

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 459 of 2009

1. Kune Ram, S/o. Premu, Aged about 50 years, R/o. Village Bhadaura, PS Gaurela, Tahsil Pendra Road, district Bilaspur (CG)
2. Madhur Singh @ Bhadau, S/o Babala Rathore, Aged about 52 years, R/o Vill. Bhadoura Ps Gaurella Tah.Pendra Road, Bilaspur
3. Chandra Bhan singh, S/o. Ganga Ram Porte, Aged about 50 years, R/o. Village Gurukul School thana Gaurella, District Bilaspur CG

---- Applicants

Versus

- State Of Chhattisgarh, Through Station House Officer Thana Gaurella, District Bilaspur (CG)

---- Respondent

For Applicants	: Shri Yogendra Chaturvedi, Advocate
For Respondent/State	: Shri Akhtar Hussain, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

01/10/2019

Present revision is directed against the order dated 16.09.2009 passed by the Additional Sessions Judge, Pendra Road, district Bilaspur in Cr.A. No. 12/2009 whereby the learned appellate court below has affirmed the conviction of the applicants as awarded by the JMFC, Pendra Road vide its order dated 16.09.2009 in Criminal Case

No. 274/1998, under Sections 420,468 and 471 IPC but has modified the sentence to RI for one year from that of 3 years on each count.

2. Facts of the case in brief are that some land situated at village Semra belonging to Dhirajiya Bai and Terasiya Bai bearing Khasra No. 263/1 area 1.16 hectares and Khasra No. 263/3 area 1.67 hectares was sold to one Ramnath on 30.03.88 for a sum of Rs. 15,000/-. Unfortunately the complainants lost their *rin pustika* which was later on found by applicant No.1 Kune Ram. It is alleged that on 08.04.98, applicant Kune Ram with the help of applicant No.2 & 3 resold the land bearing Khasra No. 263/1 area 1.16 acres to one Sukhwara Bai (since deceased) by executing registered sale deed by impersonation. After execution of the sale deed, the applicants got the land mutated in the name of applicant No.3. The complaint was made by the complainants to the SDO, Pendra Road and after enquiry, crime was registered against the applicant. After completion of investigation, charge sheet was filed and charges were framed against the applicants under Sections 420, 468,471 IPC against the present applicants and other co-accused persons.

3. So as to prove the guilt of the accused, prosecution has examined 14 witnesses. Statement of the accused under Section 313 Cr.P.C was also recored.

4. After hearing counsel for the parties, trial court convicted and sentenced the applicants under Sections 420,468 and 471 IPC and sentenced to undergo RI for three years on each count with fine of Rs. 100/- plus default stipulations. This order was appealed by the applicants and in the appeal, the appellate court has affirmed the

conviction of the applicants but has modified the sentence part with RI for one year from that of three years. Hence, the present revision. During trial, accused Sukhwaria Bai died.

5. Counsel for the applicants submits that the judgment of conviction passed by the courts below is bad in the eye of law as per the evidence available on record therefore the same is liable to be set aside. The courts below have completely failed to appreciate the evidence of the witnesses and the material adduced before the trial court during trial and therefore has reached to a wrong conclusion which resulted in conviction of the accused/applicants. He submits that both the courts' below have completely overlooked the statement of complainant Tirasiya Bai (PW-6) who has specifically stated that it was sold to one Guruji of Parsada. There are material contradictions , omissions and exaggerations in the statement of the witnesses. The witnesses have not supported the prosecution case. Learned courts below have completely failed to appreciate the fact that the complainants had never taken any steps against the said disputed sale deed to get it cancelled before any court.

6. On the other hand, counsel for the State supported the impugned order.

7. Heard counsel for the parties and perused the material on record.

8. Having gone through the statements of the witnesses Lalli Singh (PW-1), Terasiya Bai (PW-6), Moolchand (PW-7), Mangal Das (PW-9), Malik Ram (PW-10), R.S.Jacob (PW-12) Anil Shrivastava

(PW-13) and L.P. Dwivedi (PW-14) which established the involvement of the accused/applicants in the crime in question. Counsel for the applicants was unable to point out any illegality or perversity in the findings of fact given by the Courts below as well as the procedural illegality. This Court is of the opinion the prosecution has succeeded in proving its case beyond reasonable doubt and accordingly, the applicants are held guilty of committing offence under Sections 420, 468 and 471 of I.P.C. As regards conviction, it is hereby maintained.

On the question of sentence, it is submitted by Counsel for the applicants, that the incident is alleged to have taken place in the year 1988 and the applicants have already suffered the mental agony of trial and appeal for the last more than 31 years. It is further submitted that the applicants have also remained in jail for a period of more than six months and therefore, they may be sentenced to the period already undergone by them.

9. So far as applicant No.3 is concerned, counsel for the applicants submits that the conviction of the applicant would adversely affect his career and therefore prayed that benefit under Section 360 Cr.P.C. shall be granted to the applicant so that his service career shall not be affected by his conviction.

10. Looking to the limited prayer made by the counsel for the applicants and the nature of offence, conviction is hereby maintained. The long pendency of criminal case and the mental agony suffered by the accused persons and 31 years have now rolled by then; they have remained in jail for more than six months, I am of the view that ends of justice would be served if the sentence imposed on them is reduced to

the period undergone by them. However, it is made clear that conviction of the applicant No.3 will not affect his service career in any manner. With the above observation, the revision stands dismissed.

Sd/-

(Rajani Dubey)
Judge