



Crl.A.No.372 of 2018

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G.K.ILANTHIRAIYAN, J.

On 25.11.2022, this Court convicted respondents 1 and 3 for the offence under Section 374 of IPC and Section 3(1)(xi) SC/ST Act, Sections 9(2), 16, 17, 18 and 20 of Bonded Labour System (Abolition) Act, 1976 and for questioning the accused under Section 235(2) of Cr.P.C, the matter was adjourned.

2. Today i.e. 07.12.2022, when this Court questioned about the sentence, respondents 1 and 3 deposed that they are aged about 72 and 75 years respectively. Further, now they closed the rice mill and they are not able to pay any compensation.

3. Considering the above submission, respondents 1 and 3 are sentenced for one day till the rising of this Court and respondents 1 and 3 shall jointly deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as



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compensation to each victim (totally 21 victims) on or before 23.01.2023 to the credit of trial court in SC.No.237 of 2012, in default to undergo two weeks simple imprisonment. On such deposit, the victims / their legal heirs are permitted to withdraw the same by filing separate applications. It is made clear that the trial court shall permit the victims / their legal heirs to withdraw the compensation amount without ordering notice to accused 1 and 3.

07.12.2022

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Note: Issue order copy on 09.12.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2022

DELIVERED ON : 25.11.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.372 of 2018

Senbagam

... Appellant

Vs

1. Rajaram
2. Senthamarai Kannan
3. Harikrishnan
4. The Inspector of Police,
B-4 Baluchettychathram Police Station,
Kancheepuram-District.

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 372 r/w 378 of Cr.P.C, to call for the records in S.C.No.237 of 2012 in the file of Principal Sessions Judge, Chengalpet, Kancheepuram District, set aside the Judgment passed on 3 October 2017 acquitting the first to third respondents, convict the first and second respondents for the offences of which they have been charged, pass any similar other order or orders as deem fit and proper in the circumstances of the case.



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For Appellant : Mr.David Sunder Singh
For respondent
R1 and R3 : No appearance
R2 : Died
For R4 : Mr.A.Gopinath
Government Advocate (Crl. Side)

JUDGMENT

This appeal is directed as against the Judgment passed in S.C.No.237 of 2012 dated 03.10.2017, on the file of the learned Principal Sessions Judge, Chengalpet, Kancheepuram District thereby acquitting the respondents 1 to 3 herein from the charges under Sections 374 of IPC, Section 3(1)(vi) of Secheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 9, 16, 17, 18 and 20 of Bonded Labour Systems (Abolition) Act, 1976.

2. The case of the prosecution is that all the accused belongs to Yadava community and the victims belongs to Irular community under the Scheduled Tribes. The victims were working as a bonded labour in the rice mill owned by the accused. The accused had taken advantage of the witnesses'



historically disenfranchised status and had been using them as bonded labourers with illegal advance and displacing them from native villages and forcing them against their will, providing merely nominal wages and wrongfully forcing them to forfeit their freedom of employment and freedom to move from place to place. Hence, the complaint.

3. On receipt of the complaint, the respondent registered an FIR in Crime No.346 of 2010 for the offences punishable under Sections 9, 16, 17, 18 and 20 of Bonded Labour Systems (Abolition) Act, 1976 r/w Section 374 of IPC. After completion of investigation, the respondent filed a final report and the same has been taken cognizance, in S.C.No.237 of 2012 on the file of the learned Principal Sessions Judge, Chengalpet, Kancheepuram District for the offences punishable under Sections 374 of IPC, Section 3(1)(xi) of Secheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 9(2), 16, 17, 18 and 20 of Bonded Labour Systems (Abolition) Act, 1976.

4. In order to bring home the charges, the prosecution had examined P.Ws.1



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to 18 and marked Exs.P1 to 26. On the side of the accused, no one was examined and no document was marked. On a perusal of oral and documentary evidences, the Trial Court found the respondents 1 to 3 as not guilty for any of the charges and acquitted them. Aggrieved by the same, the defacto complainant preferred this present appeal.

5. The learned counsel for the appellant would submit that the accused are operating a rice mill in the name and style of "Devagi Rice Mill", situated at Thimma Samuthram village, Kanchipuram, in which all the victims were compelled to work as bonded labourers. The accused gave advance to them and in exchange, they worked at the rice mill as bonded labourers. They were not allowed to move out or leave the rice mill freely. They were also not allowed to visit their native place. Whenever, the victims move to their native place, they would bring them back by using their personal associates. They were ill-treated by the accused, by calling them by their caste name and the accused also physically abused them. It caused huge damage to them both physically and



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mentally. They were also not paid even minimum wages as provided under the Minimum Wages Act.

6. In such circumstances, on 09.09.2010, the Revenue Divisional Officer, identified the victims as bonded labourers and released them from bondage. The Revenue Divisional Officer also issued release order to each of the victims and rehabilitated them. Thereafter, the complaint was lodged and the same was registered in Crime No.346 of 2010 by the fourth respondent herein. Unfortunately, the Court below acquitted the accused from all the charges on the ground that the Revenue Divisional Officer had delegated his power to the Tahsildar. Further, the Court below held that the prosecution failed to prove the charge beyond any doubt.

7. The learned Government Advocate (Crl.Side) supported the case of the appellants.

8. Though, the notice was served on the accused and their name was printed in the cause list, no one appeared on behalf of them in person or through



pleader. A2 i.e., the second respondent herein even before the Judgment of the Trial Court died and as such all the charges stood abated as against him. Insofar as A1 and A3 are concerned, though their names are printed, none appeared on their behalf in person or through pleader.

9. As per the provisions 10, 11 and 12 of the Bonded Labour System (Abolition) Act, 1976 and also as per the Government Order, the Revenue Divisional Officer are empowered to conduct enquiries to identify the bonded labourers. Accordingly, the Revenue Divisional Officer conducted an enquiry and identified the bonded labourers and by the proceedings, he had released all the bonded labourers which were marked as Exs.P2 to 22. The Tahsildar, who assisted the Revenue Divisional Officer was examined as P.W.1. The Trial Court also concluded that the complaint lodged by the Social Action Group was not marked before the Court. When the Social Action Group was informed about the bonded labourers to the Revenue Divisional Officer, it is only an information and it cannot be treated as a complaint. After inspection, the Revenue Divisional Officer found that the victims are bonded labourers. Then



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after completing the formalities, the authority concern can lodge a complaint.

Accordingly, in the case on hand, the complaint was lodged which was marked as Ex.P1 by P.W.1 i.e, The Tahsildar.

10. On receipt of the same, the fourth respondent registered FIR which was marked as Ex.P23. The Revenue Divisional Officer, being a Sub Divisional Magistrate, can exercise his magisterial power to conduct an enquiry under the Bonded Labour System (Abolition) Act, 1976, on the information. The victims were examined as P.Ws.5 to 15. P.W.5 deposed that for the past five years, their entire family stayed in the rice mill owned by the accused on receipt of Rs.31,000/- as advance for his brother's marriage. He received Rs.19/- per gunny bag. The salary was paid ten days once. The said salary was deducted from the advance which was already received by him. They were provided one room in the rice mill in which, no amenities were provided. The accused never allowed them to visit their native places. All the family members should not leave the rice mill at a time. Like P.W.5, there were 21 bonded labours. Therefore, they informed to one person and thereafter the Revenue Divisional



Officer, inspected the rice mill and passed released order. The Revenue Divisional Officer also paid a sum of Rs.1000/- to the victims along with grocery items. All the victims almost deposed in a same manner that they were working as a bonded labour on receipt of advance amount.

11. Section 2(a) of Bonded Labour System (Abolition) Act, 1976, defines as follows,

2. Definitions. - In this Act, unless the context otherwise requires,

--

a) "advance" means an advance, whether in cash or in kind, or partly in cash or partly in kind, made by one person (hereinafter referred to as the creditor) to another person (hereinafter referred to as the debtor);

Section 2(d) of the Bonded Labour System (Abolition) Act, 1976, defines as follows,

(d) "bonded debt," means an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system;

12. Thus, the prosecution proved that the victims are bonded labourers under the accused. On payment of advance, the accused forced them to work for the advance without any salary. The accused gave illegal bonded debts to



the victims. The provisions under Section 15 of the Bonded Labour System (Abolition) Act, 1976, as follows,

15. Burden of proof:- Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.

Therefore, the burden is shifted on the shoulder of the accused and the accused failed to describe by any evidence to prove that the debt is not a bonded debt.

13. In this regard the learned counsel for the appellant relied upon the judgment reported in ***AIR 1984 SC 802*** in the case of ***Bandhua Mukti Morcha v. Union of India***, wherein it was held as follows,

"whenever it is shown that the labourer is made to provide forced labour, the court would presume that he is doing so in consideration of an advance or other economic consideration received by him and he is therefore, a bonded labourer. This presumption may be rebutted unless and until satisfactory materials is produced in rebuttal, the court must proceed on the basis that the labourer is the bonded labourer entitled to the provisions of the Act".

14. Admittedly, in the case on hand, the accused failed to produced



sufficient evidence to rebut the presumption that the victims were working in consideration of advance. Further, the Trial Court found some discrepancies between the evidence of victims. In this regard, the Hon'ble Supreme Court of India held in ***AIR 2010 SC 3071*** in the case of ***State of U.P. Vs. Krishna Master and ors***, as follows;

"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."

15. In the case on hand, all the victims are illiterates and lived under bondage for many years. It is very hard for them to withstand the intellectual and tricky question of the defence. It is a big challenge for them to understand the question and to respond with confidence and boldness. Further, from the evidence revealed that all the victim were receiving only Rs.19/- per gunny bag and it is under the minimum wages. The Minimum Wages Act provides that the



minimum wages fixed at a time rate for an industry, the employer cannot give a wage in piece rate, even if he gives it, it should not be below the minimum time rate fixed by the law.

16. Therefore, the testimonies of the prosecution witnesses demonstrated that the accused gave bonded debts to the victims and paid below the minimum wages and restricted their freedom of movement and employment. Hence, the prosecution proved its case beyond any doubt in respect of the charges under Section 374 of IPC and Section 3(1)(xi) SC/ST Act, Sections 9(2), 16, 17, 18 and 20 of Bonded Labour System (Abolition) Act, 1976.

17. Hence, the respondents 1 and 3 are liable to be convicted for the offences under Section 374 of IPC and Section 3(1)(xi) SC/ST Act, Sections 9(2), 16, 17, 18 and 20 of Bonded Labour System (Abolition) Act, 1976. Accordingly, the Judgment passed in S.C.No.237 of 2012 on the file of the learned Principal Sessions Judge, Chengalpet, Kancheepuram District, is



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hereby set aside and this Criminal Appeal stands allowed. However, for imposing sentence, respondents 1 and 3 have to be questioned under Section 235(2) of Cr.P.C.

18. Therefore, Registry is directed to issue summons to respondents 1 and 3 for their appearance before this Court for questioning under Section 235(2) of Cr.P.C. and post the matter on 02.12.2022 under the caption “for questioning the accused”.

25.11.2022

Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To

1. The Principal Sessions Judge, Chengalpet, Kancheepuram District.
2. The Inspector of Police,
B-4 Baluchettychathram Police Station,
Kancheepuram-District.

16/4



3. The Public Prosecutor,
High Court, Madras.

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