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Crl.A.No.701 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.03.2024

PRONOUNCED ON: 28.03.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.701 of 2017

N.Nagaraj ... Appellant/Sole Accused

vs.

State Rep. by
The Deputy Superintendent of Police,
Krishnagiri Sub-Division,
Krishnagiri District. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the entire records in connection with the S.C.No.116 of 2015 on the file of the learned Principal District and Sessions Judge, Krishnagiri, and set aside the Judgment dated 09.01.2017.

For Appellant	: Mr.V.Parthiban for Mr.G.M.Ananthakumar
For Respondent	: Mr.E.Raj Thilak Additional Public Prosecutor
For Victim-PW3	: Mr.David Sunder Singh



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JUDGMENT

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This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 09.01.2017 in S.C.No.116 of 2015 on the file of the learned Principal District and Sessions Judge, Krishnagiri.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the trial Court.

3. (i) It is the case of the prosecution that the accused is the Proprietor of a Brick kiln by name 'V.G.H Brick Kiln'; that he had employed nine labourers including two minors against their wishes and had paid advance of Rs.1,00,000/- to PW1, Rs.55,000/- to PW3, Rs.3,000/- to one Govindaraj and Rs.25,000/- to PW2, who are the heads of their respective families; that he made those witnesses and other witnesses who were members of the family to work in his concern for less than minimum wages and prevented them from moving freely outside the company premises; and that further exploited them since they belonged to the Scheduled Tribe community.



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(ii) It is the further case of the prosecution that PW11, the Revenue Divisional Officer of Krishnagiri Division on information that the accused had employed bonded labourers went to the premises on 14.02.2012 and confirmed the fact that they were employed as bonded labourers and rescued them and sent a complaint [Ex.P10] by post to Veppanapalli Police Station; that PW9 registered the FIR [Ex.P9] on 16.02.2012 in Cr.No.19 of 2012 for the offences under Sections 16, 17 and 18 of the Bonded Labour System (Abolition) Act, 1976 [hereinafter referred to as 'BL Act'], Sections 370, 374, 341, 323, 326 and 506 of the IPC, Section 3 of the Child Labour (Prohibition and Regulation Act), 1986 and under the provisions of the SC and ST (Prevention of Atrocities Act), 1989.

(iii) PW15, the Deputy Superintendent of Police was authorised by the Superintendent of Police to investigate since the allegations attracted the offences under the Child Labour Act and the SC and ST (POA) Act. The said authorisation letter was marked as Ex.P13. He went to the Brick Kiln and prepared a Rough Sketch [Ex.P14] in the presence of witnesses and thereafter examined the witnesses, who were kept as bonded labourers. He



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obtained the caste certificate and thereafter handed over the investigation to PW16. PW16 examined further witnesses and filed the final report, before the learned Judicial Magistrate No.2, Krishnagiri.

(iv) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.116 of 2015 and was made over to the learned Principal District and Sessions Judge, Krishnagiri, for trial. The trial Court framed charges under Sections 370 IPC r/w Section 17 of the BL Act, 374 IPC r/w Section 16 of the BL Act, Section 3 of the Child Labour (Prohibition and Regulation Act), 1986 and under Section 3(2)(6) of the SC and ST (Prevention of Atrocities Act), 1989 against the accused and when questioned, the accused pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 16 witnesses as P.W.1 to P.W.16 and marked 15 exhibits as Exs.P1 to P15. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The accused



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neither examined any witnesses, nor marked any documents.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the accused guilty of the charges under Sections 370 IPC r/w Section 17 of the BL Act and 374 IPC r/w Section 16 of the BL Act and acquitted the accused of the offence under Section 3 of the Child Labour (Prohibition and Regulation Act), 1986 and under Section 3(2)(6) of the SC and ST (Prevention of Atrocities Act), 1989. The accused was convicted and sentenced as follows:

Offence under Section	Sentenced to
370 IPC r/w 17 of the BL Act	To undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for three months.
374 IPC r/w 16 of the BL Act	To undergo rigorous imprisonment for one year and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for three months.
Sentences are ordered to run concurrently.	

Hence, the accused have preferred the appeal challenging the said conviction and sentence.



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4. Heard, Mr.V.Parthiban, learned counsel appearing for the appellant/accused, Mr.E.Raj Thilak learned Additional Public Prosecutor appearing for the respondent/State and Mr.David Sunder Singh, learned counsel appearing for the victim-Marappan(PW3).

5. Mr.V.Parthiban, learned counsel for the accused/appellant submitted that the witnesses cannot be believed in view of inherent improbabilities and contradictions in their evidence; that in any case, the prosecution had failed to establish that there was a bonded debt and the witnesses were working under bonded labour system; that the prosecution has also not established that there was a brick kiln by the name V.G.H. Brick Kiln and the accused was the Proprietor of the said Brick Kiln; that no independent witnesses were examined by the prosecution to establish the guilt of the accused; that the prosecution case was disbelieved as regards the offences under the Child Labour Act and under the SC/ST Act; and that therefore submitted that the prosecution case is false and prayed for acquittal of the accused/appellant.



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6. Mr.E.Raj Thilak, learned Additional Public Prosecutor *per contra* submitted that PW1, PW2, PW3, PW4, PW12, PW13 and PW14 who were employed as bonded labourers have all uniformly and consistently stated that they were paid less wages because the heads of the families had obtained a loan and they were prevented from moving freely. The learned Additional Public Prosecutor also took this Court through the provisions of the Act to impress upon the Court that the Act is beneficial legislation and has to be interpreted liberally in favour of the labourers. He also pointed out provisions such as Section 15 of the BL Act which provides for making a presumption, in support of his submission. Therefore, he prayed for dismissal of the appeal.

7. Mr.David Sunder Singh, the learned counsel who appeared for the victim/PW3 assisted the learned Additional Public Prosecutor and on his part reiterated the submissions made by the learned Additional Public Prosecutor and submitted that the system of bonded labour still continues and therefore the offenders must be dealt with severely so that it acts as a



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deterrent to other offenders.

8. This Court has carefully considered the rival submissions and perused all the relevant materials available on record.

9. The accused was found guilty of the offences under Section 370 IPC r/w 17 of the BL Act and Section 374 IPC r/w 16 of the BL Act.

10. (a) Section 370 of the IPC prior to the amendment on 03.02.2013, which is the relevant provision reads as follows:

“Buying or disposing of any person as a slave.- Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

(b) Section 17 of the BL Act, reads as follows:

“17. Punishment for advancement of bonded debt. —Whoever advances, after the commencement of this Act, any bonded debt shall be



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punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.”

(c) Section 374 of the IPC reads as follows:

“Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

(d) Section 16 of the BL Act, reads as follows:

“16. Punishment for enforcement of bonded labour. —Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.”

11. This Court may note here that the ingredients of the offence under Section 370 of the IPC and Section 17 of the BL Act, are different. Similarly, the ingredients of the offence under Section 374 of the IPC and Section 16 of the BL Act, are different. However, the learned trial Judge has framed the first charge as 370 of the IPC r/w 17 of the BL Act and the



second charge as 374 of the IPC r/w 16 of the BL Act, against the accused.

As stated earlier, they are distinct offences and it is not known what the trial Court meant by framing the charges in such a manner. This Court has time and again reiterated that the charges must be clear and specific and not lead to any confusion. The offences also must be clearly spelled out. The two provisions that appear in the 1st and 2nd charges, are distinct and ingredients of the offence are different. There cannot be any charge that reads as Section 370 of the IPC r/w Section 17 of the BL Act or Section 374 of the IPC r/w Section 16 of the BL Act.

12. Be that as it may, in order to establish an offence under Section 16 of the BL Act, the prosecution has to establish that the accused compelled any person to render any bonded labour. Bonded labour has been defined in Section 2(e) of the Act, which reads as follows:

“bonded labour” means any labour or service rendered under the bonded labour system”

13. It is the case of the prosecution that an advance was paid which



would fall under Section 2(g)(i). That apart, the prosecution has to establish that the act falls under either of clauses 1 to 4 i.e.,

“(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.”

14. In the instant case, it is alleged that an advance was paid to the heads of the families. It is the case of the prosecution that PW1 was paid Rs.1,00,000/-; PW3 was paid Rs.55,000/-; PW12 was paid Rs.25,000/-. According to the prosecution P.Ws.1, 2, 3, 4, 12, 13 and 14 were employed



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(a). PW1 had stated that he had obtained a loan of Rs.1,00,000/- and that he was working as a labourer under the accused. However, he had not stated that he had received less wages. The relevant portion reads as follows:

“நான் நாகராஜிடம் இருந்து 4 வருடங்களுக்கு முன்பு ஒரு லட்ச ரூபாய் கடனாக வாங்கினேன். ஒரு வருடமாக அவரிடம் கூலி வேலை செங்கல் அறுக்கும் வேலை செய்தோம். நான், என்னுடைய

மகன் மாதேஜ், என் மனைவி பைரம்மா ஆகிய மூவரும் வேலை செய்தோம். நானும், என் குடும்பத்தாரும் வேலை செய்ததற்கு ஆஜர் எதிரி எனக்கு கூலி தந்தார்.”

The only aspect spoken to by PW1 is that when he requested permission from the accused to go to his native place, the accused would insist that he should return the loan with 2% interest.

(b) PW2, who is the wife of PW1, would state that she had received wages of Rs.500/- to Rs.600/- and they would work for six days. She would also state that the accused refused to permit her also to go to her native



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(c) PW3, the nephew of PW1, another labourer would state that he received Rs.55,000/- as a loan and that the accused would go with him to the market whenever he went out to the market. In the cross-examination, he would add that there was an agreement executed by him evidencing receipt of Rs.55,000/- as a loan and that he had not handed over the said document to the police. He would also add that if husband and wife were working, only one would be permitted to go to the native place. However, in the cross examination, he would state that he had not stated so before the police.

(d) PW4 is the wife of PW3 and she would state that she received Rs.600/- as weekly wages and the accused would accompany her whenever she went to the market. She would work from 4.00 a.m. to 8 p.m. However, she has not stated about the long hours of working to the police. Further, to a specific question as to whether the accused would accompany her to the market after paying the wages on Sunday, she did not give any answer. The



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relevant portion reads as follows:

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“ஞாயிற்று கிழமை கூலி கொடுத்து நாங்கள் சந்தைக்கு செல்லும் போது ஆஜர் எதிரி உடன் வருவார் என்றால் சாட்சி பதில் கூறவில்லை.”

(e) PW12 would state that he did not receive reasonable wages and that even when his brother passed away, the accused did not send him to his native place. He would also state that the accused used to beat the children of the labourers. However, in the cross examination he admitted that he had not stated so to the police.

(f) PW13 would state that the accused paid less wages and would not reimburse the medical expenses incurred by the labourers.

(g) PW14 also would state that less wages were paid and that he was a minor at the relevant point in time and that he was beaten by the accused.

15. The trial Court had acquitted the accused for the offence under the



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Child Labour Act on the ground that there is no evidence to show that the children were employed in the Brick Kiln and in view of PW1's evidence that the 2nd child by name Shiva was studying in school and that PW14 was aged about 14 years.

16. As regards the offence under Section 370 of the IPC, the prosecution has to establish that the appellant either treated any person as a slave or kept any person under detention as a slave. 'Slave' has not been defined in the Indian Penal Code. Black's Law Dictionary defines 'slave' as follows:

“a human being who was property, and could be bought, sold, pledged and testated.”

17. There is no evidence let in by the prosecution that the labourers were either treated as slaves or were detained against their will as slaves. Similarly, Section 374 of the Cr.P.C., deals with compelling any person to labour against the will of that person. The prosecution has not let in any evidence to suggest that they were employed against their will. All the



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labourers would uniformly state that they were working in some other Brick Kiln and thereafter started working under the accused.

18. As regards Section 16 of the BL Act, the ingredients that have to be established are that the labourers were forced to do bonded labour under the Bonded Labour System. Bonded Labour System is forced employment under which a debtor (or the family members), enters into an agreement with the creditor in consideration of the money received by him for various reasons to either work for the creditor, without wages or with minimum wages or forfeit his right of freedom of employment or forfeit his right to move freely or forfeit his right to sell his product in the market. Therefore, the advance has to be established in the first place.

19. Though PW3 would state that he had executed a bond with the appellant, no document has been produced. Similarly, PW1 would admit that it is a common practice to enter into an agreement when they get employed and he had also not produced any agreement. The complaint lodged by the Revenue Divisional Officer [PW11] does not specifically



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state which employee received an advance or the exact amount of the advance, except for a vague allegation that advance ranging from Rs.20,000/- to Rs.1,00,000/- was given by the accused. No doubt, the FIR is not an encyclopedia. But the complaint here was not lodged by the labourers themselves but by an official who claims that he went to the Brick Kiln and rescued the labourers and had also issued Release Certificates, releasing them from the employment of the accused. It is also seen that the statements of the witnesses recorded by the investigating officer (PW16) were not sent to the Court immediately, but were sent along with the final report, in the year 2015.

20. Further this Court finds that many of the statements have been made for the first time in Court, as could be seen from the cross-examination of PW3, PW4 and PW12. The relevant portion reads as follows:

PW3:

“அ.ச.1 என் சித்தப்பா, அ.சா.2 என் சித்தி, ஏதிரியின் குளையில் இருந்து வேலைக்கு செய்தற்கு முன்பு நான் ஊரில் விவசாய வேலை செய்தேன். என் சித்தப்பா தான் என்னை



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செங்கல் குளைக்கு வேலைக்கு கூட்டி வந்தார். என்னை அழைத்து வந்த ஆண்டு, மூாதம், தேதி தெரியாது. ரூபாய் 55 ஆயிரம் எதரியிடம் வாங்கும் போது ஒப்பந்தம் போட்டு வாங்கினேன். அந்த ஒப்பந்தத்தை போலீசார் விசாரணையிலும், ஆர்.டி.ஓ விசாரணையிலும் நான் கொடுக்கவில்லை. 1000 கல் அறுத்தால் 600 ரூபாய் கொடுப்பார்கள் அந்த விவரத்தை நான் போலீசார் விசாரணையிலும், ஆர்.டி.ஓ. விசாரணையிலும் நான் கூறவில்லை.”

PW4:

“அதிகாலை 4 மணியில் இருந்து இரவு 8 மணி வரை செய்ததாக போலீசார் விசாரணையிலும், ஆர்.டி.ஓ. விசாரணையிலும் நான் கூறவில்லை.”

PW12:

“போலீசார் நான் இரண்டு குழந்தைகளை அடித்ததாக சொல்லியுள்ளதை ஊர்காரர்களிடமோ, புகாரோ கொடுத்துள்ளேனா என்றால் இல்லை.”

21. In such circumstances, the complaint ought to have contained the exact amount and atleast the approximate date of the advance. The Act is a beneficial legislation and no doubt a presumption can be drawn in terms of Section 15 of the Act. However, certain foundational facts have to be established by the prosecution. For the first time, the labourers stated about the amount received by them and it is not their case that because of the



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advance received they were made to work as bonded labourers.

22. This Court also notices that apart from the oral evidence of the witnesses, there is no document to show the existence of a Brick Kiln by the name 'VGH Brick Kiln' at the address where according to the prosecution, a Brick Kiln was functioning. The witnesses including the investigating officer [PW16], admitted that a brick kiln cannot be run without permission from the Government. It is not the case of the prosecution that the brick kiln was run without the permission of the Government. However, no documents have been produced to show that the brick kiln was run in the said name and address.

23. That apart, no document is produced to show that the appellant was the Proprietor of the said brick kiln. The Release Certificate issued by the Revenue Divisional Officer [PW11] is hardly any proof of the fact that the appellant was the Proprietor of a brick kiln and the brick kiln was functioning in the said name and at the said address.



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24. For all the reasons above, this Court is of the view that the prosecution has failed to establish its case beyond reasonable doubt and that the judgment of conviction and sentence imposed on the appellant/accused by the trial Court, is liable to be set aside.

25. Accordingly, the Criminal Appeal is allowed and the appellant is acquitted of all charges. The conviction and sentence imposed upon the accused/appellant in S.C. No.116 of 2015 dated 09.01.2017, on the file of the learned Principal District and Sessions Judge, Krishnagiri, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
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SUNDER MOHAN,J.

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Copy to:

- 1.The Principal District and Sessions Judge,
Krishnagiri.
- 2.The Deputy Superintendent of Police,
Krishnagiri Sub-Division,
Krishnagiri District.
3. The Public Prosecutor
High Court of Madras,
Chennai – 600 101.

Pre-delivery judgment in

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28.03.2024