

HIGH COURT OF ORISSA: CUTTACK
BLAPL No.3707 OF 2020
**(In the matter of an application under Section 439 of the Criminal
Procedure Code, 1973)**

JITU MURMU
@ SUKUL MURMU & ANOTHER PETITIONERS

Versus

STATE OF ODISHA OPP. PARTY

For the Petitioners: M/s. Anjan Kumar Biswal
and R.K.Muduli, Advocates

For the Opp. Party: Mr. Sailajanandan Das,
Additional Standing Counsel

PRESENT

THE HONOURABLE SHRI JUSTICE S.K. PANIGRAHI

Date of Hearing – 03.06.2020

Date of judgment – 10.08.2020

1. Presence of societal tribulations is undoubtedly not uncommon in any country. However, tribulations or evil practices in the society particularly based on superstitious beliefs make man's cruelty to man harsher. One among such nasty social evils is witch craft that has been in practice across culture, religion and territory and bares the terrible face of the so-called civilized society of human being. The Petitioners herein have moved the instant application under

Section 439 of the Code of Criminal Procedure, 1973 in connection with S.T. Case No.154 of 2018 pending before the Court of the learned Additional Sessions Judge-II, Mayurbhanj, Baripada, corresponding to G.R. Case No.344 of 2018 further corresponding to Kuliana P.S. Case No-35, dated 26.04.2018 for the commission of alleged offences under Sections 302,307,323,324,325,326,342,34 of the Indian Penal Code,1860 and Sections 5 & 6 of the Odisha Prevention of Witch-Hunting Act, 2013.

2. A snap shot of the facts as alleged and leading to filing of the present application is that the informant, has lodged a FIR on 26.4.2018 before the IIC, Kuliana Police Station. It was stated *inter alia* that the deceased Sambari Murmu had been to the house of one Rame Murmu who happened to be her maternal uncle and is the father of the petitioners herein. The facts as encapsulated in the FIR, the deceased who was not feeling well for few days which led her to go to the house of her maternal uncle, who was a self-styled supernatural medicine expert, for some sort of indigenous treatment as practiced by Rame Murmu. But surprisingly, on 25.4.2018 as a part of treatment practice, Sambari Murmu (deceased) was assaulted by means of Trisul/Trident, rope and iron rod as a result of which she suffered multiple fatal injuries leading to her

death. The petitioners who are also the perpetrators of such treatment had caused the death of the deceased on the pretext of conducting some sort of an exorcism which led to inflicting of some gruesome injuries. Allegedly, the Petitioners herein believed that some evil spirit had overpowered the body of the deceased resulting in her abnormal behavior. In order to pull out the “evil spirit”, the main accused Rame Murmu along with his wife Mahi Murmu, elder-son Sukul Murmu (Petitioner No.1), his wife Sita Murmu and younger son Narasingha Murmu (Petitioner No.2) tied the hands and legs of the deceased and started assaulting her by means of Trident, crowbar and iron rod. The said misadventure was done to pull out the purported remnants of negative energy from the body of the deceased but it resulted in the death of the Sambari Murmu. After receiving the FIR from the informant, the IIC registered the same as Kuliana P.S.Case No. 35/2018 for commission of offence punishable u/s. 302, 307, 323, 324, 325, 326, 342, 34 of IPC and Sections 5 & 6 of the Odisha Prevention of Witch-Hunting Act, 2013 and commenced investigation.

3. The Ld. Counsel Mr. Anjan Kumar Biswal appearing for the Petitioners submits that petitioners who are relatives of the informant have been falsely implicated due to some rivalry issue. He contended that the trial has already commenced and 16

witnesses have already been examined but none of them have implicated the Petitioners. He further submitted that the Petitioners have no prior criminal antecedents. There is no chance of apprehension that the petitioners will tamper with the evidences since the investigation in the case has already been completed, charge sheet has been filed and the trial has commenced. The Petitioners herein have been in custody since 26.04.2018 and the co-accused have been granted bail by this court. He further contended that the Petitioners herein ought to be released on the ground of parity.

4. The Ld. Counsel for the State Mr. Das, ASC has strenuously contended that witness plays a vital role in a criminal trial. Witnesses play a sacred role like sun to illuminate the face of justice. In the instant case, many of the witnesses have turned hostile due to the influence of the accused and their dominant position in the area. There is likelihood of intimidating the witnesses. The fact of perceived fear owing to the possession of some supernatural power by the principal accused leading to a sordid phenomenon of refraining the witnesses from deposing truthfully. In this context, the criminal justice system in the instant case has been witness to traumatic experience of witnesses turning hostile. He relied on a judgment of the Supreme Court in ***Ramesh and***

Others v. State of Haryana¹ which holds that threat and intimidation have been one of the major causes for the hostility of the witnesses. When the witnesses are not able to depose truthfully due to fear in the Court of law, as in the instant case, it results in an unfortunate acquittal and the cause of justice suffers. He has also relied on the statements of the witnesses to demonstrate the specific role ascribed to the Petitioners. He further contended that the offence is that of murder that too by a self-proclaimed witch-doctor of the locality which is the primary reason why the witnesses have not been forthcoming.

5. Heard Ld. Counsel for the parties. The Petitioners herein have been in custody since 26.04.2018 and have previously moved an application for bail before the learned Addl. Sessions Judge-II, Mayurbhanj, Baripada, who rejected the Bail Application of the petitioners vide its order dated 23.10.2019. It has been contended by the Ld. Counsel for the Petitioners that co-accused i.e. one Mahi Murmu and one Chhita Murmu @ Hansdah have been granted bail by this Court in BLAPL No.4358 of 2019 vide order dated 28.08.2019. It is noticed from the records of the case that the aforesaid Mahi Murmu is the wife of the principal accused Rame Murmu and the said Chhita Murmu @ Hansdah is the wife of

1(2017) 1 SCC-529

Petitioner No. 1 herein. Prior to moving this court, the aforesaid persons had moved the Trial Court, which vide its order dated 3.1.2019 had rejected the bail application with a specific finding that the custom of black magic and witchcraft were not only rampant but were a growing menace in that part of the State. The Ld. Counsel for the Petitioners relied heavily on the plea of parity stating that since the wives of the accused persons had been released on bail by this court, a similar approach ought to be taken with respect to the petitioners herein. Although, such a contention appears quite attractive on first blush, however, a deeper scrutiny clearly brings out the difference in terms of the allegations and the role ascribed to the petitioners herein.

6. A careful examination of the evidence on record, especially the autopsy report reveals that the deceased had sustained as many as 27 injuries and Injury Nos. 19 and 27 are penetrative wounds present at chest wall and lungs. The death of the deceased is said to be homicidal in nature. Prima facie it appears that the autopsy report matches with the initial version of the informant which clearly states that injuries were inflicted upon the deceased using Trident, *Gainthi* and *sabala* (crowbar). Thus, the autopsy report revealing the injuries matches with the description of the manner in which the assault was carried out by the petitioners herein. There is

a direct allegation against the Petitioners herein which is quite different from that of the accused who have been granted bail. The only allegation with respect to those accused was that they were present during the attack. The Petitioners herein, prima facie appear to have had a direct role in the unprovoked gruesome attack.

7. The informant in the present case is one Rama Murmu who is the brother of the deceased lodged the FIR on 26.4.2018. He states that the mother of the informant was not keeping well for some time and in order to get her mother cured the deceased accompanied her mother to the house of the principal accused Rame Murmu. It was well-known in the locality that the Rame Murmu used to practice sorcery and black magic to cure some elements. It is stated that while the principal accused was performing some ritual, the deceased shouted out loud, being terrified. The said fact convinced the principal accused and his family members that the deceased was overpowered by some evil spirit. On the pretext of conducting an exorcism, the principal accused and his family members, it is stated, grabbed the limbs of the deceased and tied them up with ropes etc. Thereafter, as per the prosecution, the principal accused assaulted the deceased with the Trident and the other accused persons assaulted with other sharp objects like “gainthi” and “sabala”. When the informant reached there, he saw that his sister

was severely injured and they called an ambulance to take her to the hospital. However, the deceased breathed her last in the ambulance on the way to the hospital. Thereafter, the FIR was registered by the informant.

8. The prosecution has filed charge sheet on 22.8.2018 with a list of 38 prosecution witnesses out of which about 16 witnesses have been examined. A prima facie perusal of the depositions on record reveal that the otherwise gullible and naïve persons seem to be deposing under some kind of apprehension of fear in their minds which is not very hard to comprehend given the backdrop of the case. Despite the above, the depositions reveal the barbaric nature of the crime by the accused and the injuries caused. Needless to say, the same will be subject to detailed examination during the trial.

9. The confessional statement of Narasingha Murmu (Petitioner No. 2 herein) paints a gory picture of the diabolical manner in which the death of the deceased was caused. He has categorically stated that all of them collectively tied the limbs of the deceased. Further, it is stated that while injuring the body of the deceased by a Trident, he along with the wife of the Petitioner No.1 caught hold the deceased tightly and the petitioner No.1 injured the body with an iron rod. He also confessed that he used one "Gainti" to injure the

deceased. The petitioners have also confessed that prior to the date of incident, all the accused persons have also practiced such methods on another lady of the same village. The confessional statement of Petitioner No.1 is also identical to the confessional statement made by the Petitioner No.2. The value of such statements will, of course, be examined by the Ld. Trial Court.

10. The ancestry of present-day Witchcraft and sorcery has long and chequered history. The earliest practice of witch-hunting which has been documented in India is in the year 1792 referred to as the “Santhal witch trials” of the Santhal tribes belonging to what was then referred to as the Chotta Nagpur Division in Singbhum District in British India. Even prior to that, the western world, in the pre-industrial revolution was still dabbling with the hideous idea of witch-hunting. In 1484, Pope Innocent VIII issued *Summis desiderantes affectibus*, a Papal bull which authorized correction, imprisonment and punishment of branded devil-worshippers. It was done at the request of an infamous inquisitor Heinrich Kramer, who had been refused permission by the local bishops in Germany to investigate. Three years later in 1487, Kramer published the notorious *Malleus Maleficarum* (popularly known across Europe as “Witch Hammer”) which, because of the newly invented printing presses, enjoyed a wide readership. There are also a large number of

infamous witch-trials reported which caused frenzy in a section of sensation craving public in those times.

11. At present, in some parts of the world many precious lives are sacrificed at the altar of witchcraft. Another telling aspect of the evil practice is that in tribal society the said practice is often related to local politics. Many tribal women also convert as witch and get pushed to the receiving end of immense mental and physically torture. Certain ideas, such as evil spirits, sorcery, spell casting, magic, and harmful curses are all equal with the idea of witches or witchcraft are prevalent in the tribal society even in the present century though the motive driving modern witch hunting may be more venal than spiritual. The fact that such practices are primarily hidden in villages, distant from the urban areas, allows it to thrive unnoticed, on most occasions. This would further mean that the poor and the illiterate women, being the most vulnerable, unfortunately, fall prey to the inhuman violence associated with this superstition. Disturbingly, women accused of being a witch could end up being subjected to brutal torture, abuses and even murder, with active knowledge and consent of her relative.

12. Over time, various states have risen to the occasion to end the still rapaciously prevalent scourge of superstition and have enacted

21st century despite science and scientific temper have reached its pinnacle. The fact remains, in the absence of a central legislation it has resulted in lack of uniformity in the application of law across the country. The provisions of the Indian Penal Code, although applicable for the crime associated with the menace, have not proved to be as effective in deterring these criminals.

13. The pattern of the perpetrators of the crime, sought to be curbed by the above legislations, it appears, has a lot of similarities and the uneducated and economically weaker sections end up being their soft targets. The need to generate awareness among such susceptible sections of people, therefore, assumes importance and the concerned authorities may have to take effective steps, in this regard, to dispense with such primitive beliefs and mindsets, which defies logic.

14. The United Nations Committee on the Elimination of Discrimination against Women had (CEDAW), as far back as in 2012², recognized witch hunting as a discriminatory practice and expressed its concerns regarding such customs and practices, which perpetuate discrimination against women and girls. Further,

² Fifty First Session held between 13 February- 2 March 2012

a Report by an Independent Expert body of the United Nations³ had identified a variety of impacts of witchcraft beliefs, all amounting to serious human rights violations, including attacks and mutilation, human trafficking and human sacrifice. Predictably, it was also observed that the number of cases reported are often significantly lower than the reality, since many instances of these human rights violations are unreported or unmonitored by official entities. The report also recognized that:

“... witchcraft involves harmful practices in breach of international human rights standards and obligations, notably regarding human trafficking, violence against women, the duty of due diligence, the right to life and the duty of protection requiring firm and immediate action, and the duty to prevent and prosecute harmful practices and hate crimes.... Children are particularly vulnerable and need safeguarding, including early interventions to tackle risks of witchcraft accusation or ritual killings...”

15. The Madras High Court in the case of ***Divan Sahib, In re***⁴ dealt with a case relating to death caused during an alleged exorcism and noted two earlier pre-Independence cases with almost identical facts

³Report of the Independent Expert on the enjoyment of human rights by persons with albinism on the expert workshop on witchcraft and human rights dated 23.01.2018.

⁴ 1963 SCC OnLine Mad 266

in ***Haku v. Crown***⁵ and ***Nga Po Tha v. Emperor***⁶ which depict that even after the elapse of a century too little progress has been made in too much time. In ***Gaurav Jain v. State of Bihar***,⁷ the Supreme Court was cognizant of the widespread menace of witch-hunting and directed the State to take steps to curb the menace by setting up of a special cell in each of the districts vulnerable to such perverse practices. In a case of human sacrifice, fraught with superstition and blind belief in ***Sushil Murmu v. State of Jharkhand***⁸ the Supreme Court declared that helpless boy who had his head severed by the accused to placate a deity, a fit case within the parameters of “rarest of rare” cases and prescribed death punishment.

16. Superstition-bound witch-hunting violence has long history in the State of Orissa as noted by Supreme Court in ***Dasrath Gand v. State of Orissa***⁹ and continues to rear its ugly head in Odisha despite the State government enacting Prevention of Witch Hunting Act in 2013 to put to an end the abhorrent practice. The genesis of this Act owes to a judicial pronouncement of this court in the case

5AIR 10 Lah 555 : AIR 1928 Lah 917

644 Ind Cas 679 : (AIR 1918 UB 24)

7 1991 Supp (2) SCC 133

8 (2004) 2 SCC 338

9AIR 1955 SC 583

of ***Mrs. Sashiprava Bindhani & Ors v. State of Orissa & Ors.***¹⁰

This court in the aforesaid judgment opined that the State should expeditiously introduce a bill in the Legislature to enact law to tackle the menace of witch-hunting effectively and laid down extensive guidelines to combat witch-hunting in the State. In a slew of extensive guidelines this Court has comprehensively dealt with most of the aspects arising in such cases. Out of all the directions, this Court feels that the direction that the Investigating Agency in cases involving allegations of witch-hunting, in order to avoid the witnesses turning hostile should swiftly get the statement of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 needs to be stringently followed. This is especially necessary as the experience of this court has shown that cases of witch hunting are mostly rampant in tribal and backward areas. The communities living there are usually close-knit societies and persons who claim to possess such supernatural powers and dabble in the practice of occult are usually feared in such communities. Its just like the proverbial saying "***it is ill sitting at Rome and striving with the Pope***". In this context, the experience of this court is, more often than not, the witnesses invariably turned hostile at the stage of trial fearing for their lives, possibly, due to the

perceived fear of suffering attack from supernatural powers. It is with this backdrop, it becomes extremely important that the investigating agency ensures the statement of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 goes unhampered.

17. In the case of *Moyna Murmu v. State of W.B.*¹¹ the High Court of Calcutta passed a slew of directions to enable the State to combat the evil of witch-hunting. It also directed that the victims be provided assistance through the Legal Services Authority as aggrieved persons who are entitled to legal aid under The Legal Services Authorities Act, 1987. It also directed the State Government to formulate a Comprehensive Victim Compensation Scheme under Section 357A of the Code of Criminal Procedure for victims of witch hunting. The same view was not only further buttressed but the urgency with which such practices needed to curb was emphasized by the same court in the case of *State of W.B. v. Kali Singh*.¹² In the case of *Bhimpuri v. State of Assam*¹³ the Hon'ble High Court of Gauhati painfully observed that although orders passed by it had fructified in a legislation, still there was a lot of room for doing more in the area by the State to curb the undying

11 2016 SCC OnLine Cal 4272

12 2018 SCC OnLine Cal 7237

13 2017 SCC OnLineGau 813

menace. This Court as recently as in the case of ***Iswar Attaka v. State of Orissa***¹⁴ has taken note of the worryingly rampant practices of witch-hunting which continues unabated despite there being a specific law dealing with the subject matter. The Hon'ble Supreme Court in the cases of ***Ashok Laxman Sohoni & Anr v. State of Maharashtra***¹⁵ ***PhuliaTudu & Anr v. State of Bihar***¹⁶ and ***Bhuyan v. State of Assam***¹⁷ while dealing with such cases of witch-hunting has treated them to be murder as the accused is generally fully aware of the consequences of his actions.

18. Witch hunting is abounded with stigmatization of specific groups of people including widowed women and children of lower caste. Witch hunting is prevalent in many parts of the country particularly in Jharkhand, Bihar, Haryana, West Bengal, Madhya Pradesh, Maharashtra, Gujarat, Odisha, Chhattishgarh, Assam, Rajasthan and U.P. India represents an unfortunate paradox with a projected upward growth curve and a population mired in superstition to rationalize bad events. According to India's National Crime Records Bureau, more than 2,500 victims were tortured and killed in witch hunts between 2000 and 2016. Crimes such as witch hunting shock the collective conscience of the communities who are

14 2015 SCC OnLine Ori 346

15(1977) 2 SCC 103

16(2007) 14 SCC 588

17(2011) 3 SCC 377

mostly tribal and backward people of our society. Experience has shown that the faith of these otherwise naïve populations is exploited by such charlatans who stifle the voices of the victims, brandishing the sword of “supernatural” fear. Thus, in such cases the courts need to be cognizant of the ground realities and the skittish mindset of persons subject to such atrocities. Such crimes need to be dealt with an iron hand and the message needs to go out loud and clear that courts sternly frown upon such crimes.

19. The aforesaid narration of the sordid events *prima facie* shows that the informant as well as the mother of the deceased were well aware as to how the deceased had been attacked, resulting in her death. However, understandably and regrettably, it is only much later at the stage of trial that these witnesses have turned hostile and are trying to cover up the involvement of the accused persons possibly because they are closely related to them. Additionally, it is to be kept in mind that given the fact that the principal accused i.e. Rame Murmu masquerades as a “witch doctor” claiming to possess supernatural powers, the witnesses who are yet to depose need not be exposed to any further fear psychosis. If the witnesses turn hostile because of fear of witch doctor, the Benthamian precepts on witness are “the eyes and ears of justice” will lose importance and primacy of the quality of trial process. If the witness himself is

incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a “fair trial”.

20. Considering the aforesaid discussion, submissions made and taking into account a holistic view of the facts and circumstances of the case at hand, this Court, at this stage, is not inclined to release the Petitioners on bail. Accordingly, the bail petition filed on behalf of the accused/petitioners stands rejected. It is, however, clarified that the above observations shall not come in the way of a fair trial before the Ld. Trial Court and it will proceed to decide the matter on its own merits, uninfluenced by any of the observation made hereinabove.

The bail Application under Section 439 Cr.P.C. is accordingly dismissed.

[S.K. PANIGRAHI, J.]

Orissa High Court, Cuttack.
The 10^h day of August, 2020/AKP