

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 853 of 2010**

1. Jantri Bai W/o Shri Shyam Lal Halwa, aged about 40 years,

2. Shyam Lal S/o Domar Singh, aged about 45 years,

Both are R/o Village Badbhum, Police Station: Dongargaon,
District- Rajnandgaon (C.G.).

---- Appellants**Versus**

- State of Chhattisgarh Through Station House Officer, Police Station: Dongargaon, District : Rajnandgaon (C.G.).

---- Respondent

For Appellant	: Shri C. R. Sahu, Advocate.
For Respondent/State	: Shri Sameer Sharma, Dy. G. A.

Hon'ble Shri Gautam Chourdiya, J
Judgment On Board

23/09/2020

01. Proceedings of the matter have been taken-up through video conferencing.

02. This appeal arises out of the judgment of conviction and order of sentence dated 23.10.2010, passed by Sessions Judge, Rajnandgaon, (C.G.) in Sessions Trial No. 74/2008, convicting the accused persons/appellants for the offence punishable under Sections 4 & 5 of Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005 and sentencing each of them to undergo RI for one year and fine of Rs. 1,000/-each with default stipulations.

03. Case of the prosecution, in brief, is that on the basis of merger intimation (Ex.P-16) lodged by Nakul Koshre, who was working as

Ward Boy at Dr. Bheemrao Ambedkar Hospital, Raipur at the relevant point of time, Merg intimation (Ex.P-15) was lodged by Basant Rao. After merg enquiry FIR (Ex.P/11) was lodged at Police Station Dongargarh under crime No. 298/2007 alleging therein that Kumari Soni, aged about 17 years, who is daughter of the appellants, was not keeping good health, she used to fall ill frequently and always suffering illness. As and when Kumari Soni used to fall ill, she would allege against the deceased that it is due to black magic being practicing by the deceased. The accused/appellants also used to abuse Ramoutin Bai (since deceased) by saying that she was practicing witchcraft/black magic that is why their daughter is falling ill frequently and on account of continuous humiliation and frustration, on 4.10.2007 Ramoutin Bai consumed poisonous substance, thereafter, she was taken to the Medical College Hospital, Raipur where she died on 07.10.2007 during treatment. After merg inquiry, FIR (Ex. P-11) was lodged against both the appellants under Section 306 read with Section 34 of Indian Penal Code. Viscera of deceased was seized and preserved vide Ex. P/12 and sent for FSL examination and as per FSL report (Ex. P/20), it is found that she (Ramoutin Bai) died on account of consuming poisonous substance i.e. alphasmethrin.

04. After usual investigation, charge sheet was filed against both the accused persons under Section 306/34 of IPC and Sections 4 & 5 of Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005. Thereafter, the trial Court framed charge under Sections 4 & 5 of Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005 and Section 306/34 of IPC against both the accused persons, which were denied by them and they

prayed for trial.

05. To substantiate the charge, the prosecution examined as many as 13 witnesses namely- Banas Ram Padouti (PW-1), Thanwar (PW-02), Smt. Sevti Bai (PW-03), Dr. Ullash Gonnade (PW-04), Nanduram (PW-05), Maksudan (PW-06), Smt. Dhanai Bai (PW-07), Gautriha Ram (PW-08), Khamhan Lal Thakur (PW-09), Likhan Verma (PW-10), J. P. N. Singh (PW-11), Dr. Smt. A. Datt (PW-12) & Ravi Nandan Pandey (PW13). Statements of the accused persons/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no defence witness has been examined on behalf of accused persons/appellants.

06. The trial Court, after hearing counsel for the respective parties and considering the material available on record, has acquitted the accused persons/appellants of the charge under Section 306 of IPC whereas has convicted and sentenced them as mentioned in paragraph two of the judgment. However, no appeal has been filed by the State against acquittal of the appellants of the charge under Section 306 of IPC.

07. Learned counsel for the accused/appellants submits that the accused persons/appellants are the innocent persons and have been falsely implicated in this case as there is no independent witness or material available on record to establish that appellants used to suspect deceased – Ramoutin Bai as Tonhi (witchcraft). He further submits that for the offence punishable under Section 4 & 5 of Chhatisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005, no minimum sentence is prescribed; appellants are the illiterate villagers; they are

first offender and further looking to the fact the incident occurred in the year 2007 i.e. near about 13 years lapsed and the appellant has remained in jail for about 79 days and they have deposited the fine amount as imposed by the trial Court, it is prayed that the appellants be sentenced to the period already undergone by them.

08. Per contra, learned counsel for the State would submit that the impugned judgment passed by the trial Court being based on proper appreciation of oral and documentary evidence on record needs no interference by this Court.

09. I have heard learned counsel appearing for the parties and perused the record of the court below including judgment impugned.

10. Thanwar (PW02), who is the son of deceased- Ramotin Bai, has stated in his evidence that appellants used to suspect his mother as "Tonhi" and on account of continuous humiliation and frustration, she committed suicide by consuming poisonous substance. He further stated that appellants were using filthy and abusive language against Ramoutin Bai by saying that his mother was practicing black magic (Kala Jadu) and due to the said magic their daughter became ill. The said incident occurred in the morning and on the same day his mother consumed pesticide (poison) then she was taken for treatment to Dongargarh hospital and from there she was shifted to Dr. Bheemrao Ambedekar Hospital, Raipur where she died on 07.10.2010 during treatment. He proved the inquest report (Ex.P/3) and seizure memo (Ex.P/5).

11. Smt. Sevti Bai (PW-3) -daughter-in-law of Ramoutin Bai has fully

supported the statement of Thanbar (PW02) and there is no reason whatsoever to disbelieve/discard the statement of these two witnesses.

12. Nanduram (PW-5), who is son of Ramoutin Bai (since deceased), has also reiterated the same facts as stated by the Thanbar (PW02) & Smt. Sevti Bai (PW-3). There is no contradiction and omission found in his statement. Dhanai Bai (PW-7), who is the daughter-in-law of deceased and wife of Nanduram (PW-5) has also reiterated the same facts as stated by the Thanbar (PW02) & Smt. Sevti Bai (PW-3) & Naduram (PW-5).

Maksudan (PW-6), who is independent witness, has also supported the case of the prosecution.

13. Thus, considering the evidence of Smt. Sevti Bai (PW-03), Nanduram (PW-05), Maksudan (PW-06) & Smt. Dhanai Bai (PW-07) it stands proved that the accused/appellants had identified the deceased as "Tonhi" and caused her physical and mental harassment. Being so their conviction under Section 4 & 5 of Chhattisgarh Tonhi Pratadna Nivaran Adhiniyam, 2005 by the trial Court is just and proper and is hereby affirmed.

14. So far as the sentence part is concerned, considering the fact that the incident occurred way back in the year 2007, the appellants are facing trial since 2007, at the time of incident the appellant No. 1 was 40 years whereas appellant No. 2 was 45 years of age and at present appellant No. 1 must be of 53 years of age whereas appellant No. 2 must be 59 years and at present they are on bail, appellants are reported to have remained in jail for 79 days and the fact that fine

amount as imposed by the trial Court was deposited, keeping in view the judgment of the Hon'ble Supreme Court in the matter of **George Pon paul Vs. Kanagalet and Others (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that the ends of justice would be served if the appellants are sentenced to the period already undergone by them while enhancing the fine amount.

15. In the result, the appeal is allowed in part. While maintaining conviction of the appellants under Sections 4 & 5 of Chhattisgarh Tonahi Pratana Nivaran Adhiniyam, 2005, their jail sentence is reduced to the period already undergone by them. However, the fine amount of Rs. 1,000/- imposed on each of them by the trial Court is enhanced to Rs. 3,000/- each. Failure, if any, in depositing the aforesaid amount, would make the appellants liable to undergo further three months rigorous imprisonment. The fine amount already deposited by the appellants shall be adjusted accordingly.

The appellants are reported to be on bail, therefore, their bail bonds shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)

Judge