

Silbester Kerketta Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jun-07-2017

Appellant : Silbester Kerketta

Respondent : State of Jharkhand

Judgement :

Criminal Appeal (DB) No. 1164 of 2006 With Criminal Appeal (DB) No. 1015 of 2006 Against the Judgment of conviction and order of sentence dated 15.05.2006 and 16.05.2006 respectively passed by 1st Additional Sessions Judge, Gumla, in Sessions Trial No. 20 of 2004. Silbester Kerketta. Appellant (In Cr. Appl No.1164/06) 1. Uditpal Sahu 2. Dinesh Sahu. Appellants (In Cr. Appl No.1015/06) Versus The State of Jharkhand Respondent (In both the appeals) For the Appellants : Mr. Rajesh Kumar, Advocate Mr. A.K.Sahani, Advocate Mr. Ajit Kumar, Advocate For the State : Mr. Vijay Kr. Roy, A.P.P. & Mr. Ravi Prakash, A.P.P. For the Informant : Mr. H.K.Mahato, Advocate P R E S E N T Honble the Chief Justice Honble Mr. Justice Ananda Sen J U D G M E N T C.A.V. On 18/05/2017 Delivered on 07/06/2017 Pradip Kumar Mohanty, CJ.

Since, both the abovementioned appeals arise out of the same impugned judgment, they were heard together and are being disposed of by this common judgment.

2. Both the appeals are directed against the impugned judgment of conviction and sentence dated 15.05.2006, passed by the 1st Additional Sessions Judge, Gumla

in Sessions Trial No. 20 of 2004, whereby appellant Silbester Kerketta (Cr. Appeal No. 1164/2006) has been convicted for the offences under Section 302, 380, 449 of the Indian Penal code and has been sentenced to undergo imprisonment for life for the offence under Section 302/34 IPC and R.I. for 5 years and 8 years respectively for the offence 380/34 and 449/34 IPC and to pay a fine of Rs. 1000/ for each of the offences and in default of payment of fine, he shall further undergo S.I. for 6 months. Appellants Udit Pal Sahu and Dinesh Sahu (Cr. Appeal No. 1015/2006) have been convicted under Sections 302, 380, 449 of the Indian Penal Code and have been sentenced to undergo imprisonment for life for the 2 offence under Sections 302/109 IPC and to undergo R.I. for 5 years and 8 years respectively for the offence under Sections 380/109 and 449/109 and to pay a fine of Rs. 1000/ each for each of the offences and in default of payment of fine, they were directed to undergo S.I. for 6 months each. However, all the sentences were directed to run concurrently. 3. A first information was lodged on the basis of the fardbeyan given by the informant Sitaram Sahu on 23.08.2003 stating therein that in the midnight of 22/23.08.2003 at about 12 O Clock he was sleeping with his family members inside his house and after hearing the sound at his door, he and all his family members awoke and all gathered in the room of his father and they shut the door of the room from inside. By that time the extremists had broken down the outer door of his house and entered into the courtyard of the house and they started breaking the door and wall of the rooms where he and all his family members were present. After that the extremists putting their guns at the hole of the door and started indiscriminate firing inside the room due to which a splinter of bullet hit the neck of his sister and injured her. It is stated that when his elder brother Naresh Sahu (the deceased) fired from his licensee gun, the extremists started blind firing inside the room from the hole of the door made by them. Being helpless, his brother opened the door. As soon as the door was opened, 67 extremists armed with gun entered into the room out of whom one Mangal Nagesia was identified by the informant. Then, the extremists caught informants father and brother, tied their hands and took them outside the house. It is further alleged that the extremists looted Rs. 5000/ cash, gold ring and also took their gun. The extremists were about 100 in number, out of which the informant identified Mangal Nagesia, Silbester Kerketta, Wade Khari, Surju Gope, Ritu

Pradhan and Manoj Nagesia. The informant and his family members remained inside the house and his father and brother were crying outside the house. After sometime, the crying 3 stopped and the extremists started raising the slogans and left the place. After about half an hour when the informant went outside his house, he saw that his father Harihar Sahu and brother Nuresh Sahu were lying dead in front of the door of the house and their neck were cut. The motive alleged behind the occurrence was that a months ago Mukhia Uditpal Sahu of Village Lesra had excavated a well forcibly at their land and when they opposed, Mukhia and his son Dinesh Sahu had threatened to ruin them.

4. On the aforementioned written report, Raidih P.S. Case No. 43 of 2003, corresponding to G.R. No. 561 of 2003, was registered against the accused persons.

5. After completion of investigation, charge sheet was filed in the Court and the cognizance was taken against the accused persons. After complying all the provisions, the case was committed to the Court of Sessions for trial. 6. The charges were framed against the appellants under Sections 302, 380, 449/34 of the Indian Penal code and Section 27(3) of the Arms Act and they were put on trial as they pleaded not guilty.

7. The prosecution, in order to prove its case, examined altogether eleven prosecution witnesses and also exhibited several documents. PW1 is Ramjus Kerketta @ Kharia, PW2 is Tobius Kheria, PW3 is Lohar Singh, PW 4 is Soma Munda, PW5 is Jagmohan Singh, PW6 is Mst. Baijanti, PW7 is Smt. Sushila Devi, PW8 is Kundo Devi, PW9 Sitaram Sahu is the informant of the case, PW10 is Dr. Akhouri Nandan Prasad, who conducted the post mortem examination of the dead bodies and PW11 is Dr. Nawal Kishore Sinha (Medical Officer), who examined the inured eyewitness Sushila Devi (PW7). Out of them PWs1, 2, 3, and 4 are the hearsay witnesses and PW5 is the hostile witness. PWs 6, 7, 8 & 9 are the eyewitnesses to the occurrence.

8. The prosecution also exhibited the following documents: 4 (i) Ext.1 is the Carbon copy of the inquest report of the deceased Harihar Sahu and Ext.1/1 is the carbon copy of the inquest report of the deceased Nuresh Sahu; (ii) Exts.2, 2/1, 3

and 4 are the seizure list; (iii) Ext4/1 is the pamphlet of MCC; (iv) Ext.5 is the Post Mortem report of the deceased Nuresh Sahu; (v) Ext5/1 is the Post Mortem Report of the deceased Harihar Sahu; (vi) Ext.6 is the fardbeyan; and (vii) Ext.7 is the injury report of Sushila Devi. 9. After closure of the evidence of the prosecution, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. 10. After analyzing the evidence and after hearing the arguments, the trial court vide its judgment dated 15.05.2006 convicted all the appellants/accused for the offence punishable under Section 302, 380, 449 of the Indian Penal Code and vide order dated 16.05.2006 sentenced them to undergo imprisonment for life for the offence u/s 302 IPC. They were further sentenced to undergo R.I. for 5 years and 8 years respectively for the offence u/s 380/34 and 449/34 along with fine for each of the offences.

11. Being aggrieved by the said judgment of conviction and order of sentence awarded to the appellants, the appellants have preferred the instant appeals.

12. We have heard learned counsel appearing for the appellants and learned Addl. Public Prosecutor appearing for the State in both the criminal appeal.

13. Learned counsel appearing for the appellants assailed the impugned judgment mainly on the ground that whatever material has been produced against these appellants are on the basis of the evidence of the interested and related witnesses and no independent witness has come forward to support the allegation with respect to involvement and presence of these appellants in the alleged crime. He further submitted that there are several contradictions in the evidence of the eyewitnesses. He further submits that the Investigating Officer of this case has not been examined. Lastly he submitted that the 5 prosecution has also failed to establish the motive particularly against the appellant Silbester Kerketta (Cr. Appeal No. 1164/06) and, therefore, the appellants may be acquitted from all the charges and both the appeals may be allowed.

14. On the other hand, learned APP opposing the argument advanced on behalf of the appellants, submits that from the evidence it is quite clear that these appellants have hand in the murder of the deceased. He further submits that all these persons entered into the house of the victim and assaulted them and, thereafter,

deceased were taken away and killed immediately by the group. The accused were armed with deadly weapon. Thus, it is evident that the intention was there to commit murder of the deceased. It is further submitted that the appellant Silbester Kerketta of Cr. Appeal No. 1164 of 2006, was identified by the victim and there is specific allegation against him and, thereby, the conviction of the appellants is absolutely justified and their appeals are liable to be dismissed.

15. We have heard the learned counsel for the parties and have gone through the entire lower court records including the depositions and exhibits. It appears that the first information report was registered on the basis of the fardbeyan of the informant Sita Ram Sahu (PW9) against appellants. PW9 Sitaram Sahu is the son of the deceased Harihar Sahu and is the informant as well as the eyewitness to the occurrence. He has fully supported the statement given in his fardbeyan. He, in his evidence, has stated that the extremists were 100 in number; of them he identified the appellant Silbester Kerketta at the time of occurrence. He identified the said accused in Court also and proved the Fardbeyan Ext6. In his crossexamination, in para3334 he stated that due to enhancement of the activity of extremists in the District the Police administration had got the licensed gun deposited but he does not know as to 6 when his brother has taken the gun back.

16. PW1 Ramjus Kerketta @ Kharia is a hearsay witness, who deposed that he did not go to the place of occurrence but went to the police station in the morning. He proved both the inquest reports Exts1 & 1/1. He also proved the seizure list of blood stained soil Exts 2 & 2/1. In his crossexamination, he deposed that he had not read the inquest reports as well as seizure list of blood stained soil, which was written by the police and he did not see as to where blood stained soil was kept by the police.

17. PW2 is Tobius Kheria is also a hearsay witness. He has proved the seizure list of 12 recovered empty cartridges Ext3, seizure list of pamphlets Ext4 and the pamphlets Ext4/1. In crossexamination, he stated that the police seized the firearms cartridges, which were scattered there.

18. PW3 Lohar Singh is also a hearsay witness, who has proved his signature on the inquest reports of both the deceased and on both the seizure lists of blood

stained soil, Exts2 & 2/1. In his evidence, he stated that he himself has neither read the exhibits nor the police read the same over him. 19. PW4 Soma Munda is also a hearsay witness, who has proved the seizure lists of pamphlets Ext4. In his crossexamination, he deposed that he does not know what was written in Exts. 3 & 4 by the police. 20. PW5 Jagmohan Singh has been declared hostile. 21. PW6 Mst. Baijanti is the wife of the deceased Nuresh Sahu as well as a eyewitness to the occurrence. She has fully supported the case of the prosecution. She also identified the appellant Silbester Kerketta at the time of occurrence as the person, who had kicked in her abdomen. She stated that the deceased were killed by the extremists. She further stated that prior to the said occurrence appellant Uditpal Sahu was digging a well on her land due to which an altercation had taken place between Uditpal Sahu and her husband, fatherinlaw and after the said altercation a case had also been filed in Gumla 7 Court. She further stated that Uditpal Sahu and Dinesh had threatened them of dire consequence. She identified the appellants in Court In her crossexamination, she stated that the occurrence was executed by the appellants/accused along with the extremists of Mangal Nagesia group. She further deposed that she and Sitaram had signed only one paper at the police station. 22. PW7 Smt. Sushila Devi is the daughter of the deceased Harihar Sahu as well as the injured eyewitness to the occurrence. She has also fully supported the prosecution case. She stated that she sustained injuries by two bullets; one bullet went across her left shoulder and another bullet hit her in the left chest and exited through back. In her crossexamination, she state that she does not remember whether she had told the police that extremists had set fire inside the room of her brother. She further stated that she did not tell the police that her bhabhi was kicked by the appellant Silbester in her abdomen. 23. PW8 Kundo Devi is the wife of the deceased Harihar Sahu and eyewitness to the occurrence. She has supported the case of the prosecution by stating in detail about the same. She stated that extremist asked her husband that how many sons he had and when extremists asked about Sitaram (informant) then her husband replied that he is his soninlaw. She further stated that she has identified Mangal Nagesia and Wade Kharia at the time of occurrence. She has also identified Udit, Dinesh and Silbester in the Court. In her crossexamination, she has stated that she does not know what materials were seized from the place of occurrence by the police.

24. PW10 Dr. Akhourinandan Prasad is the Medical Officer, who had conducted the post mortem examination over the dead bodies of the deceased and found one sharp cut injury at the nape of the neck of deceased Nuresh Sahu size of which is 4x3x3, cutting vertebral column at C4 levels and spinal cord as well as Trachea was completely cut. As per his opinion, the deceased Nuresh Sahu died due to the said injury. He also found one sharp cut injury on anterolateral aspect of the left side of neck of the deceased Harihar Sahu cutting the trachea and vertebral column, spinal cord besides all important vessels and muscles of the neck size of which is 5x4x4. As per his opinion, death was caused due to the said injury. 25. PW11 Dr. Nawal Kishore Sinha is also a Medical Officer, who had examined the injured Smt. Sushila Devi and found that in Xray film one Plate in the left scapular region, two plates in the left breast region and two Plates in the supra clavicular region. He opined that all the injuries were caused by the splinters of the bullet. He also proved the injury report of PW7. 27. From the evidence adduced on behalf of the prosecution we see that the entire case hinges upon the evidences of PWs 6, 7, 8 and 9 as rest of the witnesses are hearsay witnesses. They are the natural eyewitnesses of the occurrence. PWs 10 & 11 are the Doctors. Two persons have been murdered in this case: Nuresh Sahu and Harihar Sahu. PW6 is the widow of Nuresh Sahu and PW8 is the widow of Harihar Sahu. PW6 clearly stated that appellant Silbester Kerketta had entered into the house alongwith other persons and started assaulting. She herself was assaulted by the said appellant. PW9 also has clearly stated that appellant Silbester Kerketta, entered the house alongwith several miscreants. The evidence of these witnesses clearly suggest that there was attack on the family members of the deceased when they were inside their house. Sushila Devi (PW7) is one of the injured. Her injury report is Ext.7, which suggests that there was punctured wound on her person, which was caused by firearms. Thus, her deposition is well corroborated with the medical evidence. Exts.5 & 5/1 are the post mortem reports of two deceased, which suggest that they were brutally murdered. From these evidences, we could get that appellant Silbester Kerketta alongwith others entered the house of the deceased and indiscriminate firing had taken place and the deceased were taken out of the house and, thereafter, were murdered. There are evidences that some materials were also looted from the house of the deceased. So far as the charge under

Section 449/34 is concerned, from the evidence adduced, the presence of the appellant Silbester Kerketta at the place of occurrence cannot be doubted. It has been proved that he, alongwith others has committed house trespass in order to commit theft or murder. Thus, his conviction under Section 449/34 of the Indian Penal Code is justified. There are sufficient materials in record to suggest that for committing the offence of theft and murder he, alongwith other persons, entered the house of the deceased and assaulted their family members. Thereafter the deceased were taken out of the house and was murdered Thus, there was a common intention of committing the crime of murder and theft and, thereby, the judgment of conviction and order of sentence passed against the appellant Silbester Kerketta do not warrant any interference by this Court and, hence, it is hereby affirmed. Accordingly, the criminal appeal filed by him being Cr. Appeal (DB) No. 1164 of 2006, is hereby dismissed.

28. So far appellants Uditpal Sahu and Dinesh Sahu are concerned, we find that only material against them is that 15 days prior to the date of occurrence there was some altercation between these appellants and family members of the deceased. After scanning the evidence, we find that none of the witnesses have stated about presence of these two appellants at the place of occurrence, i.e. in their house when the said incident was taken place. Thus, presence of these persons at the place of occurrence is doubtful. Solely on the basis of the evidence that 15 days prior to the occurrence there was some altercation between the family of the deceased and these appellants, conviction of these appellants cannot be sustained for the charges under Sections 302, 380, 449/34 of the Indian Penal Code. Thus, we find merit in the appeal filed by appellants Uditpal Sahu and Dinesh Sahu being Cr. Appeal (DB) No. 1015 of 2006 and, hence, their appeal is hereby allowed impugned judgment of conviction and sentence dated 15.05.2006 & 16.05.2006 respectively, passed by the trial court in Sessions Trial No. 20 of 2004 against appellants Uditpal Sahu & Dinesh Sahu, are hereby set aside. The appellants, who are on bail, are discharged from the liabilities of their bail bonds.

27. In the result, Cr. Appeal (DB) No. 1164 of 2006, filed by the appellant Silbester Kerketta is hereby dismissed and the appeal filed by the appellants Uditpal Sahu and Dinesh Sahu being Cr. Appeal (DB) No. 1015 of 2006 is hereby allowed.

(Pradip Kumar Mohanty, CJ) Ananda Sen, J (Ananda Sen, J) Jharkhand High Court, Ranchi The 7th June, 2017 NAFR/Mukund/cp.03

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