

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.09.2018

PRONOUNCED ON : 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.335 of 2013

Manjula

.... Appellant/Victim P.W.6

vs.

1. Selvakumar

2. The Deputy Superintendent of Police,
Tirukazhukuntam,
Kancheepuram District.

.... Respondents/Accused/Complainant

The Criminal Appeal has been filed under Section 372 read with 378 of Cr.P.C, seeking to set aside the judgment dated 30.07.2012 passed in S.C.No.51 of 2007 by the learned Principal District and Sessions Judge, Chengalpet, Kancheepuram and to convict the 1st respondent.

For Appellant : Mr.John Richard Ebenezer

For respondents: Mr.R.Thirumoorthy for R1
MR.Ravichandran

Govt. Advocate (Crl.Side) for R2

JUDGMENT

This criminal appeal has been filed against the judgment of acquittal made by the learned Principal District and Sessions Judge, Chengalpet, Kancheepuram in S.C.No.51 of 2007, dated 30.07.2012.

2. The 2nd respondent police has registered a case against the 1st respondent in Crime No.197 of 2006 and after investigation laid a charge sheet before the learned District Munsif cum Judicial Magistrate, Thirukazhukundram. The learned Magistrate taken the charge sheet on file in P.R.C.No.1 of 2007. After completing the formalities, since the offence charged against the 1st respondent is triable by the Court of Sessions, the learned Magistrate committed the case to the learned

Principal District and Sessions Judge, Chengalpet, Kancheepuram District and the learned Principal Sessions Judge, taken the case on file in S.C.No.51 of 2007. The learned Sessions Judge after completing the formalities framed charges against the 1st respondent for the offence under Sections 16 and 17 of the Bonded Labour System (Abolition) Act, 1976 and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. During trial, in order to prove the case of the prosecution, on the side of the prosecution P.Ws.1 to 13 were examined, Exs.P1 to 12 were marked and no material objects were produced. After completion of prosecution side evidence, the incriminating evidence against the accused are put before the accused and denied as false. On the side of the defence no oral and documentary evidence was produced.

3. The learned Principal District and Sessions Judge, Chengalpet, Kancheepuram District, after completing the trial, heard the arguments advanced by both the counsel on record and on considering the oral and documentary evidence, found the 1st respondent/accused not guilty for the offence under Sections 16 and 17 of the Bonded Labour System (Abolition) Act, 1976 and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and accordingly by judgment dated 30.07.2012 acquitted him from the charges levelled against him.

4. Challenging the said Judgment of the learned Principal Sessions Judge, Chengalpet, Kancheepuram District, the defacto complainant/ one of the victim P.W.6 has preferred the present appeal before this Court.

5. The learned counsel appearing for the appellant/victim would submit that the 1st respondent is the owner of the Rice Mill who engaged the appellant / victim and other victims as bonded labourers at the Rice Mill run by the 1st respondent. The 1st respondent has not paid the minimum wage and the appellant, along with the other victims, could not provide for their basic needs. They were compelled to work for more time per day. When they asked for minimum wages, the 1st respondent became angry and compelled them to work by carefully locking the labourers on the premises. They are not allowed the appellant or the other victims to go out or to their native places, they harassed them causing huge damage to the appellant and other victims physically and mentally.

6. The Revenue Divisional Officer, Chengalpet identified the appellant along with other victims as bonded labourers. The Revenue Divisional Officer released all of them from bondage by issuing each of them a Release Certificate and rehabilitated. Since P.Ws.1 to 6 are illiterate persons, they do not know how

to approach and where to approach to set the law in motion, there is a delay of 14 days in lodging the complaint. However, on the date of receiving the complaint, the 2nd respondent Police registered the First Information Report. The delay in lodging the complaint is not fatal to the prosecution case. In this case, P.Ws 1 to 6 are working as bonded labourers under the 1st respondent and they have not been allowed to go out of the Mills and they were totally under the control of 1st respondent. Therefore, the delay in lodging the case is not fatal to the case of the prosecution. Unfortunately, the learned Sessions Judge failed to consider the object of the Act and simply held that the prosecution has failed to prove its case beyond reasonable doubts.

7. Considering the delay in filing the complaint, since the other witnesses have not supported the case of the prosecution and there is no material evidence to prove that they were working as bonded labourers under the 1st respondent and failed to appreciate the various legal provisions as contemplated under the Bonded Labour System (Abolition) Act before the Judgment, the learned Principal District and Sessions Judge simply found the accused not guilty on technical ground that the prosecution has not proved its case beyond reasonable doubts. Therefore, the benefit was extended to the 1st respondent and acquitted him which warrants interference of this Court.

8. The learned counsel for the 2nd respondent Police would submit that on receipt of the information, P.W.8 / the Revenue Divisional Officer and P.W.7/Tahsildar went to the Rice Mill, run by the 1st respondent and witnessed that P.Ws 1 to 6 were working in the Rice Mill and they also enquired P.Ws 1 to 6 and issued each of them a Release Certificate and also taken steps for rehabilitation. The offence charged against the 1st respondent under Sections 16 and 17 of the Bonded Labour System (Abolition) Act, 1976. As per the Sections, the 1st respondent falls under the definitions of the owner of the Rice Mill. Once P.Ws.7 and 8 have witnessed during the inspection that P.Ws.1 to 6 were found in the premises of the 1st respondent Rice Mill and they have also stated that they were working in the Mill and they were not provided with adequate facilities and they were paid below minimum wages and were working for the advance amount received from the 1st respondent and they were not allowed to move from the said Rice Mill, therefore, the evidence of P.Ws.1 to 6 attract the provisions of Sections 2(a), 2 (b) and 2 (d) of the Bonded Labour System (Abolition) Act, 1976 and once the prosecution established that the 1st respondent is the owner of the Mill and P.Ws 1 to 6 were working as bonded labourers under Section 15 of the Act, the burden of proof is lying on the 1st respondent to prove that they are not working as bonded labourers. Once the prosecution has established through oral and documentary evidence, P.Ws.1 to 6 were working as bonded

labourers and they were not adequately provided with sufficient salary and also the facilities that attracts Sections 16 and 17 of the Bonded Labour System (Abolition) Act, 1976. The learned Principal District and Sessions Judge, failed to consider the fact that earlier the 1st respondent was residing in the said village where the Mill is situated and since the Mill stands in the name of his father and during the trial he was residing in Chengalpet, he came to the Court as found that he is not the owner of the Rice mill which is against the provisions of law therefore which warrants interference of this Court.

9. The learned counsel for the 1st respondent would submit that the Rice Mill stands in the name of his father and he is no more now. The charges levelled against the father of the 1st respondent was abated. At any point of time, he was not the owner of the Rice Mill and the Rice Mill is not under his control. He engaged P.Ws 1 to 6 as labourers and the prosecution has not proved the case beyond reasonable doubt that the 1st respondent is the owner of the said Rice Mill in which he has engaged P.Ws.1 to 6 as bonded labourers and further the First Information Report has also been registered after 14 days from the date of alleged occurrence which also creates a doubt that the Police set up P.W.1 to foist a false case against the 1st respondent.

10. During the pendency of the case, since the father of the 1st respondent died, the charges levelled against him abated. Now, the 1st respondent has not committed any of the offence under the provisions of the Bonded Labour System (Abolition) Act, 1976. Further, the appellant and other victims are not belongs to the Schedule Caste (SC) or Schedule Tribe (ST). They belong to Most Backward Classes (MBC) and even their certificate issued by the Revenue Divisional Officer itself shows that they did not belong to Schedule Caste or Schedule Tribe community. Therefore, the proceedings will not attract and there is a enormous delay in filing the complaint and registering the case. The Principal District and Sessions Judge, Chengalpet, Kancheepuram District has rightly appreciated the entire evidence and found that the prosecution has not proved its case beyond all reasonable doubt and hence, acquitted the 1st respondent from the charges levelled against him which does not warrants any interference of this Court.

11. Heard the learned counsel appearing on either side and the learned Government Advocate (Crl.Side) appearing for the 2nd respondent police and perused the materials available on record.

12. The case of the prosecution is that the charges against the 1st respondent on or about prior to 03.03.2006, at Murugesan Naicker Selvakumar Rice Mill, Paramasivam Nagar, Thirukazhukundram, A1 and A2 subjected to witnesses P.Ws.1 to 6

under bonded labourers system and compelled them to render bonded labour service by advancing an amount of Rs.3,000/- and the 1st respondent and his father being a member of upper caste Hindu Community with the common intention to humiliate witnesses/victims on account of their community and shouted at them with filthy language and degraded their community and hence the 2nd respondent police has registered a case against the 1st respondent and his father, for the offences under Sections 16 and 17 of the Bonded Labour System (Abolition) Act, 1976 and Section 3 (1) (x) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Therefore, after investigation, the 2nd respondent Police laid a charge sheet before the District Munsif cum Judicial Magistrate, infact taking the charge sheet after committed the case to the learned Sessions Judge. During the pendency of the trial, since the 1st accused /father of 1st respondent herein died, the charge against the 1st accused was abated.

13. The case of the prosecution as revealed from the evidence of prosecution witnesses is that P.W.1 and P.W.2 were residing at Thirukazhukundram and they were belonged to Irular community. P.Ws.9 to 11 residing at Salur. P.W1 before working in the said Rice Mill, he worked in another Rice Mill. Since P.W1 had to give 3,000/- to the owner of the Mill in which he was working previously, he had received a sum of Rs.3,000/- from the 1st respondent and his father and joined to work under them along with his daughter Chitra, his son-in-law P.W.3 and daughter-in-law P.W.4, P.W. 6 and two others. If they dried 40 gunny bags, they have been paid Rs.40/- and Rs.20/- would be deducted. Four day have been taken to dry 40 gunny bags of paddy. 2 ½ measure of pieces rice were given for 10 gunny bags. Since the coolie given by the accused were not sufficient for the victims they asked the father of the 1st respondent to pay more coolie for which the father of the 1st respondent abused and assaulted them and abused them in filthy language and they won't allowed them to go out and retained them to stay at paddy godown itself. When P.W1 took the rice, the 1st respondent had beaten him with iron rod and he beaten P.W1's brother with chappal. Hence P.W.1 gave a complaint before the Revenue Divisional Officer under Ex.P1 and he came to released P.W.1 and other persons . He gave Ex.P1 complaint before the Mahabalipuram Deputy Superintendent of Police.

14. P.W.8 is the Revenue Divisional Officer at Chengalpet has corroborated the evidence of P.W.1 to the extent that on the complaint given by International Justice Vision Project, P.W.8 inspected the Selvakumar Rice Mill situated at Thirukazhukundram belongs to the 1st respondent and found P.Ws 1 to 6 were working as bonded labourers and after informing to the Government, P.W.8 released them and issued Exs. P4 to P8 Release Orders. P.W.12

received the complaint and registered the case in Crime No.197 of 2006. P.W.13 received the case from P.W.12 and took up the case for investigation.

15. On a reading the evidence of P.Ws.1 to 6, they have clearly stated that they were working as bonded labourers in the 1st respondent Rice Mill. Though the 1st respondent denied that he is not owner of the Mill and he is noway connected with the said Mill and the Mill is not under his management, but the evidence of P.Ws.1 to 6 clearly shows that they were working in the Rice Mill belong to the 1st respondent. The name of the Rice Mill itself shows that M/s. Selvakumar Rice Mill. He has not denied the fact that he is not the son of A1 and he admitted the name of the Mill that it is M/s.Selvakumar Rice Mill. The A2 is the 1st respondent herein. P.Ws.1 to 6 have clearly stated that the 1st respondent harassed the appellant and her family. Further their right of free movement was denied. If they tried to go away from the Rice Mill to their village, the 1st respondent would bring them back by using their personal associates. Additionally, the money spent by the accused in tracing the appellant family would be added to their bonded debt. Despite the fact that the appellant and her family could earn more wages if they work somewhere else, which would mean they could pay their debt off sooner, the 1st respondent refused to allow them to pursue other work outside the Rice Mill. He compelled the appellant and her family to work by telling them that once they received the bonded debt they could not go out for any other job. The 1st respondent ill-treated the appellant and other victims in the Rice Mill and he called them by their caste name and physically abused them. The 1st respondent used and exploit the appellant and other victim members who belong to suppressed community.

16. Eventhough the appellant has not produced the documents to show that they are belong to the Scheduled Caste community, Ex.P3 shows that the secret information reveals that the victims family are belong to the Vanniyakulachatriyar. Therefore, the acquittal under Section 3 (1)(x) of Schedule Caste and the Scheduled Tribes Act does not warrants any interference of this Court. The prosecution failed to prove that the victims belong to either Scheduled Caste or Scheduled Tribe community. But however, the prosecution has proved the other charges levelled against the 1st respondent beyond reasonable doubts. At the time of visit of P.Ws.7 and 8 at the Mill belonging to the 1st respondent they had witnessed that the appellant and other victims were working as bonded labourers and Exs.P4 to P9 clearly shows after getting permission from the Government, P.W.8 issued Release Certificate and also rehabilitation papers. Therefore, through the evidence of P.W.1 to 6 and further

evidence of P.Ws.7 and 8, the prosecution has proved its case beyond reasonable doubts.

17. It is settled preposition of law that once the prosecution has proved beyond reasonable doubts that the victims were working in the accused Mill as bonded labourers and also they borrowed meager amount for which they were working for below the minimum wages and not allowed to go outside and in this case, even the evidence of the victims shows, if the victims went outside, the accused persons directly or by sending their persons, bringing them back and harassed them physically and abused them verbally by scolding in filthy language and they are not provided with adequate facilities and also decent salary, hence the 1st respondent committed the offence as per the charges in this case.

18. In view of the above discussions, this Court find a sound ground and compelled circumstances to set aside the judgment of acquittal made by the trial Court. Therefore, the judgment dated 30.07.2012 passed in S.C.No.51 of 2007 by the learned District and Sessions Judge, Chengalpet is set aside and thereby the 1st respondent is convicted for the offences under Sections 16 and 17 of the Bonded Labour System (Abolition) Act, 1976 and acquitted for the offence under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 .

19. In the result, the criminal appeal is allowed in part. The 1st respondent is directed to appear before this Court for asking question about the sentence to be imposed against him.

20. Post on 27.08.2019 "for question of sentence".

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge, Kancheepuram District at Chengalpet

2. The Additional Public Prosecutor, High Court of Madras.

3. The The Deputy Superintendent of Police,
Tirukazhukuntam, Kancheepuram District.

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

CrI.A.No.335 of 2013

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