to surrender before the trial court and apply for regular bail and in compliance of the Hon'ble Apex Court direction the appellants surrendered before the learned court and prayed to release the appellants on bail during the pendency of this trial.

10. Learned counsel for the appellants has pointed to the fardbeyan of the informant and submitted that the accusation is made against as many as at least 15 named persons of assaulting informant father at night time, hence determining how many persons were assaulting, and who was assaulting with what and on which part of the body is all doubtful. Learned counsel has also pointed to the annexed depositions of P.W. – 1 and P.W. – 2, the daughter and wife of the deceased and pointed out that both have named accused persons and weapon they were assaulting. He has further contended with the deposition of Shivdeo Prasad in SC/ST Case No. 30376 of 2001 and pointed out as per his deposition he had returned with the deceased Deonath Paswan. Shivdeo Prasad has in his cross-examination pointed that when Deonath Paswan had alighted from the bus, then he had not seen his wife and daughter waiting for him. That the next day when he went to the house of the deceased, then the wife and daughter had not told him that the accused had pulled Devnath Paswan. That as per the written, even when the body of the deceased was found even then the family members of the deceased had not said the accused murdered him.

11. On the other hand, learned counsel for the respondent no. 2 Mr. N. K. Sinha, has argued that the appellants are so powerful persons that after committing a brutal murder of the father of the informant escaped themselves from the court proceedings for about 23 years and when the Hon'ble Supreme Court strictly directed them to surrender within a stipulated period then they surrendered before the learned trial court. All witnesses have consistently supported the case

of the prosecution and they categorically gave worthy and reliable evidences against all the appellants (Annexure – 7 series of the instant Criminal Appeal). It is further stated that all the cogent and reliable eye-witnesses have categorically stated in their deposition of S. T. No. 376 of 2001 and clearly stated the specific role played by the appellants while committing the murder of Deo Nath Paswan. It is further submitted that P.W. – 1 Savitri Kumari, P.W. – 2 Sarswatiya Massomat have clearly stated that Rajesh Singh had told to kill Devnath Paswan and Prithvi Singh had given fatal blow on the neck of Deo Nath Paswan by fasli. Therefore, the appellants are not deserving their prayer for suspension of sentence be allowed.

12. Learned counsel for the State, learned A.P.P. Mr. Manoj Kumar Mishra, has argued that trial was taken up against charge-sheeted accused persons in S. T. No. 376 of 2001 and against Kauleshwar Yadav separately vide S. T. No. 376A/2001 and he was convicted by the trial court vide judgment dated 04.09.2017. The six witnesses categorically stated about involvement of these present petitioner in alleged offence of murder of Deonath Paswan with whom they were in inimical terms is also admitted by appellants and it further came in evidence of witnesses that all the accused persons armed with lethal weapon like lathi, fasli, knife, farsa, garasa, bhala Bhujali and assaulted Deonath Paswan, one Chhotan Singh inflicted knife blow and other accused including appellants started assaulting Deonath Paswan due to which he fell down and the accused persons dragged him towards domgarha Ghati and on instigation of accused Rakesh Singh all the accused persons caught hold of Deonath Paswan and appellant no. 5 slit off the head of Deonath Paswan to which these witnesses have fully supported and postmortem report Exhibit – 3 gives detail of 12 grievous injuries on entire part of body. Learned counsel further submitted that 319 Cr.P.C. petition filed by the informant was allowed vide order dated 29.08.2005 passed by learned 1st Additional Sessions Judge, Hazaribag in S. T. No. 376 of 2001 and the same was challenged by the petitioner in Cr.M.P. No. 1219 of 2005 which has been dismissed by the Hon'ble High Court in view of fact and on the basis of deposition of witnesses charges against appellants was made out on the basis of material on record. Learned counsel has further submitted that the appellants preferred S.L.P. No. 620 of 2020 before the Hon'ble Supreme Court and the appellants have been directed to surrender before the trial court period of two weeks.

Conclusion

13. Having heard the counsel for the appellants, the State and learned counsel for the respondent no. 2 and having gone through the records of the case available deposition statements attached, including those of the wife Sarswatia Mossamat, informant Savitri Kumari, Shivdeo Prasad and Dr. Mahendra Prasad Choudhary and noting the facts and circumstances, I am inclined to grant the privilege of bail to the appellant no. 1 Sunder Sao @ Sunder Kumar Gupta, appellant no. 2 Bhola Sao @ Bhola Prasad Gupta, appellant no. 3 Karu Sao @

Abhimanyu Prasad Gupta, No. 4 Gurucharan Sao, appellant no. 6 Narsingh Singh and appellant no. 7 Prayag Singh and they are ordered to be released on bail, during pendency of this appeal, on executing bail bonds of Rs. 25,000/- (Rupees Twenty five Thousand Only) each with two sureties of the like amount each to the satisfaction of the learned District and Additional Sessions Judge – VI cum Special Judge, SC/ST Act, Hazaribag in Keredari P. S. Case No. 1 of 2000 corresponding to G. R. No. 37 of 2000, SC/ST Case No. 30376 of 2001, subject to the condition that the appellants shall submit self-attested photocopy of their Aadhar Card and mobile numbers before the learned court below which they will always keep active and will not change it during pendency of the case without prior permission of the Court.

However, I am not inclined to grant bail to the appellant no. 5 Prithvi Sing @ Prithvi Singh, his appeal for prayer of bail is rejected and dismissed.

Accordingly, this appeal is partly allowed. I.A. No. 9589 of 2023 also stands disposed of.