

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No.177 of 2009

1. Shobharam, S/o Aamru Bhuiya, Aged about 50 years, Caste- Bhuiya, R/o Village Tendubay, P.S. Gariyaband, Distt.-Raipur (CG)
2. Baran Singh Bhuiya S/o Chandar Singh, Aged about 55 years, Caste Bhuiya, R/o Village Tendubay, P.S. Gariyaband, Distt.-Raipur (CG)

---- Applicants

Versus

- State Of Chhattisgarh, Through Police Station Gariyaband, Distt.-Raipur (CG)

---- Respondent

For Applicants	:	Shri Shobhit Mishra, Adv.
For Respondent/State	:	Shri Vikash Shrivastava, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

27.02.2019

The present revision arises out of the impugned judgment of conviction and order of sentence dated 16/03/2009 passed by the Sessions Judge, Gariyaband in Cr. Appeal No. 07/2009 whereby the learned appellate Court below has confirmed the conviction and sentence of the accused/applicants as awarded by the learned Judicial Magistrate first Class, Gariyaband, vide its judgment dated 06.01.2009 in Cr. Case No. 926/2007 for the offence punishable under Section 5 of the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005, and sentenced them to undergo RI for one year and to pay fine of Rs.500/-, each, with default stipulations.

2. Brief facts of the case are that on the date of incident a programme was going on in Sheetla Mata Mandir, at village Raiaama, where all the villagers had gathered, complainant Usha Bai had also been there in the Mandir. A line has been marked with rice flour and every villager was trying to cross this line. When the complainant tried to cross the line, the applicants asked her not to cross the line as she is a Tonahi (one who practices witch craft) and then the applicants forced her to eat wick of a burning lamp and rice, if she is not a Tonahi. On this, the complainant ate the wick of the lamp and sworn in the name of Sun God. The applicants/accused were not satisfied to this and they placed a sword on her neck and caught the burning *Angithi* and asked her if she is a Tonahi, run away from there. The complainant went to the Police Station, Gariyaband, and lodged a report against them. After completion of usual investigation, charge was framed against the accused/applicants under Section 5 of the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005.

3. So as to prove the guilt of the accused/applicants, the prosecution has examined as many as 10 witnesses. Statements of the accused/applicants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges leveled against them and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 06.01.2009, learned Magistrate has convicted the accused/applicant for the offence under Section 5 of the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005, and sentenced them to undergo RI for one year and to pay fine of Rs.500/-, each, with

default stipulations. This order was appealed by the applicants and in the appeal, learned appellate Court has confirmed the conviction and sentence of the applicants. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicants submits that he is not pressing this revision as far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to him, the incident is said to have taken place in the year 2007, and thereby more than 11 years have rolled by since then, they are aged about more than 60 years, the applicants have already remained in jail for about two months and no useful purpose would be served in again sending them to jail. Therefore, it would be, in the interest of justice, if the sentence imposed on them may be reduced to the period already undergone by them.

7. Learned State counsel has no objection to this proposition.

8. Having gone through the material on record and the evidence of the Complainant Usha Bai (PW-1), established the involvement of the accused/applicants in the crime in question. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction of the applicants under Section 5 of the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005, being so they are hereby maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place in the year 2007, and further that the applicants have already remained in jail for about two months, the revision is partly

allowed. Conviction part of the impugned judgment is maintained. Applicants are reported to have remained in jail for a period of two months, their sentence is reduced to the period already undergone by them. Applicants are on bail. Their bail bonds shall stand discharged.

10. Revision thus partly succeeds.

Sd/-
(Rajani Dubey)
Judge

yasmin