

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 990 OF 2011

1. Jai Kumar, S/o Shri Sita Ram Rathore, aged about 20 years, R/o Sarthi Mohalla Sivani, Police Station Champa, District Janjgir-Champa (C.G.)
2. Bhagwandin @ Durpiha @ Baiga S/o Shri Mantri Ram Rathore, aged about 65 years, R/o Bajrang Chowk Sivani, Police Station-Champa, District Janjgir-Champa (C.G.)

... Appellants

Versus

- State of Chhattisgarh, through Station House Officer, Police Station Champa, District Janjgir-Champa (C.G.)

... Respondent

CRIMINAL APPEAL NO. 991 OF 2011

1. Sita Ram Rathore S/o Shri Firat Ram Rathore, aged about 45 years, R/o Sarthi Mohalla Sivani, Police Station- Champa, District Janjgir-Champa (C.G.)
2. Radheshyam S/o Shri Firat Ram Rathore, aged about 47 years, R/o Navadha Chowk Sivani, Police Station- Champa, District Janjgir-Champa (C.G.)

... Appellants

Versus

- State of Chhattisgarh, through Station House Officer, Police Station Champa, District Janjgir-Champa (C.G.)

... Respondent

For Appellants : Mr. Uttam Pandey and Mr. S.S. Tiwari, Advocates.
For Respondent : Mr. Ashish Shukla, Government Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

18/10/2016

1. Since the two appeals relates to the same incident and arise out of the same judgment, the two appeals are being decided by this common order.

2. The appeals have been filed assailing the judgment dated 15.12.2011 passed by the Additional Sessions Judge, Janjgir, District Janjgir-Champa in Sessions Trial No. 82 of 2011, whereby the Appellants have been convicted and sentenced as follows:-

Convicted under Sections	Sentenced to undergo
304 IPC	R.I. for 10 years and fine of Rs.1000/-, and in default of payment of fine additional S.I. for six months.
328 IPC	R.I. for 10 years and fine of Rs.1000/-, and in default of payment of fine additional S.I. for six months.
4 of the Tonahi Pratadana Adhiniyam, 2005	R.I. for 3 years and fine of Rs.500/-, and in default of payment of fine additional S.I. for five months.
5 of the Tonahi Pratadana Adhiniyam, 2005	R.I. for 3 years and fine of Rs.500/-, and in default of payment of fine additional S.I. for five months.

3. Facts of the case in nutshell are that a case was registered against the appellants-accused and two other female co-accused persons on account of death of one Panchkunwar Bai, who was 85 years old at the time of incident, on account of making the deceased to drink some poisonous substance by the accused persons suspecting her to be involved in witchcraft/black magic. Case of the prosecution is that about 3-4 months prior to 8/9.1.2011, the daughter of the co-accused Sitaram, namely Meerabai sustained burn injuries received while working on a kerosene stove. After about 3 months time in the intervening night of 8/9.1.2011 the Appellants, Radheshyam and Jai Kumar, reached to the house of the Complainant, Sanohar Dewangan, at Village Sivani and knocked at the door and asked them in abusive language to open the door alleging witchcraft against them on account of which the daughter of Appellant Sitaram was not getting cured of the burn injuries. Since the

Complainant did not open the door, they left. Next day morning it is said that the lady members in the accused family stopped the sister and niece of the Complainant, namely Parwati and Malti, requesting them to cure the daughter of Appellant Sitaram so that her injuries can be healed up early and they also started abusing them. Later on it is said that Parwati and Malti went home. After a while the Appellants, Radheshyam and Jai Kumar, again went to the house of the Complainant and took his sister Parwati and neice Malti to the house of Appellant Sitaram. At the house the house of Appellant Sitaram the lady folks surrounded Parwati and Malti and about 25-30 women of the village gathered in the house of Appellant Sitaram where the other Appellants, Bhagwandeem and Radheshyam were performing some sort of witchcraft/black magic. While performing the witchcraft they had placed the Holy Book Geeta and Ramayan near a metal pot and two coconuts. It was further ordered by the accused persons to the ladies to swear touching the Holy Book Geeta and Ramayan of not having performed any witchcraft/black magic on the daughter of Appellant Sitaram, which all the ladies gathered together had done. Later on, it is said that the Appellants Radheshyam and Bhagwandeem brought an alleged herbal drink in a steel utensil and it is said that the accused persons made the women who had gathered to drink the same. Thereafter, it is said that the persons who had consumed the said drink offered by the Appellants Radheshyam and Bhagwandeem started getting unconscious and all of them were taken to the BDM Hospital.

4. A report in this regard was also lodged at the Police Station, Champa. One of the persons who had consumed the drink was the deceased Panchkunwar Bai, aged about 85 years, whose condition got deteriorated and therefore she was referred from BDM Hospital to CIMS

Hospital, Bilaspur and from CIMS she had sent to Medical College, Raipur and when she did not have much recovery at Raipur also she was taken back to her house and later on she was again admitted to the BDM Hospital where she died on 31.1.2011. Merg intimation was lodged and an investigation was conducted and body was sent for post-mortem. After conducting the post-mortem on 31.1.2011 itself the Doctor gave an opinion that the death is due to shock for some unknown cause and further ordered for preserving the viscera and had sent it for FSL. Later, a charge-sheet was filed and the case was charged against the six accused persons, that is, the four Appellants herein and the two ladies namely Teejmati, the wife of Appellant Sitaram and Phoolbai, aged about 70 years, the mother of Appellant Sitaram and Radheshyam.

5. It is pertinent to mention at this juncture that the Appellants, Sitaram and Radheshyam, in Criminal Appeal No. 991 of 2011, are real brothers and Appellant No.1 Jairam, in Criminal Appeal No. 990 of 2011, is the son of Sitaram and Appellant No.2 Bhagwandeem in the said Criminal Appeal No. 990 of 2011 is stated to be a Baiga who had been called for performing witchcraft for early curing of the daughter of Sitaram.

6. In the course of trial the prosecution examined as many as 31 witnesses and after the trial was concluded the Court below found the two female accused persons, that is, Teejmati and Phoolbai not guilty of the offence for which they were charged with and accordingly acquitted them. The Court however found the four Appellants herein to be guilty of the offence and convicted them and ordered to undergo the sentence as has been narrated in the paragraph 2 of this judgment.

7. Assailing the impugned judgment Counsel for the Appellant at the out set submits that he does not intend to challenge the finding of conviction against the Appellants but prays that taking into consideration the peculiar facts and circumstances of the case the sentence imposed upon them may be reduced to the period already undergone. According to him, Appellants Bhagwandeem and Radheshyam were arrested on 10.1.2011 and Appellants Jai Kumar and Sitaram were arrested on 12.1.2011 and of which Sitaram and Radheshyam have remained in custody right from the date of arrest, i.e., 12.1.2011 and 10.1.2011 respectively. Appellant Jai Kumar had remained in custody for a period of about 7 months during trial and was thereafter released on bail. Likewise, Appellant Bhagwandeem also remained in custody for a period of about 5 days and thereafter released on bail and subsequently is in custody since the date of the judgment under challenge, i.e., 15.12.2011. According to the Counsel for the Appellants, the two Appellants Sitaram and Radheshyam in Criminal Appeal No. 991 of 2011 have remained in custody all along from the time of their arrest, i.e., January, 2011 and as such by now they have already remained in custody for a period of 5 years and 10 months. Likewise, in Criminal Appeal No. 990 of 2011, the Appellant Jai Kumar has remained in custody for a period of 5½ years and the Appellant Bagwandeem has remained in custody for a period of 4 years and 10 months.

8. Having heard the submissions put forth on behalf of either side and on perusal of the evidence which has come on record, even if the entire prosecution case is accepted as it is what clearly spills out is the fact that the daughter of Appellant Sitaram, namely Meera Bai had sustained some burn injuries somewhere in September-October, 2010 and in spite of

continuous treatment she was not getting cured and therefore the accused persons were made to believe that the non-healing of Meera Bai was on account of some witchcraft or black magic performed by some villagers and that unless the persons who had performed the witchcraft intend to cure she would not get cured and in the course they had called upon all the women of the village and the Appellant Bagwandeem who was said to be a Baiga and used to perform these sort of rituals, and in the course they were said to have made the villagers swear upon the Holy Book Geeta and Ramayan of not having done any witchcraft on Meera Bai and also made to drink the solution allegedly to be a herbal solution.

9. Another aspect which is not disputed from the prosecution case is that on account of said drink which was offered by the accused persons to the villagers it is the deceased Panchkunwar Bai alone who had got seriously ill. Though all the other women also fell ill after consuming the said drink but they were all cured and were taken to the hospital but were discharged on the same day. The age of the deceased indisputably again was more than 85 years. The post-mortem does not disclose her to have died because of consuming of the said alleged drink offered by the accused persons. The date of incident as per the prosecution case itself is 9.1.2011 and the date of death of the deceased is 31.1.2011, that is, after about 22 days from the date of incident. Another aspect which cannot be brushed aside is the fact that none of the prosecution witnesses have led any evidence to show that there has been physical assault made by the accused persons upon any of the villagers in any form except for using verbal abuses. All the women who had come 25-30 in number were offered the same drink and which they had also consumed and though they had all fallen ill but all of them recovered on the same day which itself is a great

indication of the fact that the deceased appears to be a weak lady considering her age which could have aggravated her illness leading to her death.

10. Further, from the evidence it also reveals that the deceased was never a person who was thought of having committed the witchcraft by virtue of which the daughter of Appellant Sitaram was not getting healed. She had gathered at the house of the Appellant Sitaram along with other women of the village and she also as has been offered to the other women had consumed it. Similarly, it is also pertinent to take note of the fact that none of the villagers including the deceased were forced to drink the said solution. Every villager who had gathered there had drunked the same voluntarily which would also establish that the Appellants never had any intention of killing anybody or taking anybody's life. Lastly, even the medical evidence does not support the case of the prosecution to hold that the cause of death of the deceased Panchkunwar Bai was on account of poisonous substance made to drink by the Appellants to her.

11. Thus, for the foregoing reasons, this Court has no hesitation in reaching to the conclusion that the Appellants had never an intention to kill the deceased or had planned to take the life of the deceased or for that matter of any of the person who had gathered in the house of the Appellant Sitaram. Therefore considering the age of the deceased Panchkunwar Bai, the medical evidence which has come on record, death of the deceased had occurred after more than 22 days from the date of incident, it is a fit case where upholding the conviction of the Appellants for the offence for which they have been charged with, the sentence part deserves to be reduced.

12. Accordingly, taking into consideration all these facts and circumstances of the case and also considering the fact that the three Appellants, namely Sitaram, Radheshyam and Jai Kumar have already remained in custody for more than 5½ years and the fourth Appellant Bhagwandeem has remained in custody for a period of about 4 years and 10 months, the sentence imposed upon them is reduced to the period already undergone.

13. With the modification of the sentence, the appeals are dismissed.

Sd/-

(P. Sam Koshy)
Judge