

Bail Slip:

The Petitioner/Accused M.Kandasamy(A1) S/o. Manickam and K.Sivakumar S/o.Kandasamy(A2) and Munusamy Naidu S/o.Subba Naidu (A3) were released on bail as per the order of the Court dated 20.05.2010 and made in MP.No.1 and 2 of 2010 in CrI.A.No.322 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation : 24.10.2016

Date of Pronouncement : 09.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.322 of 2010

1.M.Kandasamy Mudaliar
2.K.Sivakumar
3.Munusamy Naidu

Vs.

Appellants/A1 to A3

The State by Inspector of Police
Kadambattur Police Station
Tiruvallur District
(Cr.No.178/2005)

Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C. to call for the records and to set aside the conviction and sentence passed in the judgment in S.C.No.155 of 2008 dated 18.05.2010 on the file of the Additional District Court, Fast Track Court-III, Tiruvallur.

For Appellant : Mr.N.Manokaran
for Mr.R.Sivakumar

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

For RR3 : John Richard Ebenezer (victim
PW3)

J U D G M E N T

This criminal appeal has been filed by the appellants/A1 to A3 against the judgment of conviction passed by the learned Additional District Court, Fast Track Court-III, Tiruvallur, in S.C.No.155 of 2008 dated 18.05.2010, in which, the learned Judge had convicted the appellants for the commission of offence under Sections 370, 371, 374 of I.P.C. and Sections 16, 17 and 20 of Bonded Labour System (Abolition) Act, and sentenced them as follows:

"A1 to A3 were sentenced to undergo 5 years rigorous imprisonment each and to pay a fine of Rs.25,000/- each in default to undergo six months simple imprisonment for the offence under Section 370 of I.P.C. and sentenced them to undergo six months rigorous imprisonment for the offence under Section 374 of I.P.C. and also sentenced them to undergo one year rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo 1 month simple imprisonment each for the offence under Section 16 of Bonded Labour System (Abolition) Act. A1 was further sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo six months simple imprisonment for the offence under Section 371 of I.P.C. and also sentenced to undergo one year rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo 1 month simple imprisonment each for the offence under Section 17 of Bonded Labour System (Abolition) Act."

2.The case of the prosecution is that all the three accused engaged 15 persons by paying them Rs.800/- to Rs.1000/- each depending upon their age and treated them as bonded labourers, without providing them any accommodation or medical facilities, keeping them under their control and paying them wages less than the minimum wages as prescribed by the Minimum Wages Act, 1947. Therefore, a case was registered by the respondent in crime No.178 of 2005 against the appellants/accused herein for the offences punishable under Sections 370, 371 and 374 of IPC and Sections 16,17 and 20 of Bonded Labour System (Abolition) Act, 1976. After investigation, Police laid a charge sheet before the Judicial Magistrate-II, Tiruvallur and the case was taken on file in P.R.C.No.27/2006 and the case was committed to the learned Sessions Judge, Tiruvallur and the same was made over to the Additional District Judge, FTC-III, Tiruvallur in S.C.No.155/2008 and as prima facie case was found against the

accused, they were charged for the commission of offence as stated above.

3. In order to prove the case of the prosecution, on the side of the prosecution, as many as 7 witnesses have been examined as P.W.1 to 7 and Ex.P1 to 3 were marked. PW1 is the defacto complainant as well as social worker and she has spoken about the complaint given to Kadambathur Police station and the inspection conducted by RDO in the Power House Rice Mill owned by the first accused. PW2, the Associate of the defacto complainant has spoken about the source information that the bonded labourers were engaged by the first accused in his Rice Mill and given the complaint to the defacto complainant and PW1 had given the complaint to the Kadambathur Police station. PW3, who is one of the workers in the Rice Mill of A1 has spoken about his engagement as a bonded labour by A1. P.W.3 to P.W.5 are bonded labourers in the said Rice Mill. PW6, RDO has spoken about the inspection in the Rice Mill of A1/Power House Rice Mill and released the bonded labour from the said Mill. PW7 is the Inspector of Police, Kadambathur Police Station, who has spoken about the investigation of the case and filing of the charge sheet.

4. After examining the above said witnesses, the incriminating evidence as against the accused were put to them, for which, the accused denied the same as false and in order to disprove the case of the prosecution, on the side of the accused, they have not chosen to examine any witnesses and they have not produced any documents.

5. The trial Court, after completion of trial, on the basis of oral and documentary evidence produced by the prosecution, found the accused guilty for the offence under Sections 370, 371 and 374 of IPC and Sections 16, 17 and 20 of Bonded Labour System (Abolition) Act, 1976 and sentenced them as stated above. Aggrieved by the said judgment of conviction passed against the accused, the present appeal has been filed.

6. The learned counsel for the appellant would submit that the present complaint is a motivated one with a view to wreak vengeance, since P.W.1 failed in her earlier attempt, when there is no legal evidence to prove the bonded debt and on account of which, the workers were forced to work. The ingredients of Section of the Act have not been proved by the prosecution and there is also discrepancy on the date of inspection. He would further submit that the evidence of PW3 would show that she had approached A1 for employment on her own and not on compulsion or force. There are discrepancies in the evidence of prosecution. P.Ws. 3 to 5 are having separate residence. They were freely

moving everywhere. No complaints have been made by them against these appellants/accused. They were neither forced to work nor engaged as bonded labourers. During the inspection, Police also accompanied with the team. Therefore, the alleged complaint is false. The FIR dated 11.09.2005 was registered on the basis of the complaint dated 31.08.2005. PW1 says that she gave a complaint dated 26.08.2005. But the fact remains that the FIR was registered on the complaint dated 11.09.2005 itself. Therefore, the complaint dated 26.08.2005 is not a first information. Further, A1 was the owner of the mill and he died on 15.03.2011. Hence, the charge against A1 is abated u/s.394 of Cr.P.C., Further, there is no legal evidence against A2 and A3, who are aged about 69 and 73 years respectively. A3 is bed ridden and is not in a position to move and he can move only with the help of others. Therefore, the conviction and sentence passed by the trial court is liable to be set aside.

7.The learned Special Public Prosecutor would submit that the defacto complainant is a social worker and an Associate of the International Justice Mission Project. On source information, she made a complaint before Kadambathur Police Station, Tiruvallur District. Based on their information, they registered FIR and investigated the matter. Even when RDO and other revenue officers went with defacto complainant and inspected Mill of A1, they found 16 persons were working as bonded labourers and after enquiry, they were released and P.W.6, RDO also issued a release certificate to all the 16 workers.

8.He would further submit that the prosecution has proved its case beyond all reasonable doubt and the trial Court, after considering the oral and documentary evidence produced by the prosecution, found the accused guilty for the offence stated above and convicted them in accordance with law and there is no valid ground to set aside the judgment of the trial court. He would further submit that since A1 died during pendency of the appeal, even though charges are framed against him, this Court no need to go into depth about the commission of offence with regard to A1.

9.Since the first appellate Court is a fact finding Court, this Court has to come to an independent conclusion as to whether the accused has committed the offences and the prosecution has proved the charges as framed against the appellants/accused beyond reasonable doubt?

10.Heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on records as

well as the judgment passed by the Court below.

11.The brief facts of the prosecution case is that on 09.08.2005 at 3.00 p.m., the defacto complainant, along with RDO, conducted an inspection in the premises of Power House Rice Mill, Kadambathur owned by A1 and nearly 15 workers in the Rice Mill were examined and they informed before the defacto complainant that they were compelled to work tirelessly for the wages below the minimum wages and the accused person had harassed them. RDO recorded their statements and released them and issued release certificates dated 16.08.2005 under Ex.P2 series. On 11.09.2005, the defacto complainant gave a complaint to the Sub-Inspector of Police, who in turn, registered a case in Cr.No.178 of 2005 and after investigation, the Inspector of Police had filed a final report, which was taken on file in PRC.No.27 /2006 and the case was made over to the learned Additional District Judge, Fast Track Court No.iii, Thiruvallur in S.C.No.155 of 2008 and after trial, the trial Court considering the oral and documentary evidence produced by the prosecution, found the accused guilty and sentenced them as stated above.

12.The main defence of the appellants/accused is that they denied the prosecution case in toto. Earlier, on the complaint of the very same defacto complainant, a case in Cr.No.65/2004 was registered against A1 in respect of the alleged occurrence of similar nature which took place on 12.03.2004, wherein, RDO conducted an enquiry in STC.No.1 of 2004, in which, A1 pleaded guilty and paid fine of Rs.500/- as per the order dated 19.07.2004.

13.For the same occurrence, the defacto complainant herein filed a private complaint in C.C.No.320/2004 before the learned JM- II, Tiruvallur against A1 to A3 and cognizance was taken on 04.06.2004. A1 to A3 in C.C.No.320/2004 have entered appearance and filed CMP.No.4042/2004 u/s.300 of Cr.P.C., on the ground that A1 was already tried and fine was also imposed. Further, there were no incriminating materials against A2 and A3. The said petition in CMP.No.4042/2004 on the file of learned Chief Judicial Magistrate II, Tiruvallur was allowed on 06.01.2005

14.The above said order was challenged in CrI.R.C.No.200/2007 and it was dismissed by this court on 24.08.2007 against which defacto complainant filed an appeal in SLP.No.1455/2007 and the same was dismissed by the Hon'ble Supreme Court on 13.07.2009. Pending the above proceedings, again, the defacto complainant has come forward with a motivated

complaint against these appellants/accused alleging that on 09.08.2005, the defacto complainant and RDO conducted inspection in the Rice Mill of A1 and found 13 workers were working as bonded labours.

15. In order to find out the correctness of the judgment of the trial Court, it is relevant to refer the evidence of prosecution, which would run thus:

"P.W.1, the defacto complainant has deposed that she is a social worker and volunteer of the International Justice Mission Project. According to her, on source report, she came to know that the accused had engaged bonded labours in his Rice Mill and hence, she filed a complaint in Kadambathur police station on 26.08.2005 and earlier on 09.08.2005, at about 3.00 p.m., she went along with RDO of Tiruvallur and conducted an enquiry and found 16 labourers, who were forced to work as bonded labourers and they were released immediately by RDO. The forced bonded labourers were examined and revealed that the forced bonded labourers were paid wages less than the minimum wages and were paid an advance amount and some of the women labourers were subjected to sexual abuse. This is the second incident of accused committed such offence. PW2, one Mrs. Hassis suganya has deposed that the defacto complainant is her colleague and based on the source information, in the month of August, 2005, they have given a complaint to the Tiruvallur Revenue Divisional Officer, regarding the bonded labour system in the Power House Rice Mill and on 09.8.2005, she along with PW1, RDO and other revenue officials went to the Rice Mill and made enquiry and during the enquiry, they have examined the bonded labours and noted that they were residing with their families in the Mill premises itself and after receiving advance amount, they worked there, to repay the same. Therefore, the RDO released them and recording their statements, later he issued release certificates Ex.P2 series to all the bonded labours. P.W.3 Mallika has deposed that when she was starving without any source of income, some of her relatives had advised her to approach A1 for employment and when she approached, A1 had paid Rs.5,000/- as loan and one day, when her husband was not well, he could not go for work, for which, A2 beaten up her husband with chappal and her

husband fled away from the village and three months later, he came back and joined her and both of them were paid Rs.80/- per day, out of which Rs.40/- was deducted towards the advance amount paid to them and her son, who is aged about 16 years was also employed along with her. P.W.4, Chinnarasu has deposed that he is the son of PW3 and was forced to work in the Rice Mill after his father fled away from the village. Since his father was beaten up by A2, he fled away from the village for which they insisted him to do the work for the loan paid to them. Since he was aged about 16 years and expressed his inability to carry load, he was forced to work there against his wish and during that time, due to the heavy work, he suffered with chest pain and he was not given any primary medical aid by the accused. When he left the mill, he was brought back to the Mill by A3. Once he met a doctor for his chest pain, he was advised not to carry weight. But, he has to carry atleast 40 bags daily to the distance of half-a-kilometer, for which, he was paid only Rs.80/- per day and he was released only after the visit of RDO. P.W.5 was also the bonded labourer in the same Mill and he has corroborated the evidence of Pws.3 and 4. RDO has been examined as PW6 and she has deposed that there was source information and she visited A1 Rice Mill along with Tahsildar on 12.08.2005 at about 4.00 p.m., where, they found 15 persons were working as bonded labourers and after enquiring them, they released 16 persons from the said Mill and issued release certificate, Ex.P2 series to all the 16 persons and they were given Rs.20,000/- each for rehabilitation. P.W.7, the Investigation Officer has taken up the case in Cr.No.178/2005 and after completion of the investigation, he laid a charge sheet against the appellants/accused herein for the offences under Sections 370,371 and 374 of IPC u/s.16,17 and 20 of Bonded Labour System (Abolition) Act."

16. The main contention of A2 and A3 are that they are not the owners of the Power House Rice Mill. A1 alone is the owner of the Rice Mill. Therefore, employment of bonded labourers under the Act is not applicable to A2 and A3. In this regard, the evidence of PW3 would go to show that there is an involvement of A2 in the employment. Further, during the employment, her husband fell ill, A2 beaten her husband with

chappal and the same was informed by the other workers to her and when she went and asked about the occurrence with A2, he denied such allegations. But, when she asked the same with her husband, he told that A2 beaten him by chappal. It is relevant to refer the evidence of PW 4 and 5, wherein they have categorically stated that another 15 employees were not allowed to move freely and even if they go to shop, immediately, A.3 go and call them inside the Mill premises and further they have not allowed to go freely anywhere and they were paid only less than the minimum wage.

17. According to the learned counsel for the appellants, the workers have not given any complaints either to police or the revenue officials and due to previous motive, she has given this complaint. On a perusal of evidence of PWs.1 and 2, would show that defacto complainant is a social worker and volunteer of the International Justice Mission Project. Mainly, she is focussing on the weaker sections and also to the bonded labour and wherever she gets the information, she used to verify and give complaint to the police and also the revenue officials. All the workers are uneducated and illiterates and they have not even known about their rights and even these labourers are exploited by some of the employers.

18. From the evidence of PWs.1 to 6, the prosecution has proved its case that in the Power House Rice Mill, during the inspection of PW6/RDO, 15 persons were working as bonded labourers. In the earlier proceedings in STC.No.1 of 2004, A1 has admitted his guilt and paid the fine and again, when RDO visited the spot, they found 15 persons.

19. The main defence of the accused is that all the 15 persons have not been examined but only these 3 persons (PWs.3 to 5 belonging to one family) have been examined, in order to prove the ulterior motive and in order to wreak vengeance, PW1 set up these 3 persons to give evidence.

20. As already stated, in the earlier occasion A1 has admitted that he had engaged the labours as bonded labourers. In the present case has also been proved that when PW6 inspected the Mill belonged to A1 and managed by A2 and A3, she found that 15 persons were employed as bonded labourers. Therefore, I am of the view that prosecution has proved its case beyond reasonable doubt and the trial court has correctly come to the conclusion that A1 to A3 committed the offence of engaging bonded labourers

and convicted the accused and sentence them as stated above.

21. The learned counsel for the victim/PW3, who assisted the prosecution has submitted the following authorities:

(i) in the case of Somiben Mathurbai Vasava Vs. Lalji Hakku Parmar Leather Works Company reported in MANU/GJ/0032/1983, wherein, it has held as follows:

" Minimum time rate wages for piece work:

Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time rate" .

A bare reading of this section clearly contemplates that:

- (a) an employee is employed on piece work;
- (b) for which minimum time rate is fixed; and
- (c) no minimum piece rate is fixed.

In the present case all these three conditions are satisfied. Then, the section provides, the employer shall pay to such employee wages at not less than the minimum time rate. Thus there is no escape from the conclusion that the petitioner, though employed on piece work, is entitled to the minimum time rate fixed under the notification (Ann.A) and the Labour Court was clearly in error in holding that the notification was not applicable to piece-rated workmen"

(ii) Sageer & Others Vs. State of U.P. & Others reported in 2012 (91) AIR 59, the relevant portion of the judgment is extracted here under:-

" 10. The 'bonded labour system' as defined in Section 2(g) of the Bonded Labour (System) Abolition Act, 1976, shows that it is usually as a result of advances given by way of bonded debt that a debtor or his dependents or heirs are compelled to provide forced or partly forced labour to the creditor for a specified or unspecified period for no wage or for nominal wages, to forfeit their right to freely sell their labour in the market, change their employer or to move about freely in India. Therefore, if any advance was given (as may have been done in this case), it may have actually been a bonded debt."

22. With regard to the locus standi of the Defacto complainant for giving the complaint is concerned, the learned counsel referred the order in the case of Neeraja Chaudhary Vs. State of M.P, reported in AIR 1984 SC 1099 NGO, wherein, the Hon'ble Supreme Court has held as follows:

" It is difficult to believe that the existence of bonded labour can be discovered and the evil of bonded labour can be wiped out by relying solely on action to be taken by the members of the Legislative Assembly or the bureaucracy or even the panchayats though their help must certainly be sought & taken. The Commissioners and Collectors have multifarious duties to attend and even if they are anxious to help in eradication of the vice of bonded labour system, investigation but they would have to rely on their subordinate officers such as tehsildars and patwaris and at many places, the patwaris and tehsildars being either in sympathy with the exploiting class or lacking in social commitment or indifferent to the misery and suffering of the poor and the down-trodden, the task of identification, release and rehabilitation of bonded labour through the official machinery would be very difficult of achievement. So also the members of the Legislative Assembly, though extremely sincere and well meaning and having the welfare of the poor at heart, would, barring perhaps in a few cases, hardly have time to carry out any inquiry or investigation for the purpose of identification and release of bonded labourers. The panchayats also, dominated as they some times are by vested interests, and having regard to their mode of functioning, may not be very effective in this task. What is really necessary is to involve social action groups operating at the grass root level in the task of identification and release of bonded labourers.

"It is only through social action groups working amongst the poor that we shall be able to discover the existence of bonded labour and we shall be able to identify and release them. There are fortunately in our country a large number of such dedicated social action groups-young men

and women inspired by idealism and moved by a passionate and burning zeal to help their fellow beings - whose services can be utilised for identification, release and rehabilitation of bonded labourers. We would strongly urge upon the State Government to include the representatives of such social action groups in the vigilance committees and to give them full support and cooperation. These social action groups may appear to be unorthodox and unconventional and their actions may be marked by a sense of militancy, but they alone will be able to deliver the goods and it is high time that the State Government should start taking their assistance instead of looking at them askance and destructing them. The vss'ed interests would undoubtedly be against such social action groups which are trying to organise the poor and the oppressed and would try to attack and destroy such social action groups with all the resources at their disposal including filing of false cases or influenced by the vested interests and under the guise of maintenance of law and order, harass and oppress the disadvantaged sections of the community whom such social action groups are trying to organise with a view to making them strong and self-reliant and capable of fighting for their rights through the process of law.

23. With regard to the discrepancies regarding evidence of PW1 to 3, he submitted the unreported judgment in CrI.A.No.1180/2004 (State of U.P. Vs. Krishna Master & Others), where in it is held as follows:

" It would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in the court. Small/trivial omissions would not justify a finding by

court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a short-coming from which no criminal matter or pertain to insignificant aspects thereof"

" Therefore, the discrepancies noticed in the evidence of a rustic witness who is subjected to grueling cross-examination should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused who have perpetrated heinous crime. The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that the evidence of such a witness should be appreciated as a whole. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating evidence of a rustic witness"

24. Considering the facts and circumstances of the case and also perusal of the materials placed before this court and submissions made by both the learned counsel and authorities cited by them, this court has come to the conclusion that A1 has engaged bonded labours in the Power House Rice Mill and at the time of occurrence, 15 persons were employed as bonded labourers and they were released under Ex.P2 series and they have been paid Rs.20,000/- each for their rehabilitation. Therefore, the contention raised by appellants/accused that they are not responsible for the offence is not acceptable and the same is liable to be rejected. From the evidence of Pws.1 to 5, the prosecution has proved that A2 and A3 are also responsible for the commission of offence. Therefore, this Court is of the view that there is no reason to interfere with the judgment of conviction passed by the trial court. This court cannot slow down the object of the Bonded Labour (Abolition) Act. Therefore, the punishment imposed by the trial court is also in order and therefore, the judgment of conviction and sentence passed by the trial court is in order and hence, the appeal is liable to be dismissed.

25. Accordingly, this criminal appeal is dismissed and the judgment dated 18.05.2010 made in S.C.No.155 of 2008 by Additional District Court, Fast Track Court-III, Tiruvallur are hereby confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Court,
Fast Track Court-III, Tiruvallur.

2. The Judicial Magistrate 2,
Tiruvallur.

3. Thro' Chief Judicial Magistrate,
Tiruvallur.

4. The Inspector of Police,
Kadambathur Police Station,
Tiruvallur Taluk Circle,
Tiruvallur District.

5. The Superintendent,
Central Prison,
Puzhal, Chennai.

6. The Public Prosecutor,
High Court, Madras.

7. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr. Kanda samy, Advocate, S.R.No.41052

+1cc to Mr. R. Siva kumar, Advocate, S.R.No.41083

CrI.A.No.322 of 2010

AD(CO)
RS(19/06/2017)