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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1364 of 2017

Judgment Reserved on : 30.9.2019

Judgment Delivered on : 19.12.2019

Tikaram Sahu, S/o Shyamlal Sahu, aged about 40 years, R/o Village Adil, P.S. Maalkharauda, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Jashpur, District Jashpur, Chhattisgarh

--- Respondent

Criminal Appeal No.1361 of 2017

1. Jaikumar, S/o Raja Kaundar, aged about 37 years, R/o Police Station Rashipuram, District Namakkal, Tamilnadu
2. Bapu Harchand Walerao, S/o Harchand Mila Walerao, aged about 35 years, R/o Nehru Nagar Dharangaon, District Jalgaon, Maharashtra

---- Appellants

versus

State of Chhattisgarh through Station House Officer, Police of Police Station Patthalgaon, District Jashpur, Chhattisgarh

--- Respondent

Criminal Appeal No.1573 of 2017

Nehru Bhuihar, S/o Lasru Bhuihar, aged about 36 years, Caste Bhuihar, R/o Beldegi, P.S. Pathalgaon, District Jashpur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through District Magistrate, Jashpur, District Jashpur, Chhattisgarh

--- Respondent

For Respective Appellants : Shri Manoj Chouhan, Shri Manoj Paranjpe and
Shri Vivek Kumar Tripathi, Advocates

For Respondent : Shri Anand Verma, Dy. Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. All the above appeals arise out of a common judgment and, therefore, they are decided together.
2. The appeals are directed against the judgment dated 18.8.2017 passed by the Additional Judge to the Court of Additional Sessions Judge, Kunkuri, District Jashpur in Sessions Trial No.12 of 2016, whereby each of the Appellants has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 363 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.500/- with default stipulation
Under Section 370(3) of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.1,000/- with default stipulation

3. Facts of the case, in brief, are that on 3.1.2016, Complainant Sadanand (PW5), Field Worker of Jivan Jharna Development Institution, Kansabel lodged a written complaint (Ex.P2) stating that on 3.1.2016, he came to know that Appellant Nehru Bhuihar along with his friends induced villagers to work at Tamilnadu to get some money and on the influence of Appellant Nehru Bhuihar and his friends some of the villagers agreed to go to Tamilnadu and for that purpose they reached at the Passengers Waiting Room, Beldegi. Thereafter, Complainant Sadanand (PW5) and his friends Radheyshyam Gupta and Nishabai rushed to the waiting room where they found villagers Ajay Toppo (PW1), Bhodro (PW2), Manoj Kujur (PW3) and a minor boy Filmon (PW6), aged about 15 years. Appellant Nehru Bhuihar and his 3 friends were also present there. Appellant Nehru Bhuihar and his said 3 friends,

after having seen the Complainant and his companions, fled from the spot. On being asked, Ajay (PW1), Bhodro (PW2), Manoj (PW3) and Filmon (PW6) told that Appellants Nehru Bhuihar, Jaikumar, Bapu Harchand Walerao and Tikaram Sahu had induced them that they will be paid handsome money for working at Tamilnadu. On the basis of the written complaint (Ex.P2), First Information Report (Ex.P3) was registered. Filmon, Manoj, Bhodro and Ajay were recovered from the possession of the Appellants vide recovery memo (Ex.P1). During the course of investigation, Filmon's progress report (Article 1) of 5th Standard was obtained from Ramiyabai, mother of Filmon. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants. Charges were framed against them.

4. In support of its case, the prosecution examined as many as 9 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt. No witness has been examined in their defence.
5. On completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in second paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the respective Appellants submitted that without there being evidence on record against the Appellants the Trial Court has wrongly convicted them. Ajay (PW1), Bhodro (PW2), Manoj (PW3) have not supported the case of the prosecution and turned hostile. Witnesses of the recovery panchnama Shriram Minz (PW4) and Sunil Kumar (PW8) have also not supported the case of the prosecution. The Trial Court

has convicted the Appellants only on the basis of the statement of Complainant Sadanand (PW5) and Filmon (PW6). Complainant Sadanand has admitted the fact that he had not seen Appellants Bapu Harchand Walerao, Tikaram Sahu and Jaikumar. He saw them for the first time in the Court itself and he had submitted the written complaint on being told by the Station House Officer. It was further submitted that with regard to Appellant Nehru Bhuihar, Complaint Sadanand has only stated that he had seen him standing in the passengers waiting room. There is no evidence on record that Appellant Nehru Bhuihar had induced Ajay (PW1), Bhodro (PW2), Manoj (PW3) and Filmon (PW6) in any way. It was further submitted that Filmon (PW6) has not supported the case of the prosecution and turned hostile. Filmon has also admitted that other than Appellant Nehru Bhuihar, he never talked with any of the remaining Appellants. He has further admitted that he never saw talking Appellant Nehru Bhuihar with the remaining Appellants. Thus, there is nothing on record on the basis of which it could be established that any of the Appellants induced any of Ajay, Bhodro, Manoj and Filmon for better work and salary at Tamilnadu. Thus, no offence is made out against any of the Appellants.

7. Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. According to the case of the prosecution, Appellant Nehru Bhuihar had arranged a meeting of Ajay (PW1), Bhodro (PW2), Manoj (PW3) and Filmon (PW6) with the remaining Appellants and all the Appellants had induced these four persons for better employment

and handsome money at Tamilnadu. But, before the Trial Court, Ajay (PW1), Bhodro (PW2) and Manoj (PW3) have not supported the case of the prosecution and turned hostile. Witnesses of the recovery panchnama (Ex.P1), Shriram Minz (PW4) and Sunil Kumar (PW8) have also not supported the case of the prosecution and turned hostile.

- 10.** Sadanand (PW5) is the witness who made the written complaint (Ex.P2). He has deposed that he came to know from some of the villagers that some outside people had come in the village and they offered employment to some of the boys of the village and they were taking them. Then he along with Nisha and Radheshyam reached near Passengers Waiting Room of Bus Stand, Beldegi. There, a scorpio vehicle was parked and having seen them, the said scorpio was started and driven away. He has further deposed that he intimated Police Station Patthalgaon through his mobile phone and on this the police caught the scorpio vehicle and brought to the said waiting room. He saw that 3 outside persons were sitting in the scorpio vehicle. But, he has not been able to state who were those 3 persons. During his cross-examination, this witness has categorically admitted in paragraph 7 that he saw Appellants Bapu Harchand Walerao, Jaikumar and Tikaram Sahu for the first time in the Court room. In paragraph 9 also, this witness has admitted that he was not able to state which villager intimated him about the incident and he had submitted the written complaint (Ex.P2) on being told by the Station House Officer. There is no statement given by this witness that he ever met with Appellant Nehru Bhuihar.

- 11.** Filmon (PW6) has deposed that the Appellants were taking him to

Kerala for working there. They had told him that he had to work in a boring vehicle and he will be paid therefor a sum of Rs.8,000/- and they had come to him to take him in a car, but, at that time, police officials had reached there. He has further deposed that Appellant Nehru Bhuihar had come to him and told that he had to go to work in a boring vehicle at Tamilnadu and he had also arranged his meeting with the remaining 3 Appellants. But, this witness has admitted that no talk had taken place between him and the remaining 3 Appellants. He has further admitted that near the waiting room, Appellant Nehru Bhuihar had come and he, saying that he had to get his mobile phone recharged, had gone away. This witness has further admitted that he had not seen Appellant Nehru Bhuihar talking with the remaining 3 Appellants. According to this witness, Appellant Nehru Bhuihar had only told him that he had to go along with the remaining Appellants.

12. On a minute examination of the evidence available on record, it is clear that Ajay (PW1), Bhodro (PW2) and Manoj (PW3) have not supported the case of the prosecution and turned hostile. The case of the prosecution is based only on the statement of Complainant Sadanand (PW5) and Filmon (PW6). Sadanand (PW5) has categorically admitted that he had submitted the written complaint (Ex.P2) on being told by the Station House Officer. He has further admitted that he saw Appellants Bapu Harchand Walerao, Jaikumar and Tikaram Sahu for the first time in the Court room. He has further admitted the fact that he did not see Appellant Nehru Bhuihar talking with remaining 3 Appellants. Thus, from the above admission made by Complainant Sadanand (PW5), the whole prosecution story fails and the prosecution does not get any help from the statement of the Complainant. Though

Filmon (PW6) has stated that the Appellants had come to him to take him to Kerala for his employment in a boring vehicle and they had told him that he will be paid therefor a sum of Rs.8,000/-, during his cross-examination this witness has also admitted that except Appellant Nehru Bhuihar no talk had taken place between him and the remaining 3 Appellants. From the above discussion, it is also established that the said remaining 3 Appellants had never induced Filmon (PW6). With regard to Appellant Nehru Bhuihar, Filmon (PW6) has also admitted that he had never seen Appellant Nehru Bhuihar talking with the remaining 3 Appellants. In paragraph 5 of his cross-examination, this witness has categorically stated that Appellant Nehru Bhuihar had only told him that he had to go along with the remaining 3 Appellants. There is no categorical statement given by this witness that Appellant Nehru Bhuihar induced him in any way. Thus, the prosecution has not been able to establish any case against Appellant Nehru Bhuihar also.

13. Consequently, all the appeals are allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
14. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE