



Crl.A.No.619 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2022

PRONOUNCED ON : 09.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.619 of 2018

1. Rajagopal
2. R.Sudhakar
3. Chandrasekaran
Appellants

...

Vs

The State by
The Deputy Superintendent of Police,
Cheyyar Division,
Dusi Police Station,
Thiruvannamalai District.
Crime No.92 of 2012

... Respondents

Prayer:- Criminal Appeal filed under Section 374 of Criminal Procedure Code, to set aside the conviction and sentence imposed upon the appellants vide judgment dated 08.10.2018 in S.C.No.44 of 2014 on the file of the learned Principal District and Sessions Judge cum Special Judge for SC/ST Act, Thiruvannamalai, and acquit the appellants and direct the trial Court to refund the fine amount in the interest of justice.



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For Appellants

For A1 : Mr.B.Kumar, Senior Counsel
For Mr.A.Ashwin Kumar

For A2 : Mr.B.Kumar, Senior Counsel
For Mr.C.Suraj

For A3 : Mr.R.Vijayakumar,
For Mr.C.Iyyapparaj

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

For victim/PW.13
in Crl.M.P.No.15793 of 2022 : Mr.David Sundar Singh

JUDGMENT

This Criminal Appeal is directed as against the judgement dated 08.10.2018, passed in S.C.No.44 of 2014 by the learned Principal District and Sessions Judge cum Special Judge for SC/ST Act, Thiruvannamalai, thereby convicting the appellants for the offences under Sections 347, 370, 374 r/w 34 of IPC and Section 18 of the Bonded Labour System (Abolition) Act, 1976 (herein after referred to as “the Bonded Labour Act”)

2. The case of the prosecution is that Blue Metal quarry situated at Keelezhacherry Village, Cheyyar Taluk, owned by the third accused and the first and second accused were said to have been



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managed the said quarry. Prior to February 2012, the accused had brought bounded labourers from their respective villages such as Oonamalsi, Perumbakkam, Siruperpandi, Ullavur, on payment of advance amount of Rs.10,000/- to the families of the victims and treated them as bonded labourers. While they were in working, they were harassed and they have not paid proper wages for many number of years.

3. On the complaint lodged by the International Justice Mission, the revenue officials inspected the quarry and rescued the bonded labourer from the quarry. They were also issued release order and compensation as contemplated under Section 12 of the Bonded Labour Act. On the complaint lodged by the revenue officials, the respondent registered FIR in Crime No.92 of 2019 for the offence under Sections 347, 370, 374 r/w 34 of IPC Section 18 of the Bonded Labour Act, and Section 3(i)(vi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (herein after referred to as “the SCST Act”). After completion of investigation, the respondent has filed final report and the same has been taken cognizance by the trial Court.



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4. In order to prove the charges, the prosecution examined P.W.1 to P.W.35 and marked documents as Ex.P.1 to Ex.P.8. On the side of the accused, no one was examined and marked document as Ex.D.1. On a perusal of oral and documentary evidence, the trial Court found the appellants guilty and convicted them for the offences under Sections 347, 370, 374 r/w 34 of IPC, Section 18 of the Bonded Labour Act, and sentenced them as follows :-

<i>Sl. No.</i>	<i>Conviction</i>	<i>Sentence</i>
1.	Section 347 r/w 34 of IPC	To undergo two years rigorous imprisonment each and to pay fine of Rs.1,000/- each in default to undergo further six months rigorous imprisonment.
2.	Section 370 r/w 34 of IPC	To undergo five years rigorous imprisonment each and to pay fine of Rs.1,000/- each in default to undergo further one year rigorous imprisonment.
3.	Section 374 r/w 34 of IPC	To undergo one year rigorous imprisonment each and to pay fine of Rs.1,000/- each in default to undergo further three months rigorous imprisonment.
	The above sentences ordered to be run consecutively.	

Aggrieved by the same, the present appeal.

5. The learned Senior Counsel appearing for the appellants 1 &



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2 and the learned counsel appearing for the third appellant submitted that no one of the prosecution witnesses whispered about the names of the alleged bonded labourers. They allegedly rescued the victims from the quarry owned by the third accused. The report submitted by the revenue official which was marked as Ex.P.1 was also not mentioned any names of the victim allegedly rescued from the quarry. Therefore, the prosecution failed to prove its case beyond any doubt. All the allegations are bald and vague and the prosecution did not even mention how many victims were rescued from the quarry owned by the third accused.

5.1. They further submitted that the investigation officer was examined as P.W.34 and she deposed that she also assisted the revenue official in the rescue operation and brought the victims in the office of the Revenue Divisional Officer on the same day, on the instruction given by the Deputy Superintendent of Police, who assisted the Revenue Official. However, in her cross examination, revealed that on 10.02.2013 at 2.00 to 2.30 p.m., all the labourers reached the office of the Revenue Division Officer at Cheyyar all of them sent to their respective village. It is also the case of the prosecution that after registration of FIR in Crime No.92 of



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2012 the Deputy Superintendent of Police contacted the respondent to assist the Revenue Divisional Officer. However, no FIR was registered on 10.12.2012 till 5.30 pm. Further when all the victims were sent to their respective villages at 5.30 p.m., on 10.12.2012, there was absolutely no possibility for recording their statement on 10.30 p.m., on the same day.

5.2. Insofar as the offence under Section SCST Act is concerned, there should be authorization under Section 7 of the SCST Act, and without any authorization on 10.12.2012, P.W.35 commenced the investigation and other victims were also examined on the same day by the police. The conviction under Section 370 of IPC cannot be sustained for the reason that the prosecution failed to prove about the buying or disposing or selling any person as a slave. However, there was no charge framed in such a manner by the trial Court and all the allegations are bald and vague.

5.3. It is not the case of the prosecution that the victims had brought as slave for the specific amount. The earliest document viz., the written report of the International Justice Mission was not filed before the trial Court. According to the prosecution, the International Justice



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Mission submitted report before the Collector on 10.02.2012 and only on the basis of the direction, subsequent proceedings have been initiated by the Revenue Officials. The said report was not filed before the trial Court and the prosecution has failed to mark the same. Hence the entire rescue operation is doubtful.

5.4. Insofar as the offence under Section 347 of IPC is concerned, it cannot be sustainable as the prosecution failed to prove the same beyond doubt. The provision under Section 18 of the Bonded Labour Act is also identical and similar to the provisions under Section 374 of IPC. According to the prosecution, P.W.3, 7 and 14 and their family were paid Rs.10,000/- as advance and they were taken to the quarry to work. Whereas, P.W.3 deposed that he received a sum of Rs.20,000/-. His wife was examined as P.W.4 and she did not whisper about the money. P.W.7 failed to depose that he received any amount. P.W.14 also did not depose about the advance amount.

5.5. They further submitted that the respondent completed the investigation and filed final report only after lapse of eleven months. It is



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violation of principle mandatory and the investigation should be done within a period of 60 days under the SCST Act. The provision under Section 18 of the Bonded Labour Act would apply only when there is established the bonded labour debt. There is no proof for bonded debt as defined under Section 2(d) of the Bonded Labour Act. Mere allegations of advancement is not sufficient to satisfy the ingredients of the bonded debt. In support of their contention, they relied upon the following reported judgements :-

(i) 2017 SCC Online Mad 27030 – Singh Vs. Deputy Superintendent of Police

(ii) 2015 SCC Online Mad 14190 – Periyasamy and anr Vs. State

(iii) 2022 SCC Online Mad 1921 – Vijayalakshmi Vs. State

(iv) 1880 SCC Online All 110 – Empress of Inida Vs. Ram Kuar

(v) 2012 SCC Online All 32 – Sageer & ors Vs. State of UP & ors.

(vi) 2019 SCC Online Mad 15650 – Kanniammal Vs. Govindan & ors.

(vii) 2004 Cri.L.J.3075 – Ravi Vs. State of Kerala

(viii) 2017 SCC Online Mad 37697 – Registrar (Judicial), Madras High Court

(ix) (2000) 4 SCC 406 – Allahabad Bank Vs. Canara Bank and anr

Therefore, they prayed for acquittal of the appellants.



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6. Per contra, the learned Government Advocate (Crl.Side) appearing for the first respondent police submitted that the contradiction between the witnesses would not cause any prejudice to the accused. That apart, it should not be fatal to the case of the prosecution. Further the revenue officials on receipt of the complaint went to the scene of crime and rescue the victims. They passed release order separately to each victims and also paid sum of Rs.1,000/- as compensation as contemplated under the Act. All the victims categorically deposed that they were paid advance and they were taken to quarry. They were not allowed to go out and the accused treated them as slave. The poor labourer had no knowledge how to depose before the Court and as such small contradiction between them is not a fatal to the case of the prosecution.

6.1. He further submitted that the revenue officials categorically deposed that on the complaint received from the private non government organization, they lodged complaint. Thereafter, they went to the scene of crime with the assistant of P.W.34 and rescued the victims from the quarry owned by the accused. Hence, the prosecution categorically proved its case beyond doubt and the Court below rightly convicted the



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appellants. In support of his contention, he relied upon the following reported judgments :-

- (i) (2016)5 SCC 371 – Susanta Das and ors Vs. State of Orissa*
- (ii) (1982) 3 SCC 235 – People's Union for Democratic Rights & ors Vs. Union of India and ors.*
- (iii) (1984) 3 SCC 161 – Bandhua Mukki Morcha Vs. Union of India and Ors*
- (iv) Crl.A.No.193 of 2017 dated 19.07.2017 – Raja Vs. Palani Chittiar and ors.*
- (v) (2010) 12 SCC 324 – State of UP Vs. Krishna Master and ors.*
- (vi) HCP.W.P.No.70403 of 2011 dated 05.01.2012 – Sageer and ors Vs. State of UP and ors.*

7. The learned counsel appearing for the victim/P.W.13 submitted that the victims were treated as slaves. They were paid advance amount and thereafter they were not allowed to go to their native place. Though the accused allowed one member of the family to go out, the rest of them were not allowed to go anywhere. The revenue officials came their and rescued them. They were paid Rs.1,000/- each as contemplated under the Act. Therefore, the prosecution proved its case beyond any



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doubt and it doesn't require any interference from this Court.

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7.1. He further submitted that insofar as the contradictions are concerned, on reading of the testimony of the witnesses, they are rustic witnesses who are subjected to fatiguing, taxing and tiring cross-examination for days together, is bound to get confused and make some inconsistent statements. Some discrepancies are bound to take place, if a witness is cross-examined at length for days together. Therefore, the discrepancies noticed in the evidence of a rustic witnesses who are subjected to grueling cross-examination should not be blown out or proportion.

7.2. He also submitted that bonded labour system is defined under Section 2(g) of the Bonded Labour Act and it says that it is usually as a result of advance 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 specified or non specified period for no wages or for nominal wages to forfeit their right to freely sell their labour in the



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market, change their employer or to move about freely in India.

Therefore, if any advance was given, it may have actually been a bonded debt. In the case on hand, all the victims were paid advance and it was nothing but bonded debt. Therefore, all the accused persons are liable to be punished under the Bonded Labour Act.

7.3. He further submitted that any person who is wrongly and illegally employed as a labourer in violation of the provision of the Bonded Labour Act, is essence deprived of his liberty. A bonded labourer truly becomes a slave and the freedom of a bonded labourer in the matter of his employment and movement is more or less completely taken away and forced labour is thrust upon him. Therefore the trial Court rightly convicted the appellants and it doesn't require any interference from this Court.

8. Heard Mr.B.Kumar, learned Senior Counsel appearing for the appellants 1 & 2, Mr.R.Vijayakumar, learned counsel appearing for the third appellant, Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent and Mr. David Sundar Singh,



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learned counsel appearing for the victim/P.W.13.

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9. The brief facts of the case of the prosecution is that the International Justice Mission, Chennai, a non government organization informed by its report through the revenue officials about the quarry at Chinna Ezhachery Village, Cheyyar, on 10.02.2012 and on receipt of the said report, as per the orders of the Collector, Thiruvannamalai, the Revenue Divisional Officer, who was examined as P.W.2 along with Thashildar, who was examined as P.W.1 inspected the quarry which belongs to the third appellant herein and managed by the first and second appellants. The members of the International Justice Mission were examined as P.W.28 and P.W.29. They were also accompanied the revenue officials and found 31 bonded labourers in the quarry and three families were given advance by the first appellant and treated them as bonded labourers. On inspection, the revenue officials conducted enquiry and recorded the statement from the bonded labourers. Thereafter they were released by appropriate release deed separately and sent them to their respective villages. Thereafter, P.W.1 lodged complaint before the Inspector of Police, Dusi Police Station, Cheyyar. The complaint was



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marked as Ex.P.1.

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10. On a perusal of Ex.P.1 revealed that, P.W.1 accompanied with P.W.2 and conducted enquiry. In the quarry, they identified 31 labourers working in the rock quarry and they were bonded labourers. They received advance between Rs.1,000/- to 20,000/- and they had forfeited there freedom in consideration of that advance. They were paid only Rs.17/- to Rs.25/- per day, as wages and that is well below the minimum wages fixed by the government. On the said complaint, FIR was registered in Crime No.92 of 2012 for the offences under Sections 341, 342, 343, 344, 370 & 374 of IPC Sections 9, 16, 17, 18, 20 & 23 of the Bonded Labour Act, and Section 3(i)(vi) of the SCST Act, Sections 3 & 14 of the Child Labour Act 1986, Sections 40 & 45 of the Mines Act, 1952.

11. Admittedly, the complaint or FIR does not mention the names of the victim. According to the revenue officials, they passed release order to release them from quarry and also paid a sum of Rs.1,000/- as contemplated under Section 12 of the Bonded Labour Act.



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However, they failed to produce any order of release, releasing the victim and also to show that they had paid a sum of Rs.1,000/- as contemplated under the Bonded Labour Act to the victims. Further according to the revenue officials, they conducted enquiry and recorded their statement. However, the prosecution failed to produce any statement of the victim and no order was produced by the prosecution.

12. That apart, the members of the International Justice Mission were examined as P.W.28 and P.W.29. According to them, they only informed P.W.2 with regard to the bonded labourers engaged by the appellants. However, the said report was not marked by the prosecution. Further, the prosecution failed to name the victims, even in the FIR or any other documents. The information given by P.W.28 and P.W.29 would not reveal about the identity of the bonded labourers as alleged by the defacto complainant. However, the said information, which was the earliest document, was not produced by the prosecution. As per the Bonded Labour System Abolition Rules, 1976 Rule 7(a), a register containing the names and addresses of the freed bonded labourer should be maintained by the revenue officials. Whereas in the case on hand, it



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has not been furnished to know who were the bonded labourers rescued from the scene of crime.

13. Further, according to P.W.1, he lodged complaint which was marked as Ex.P.1 at about 9.00 p.m., on 10.02.2012, before the Inspector of Police, Dusi Police Station, stating that they conducted inquiry and they rescued 31 bonded labourers. On receipt of the same, P.W.33 registered the FIR in Crime No.92 of 2012 for the offences under Sections 341, 342, 343, 344, 370 & 374 of IPC Sections 9, 16, 17, 18, 20 & 23 of the Bonded Labour Act, and Section 3(i)(vi) of the SCST Act, Sections 3 & 14 of the Child Labour Act 1986, Sections 40 & 45 of the Mines Act, 1952. Whereas P.W.1 deposed that only after registration of FIR, they went to the quarry at about 11.30 a.m., on 10.02.2012 and rescued the bonded labourers. It is completely contrary to the FIR and it is also corroborated by P.W.2.

14. P.W.2 also deposed that on 10.02.2012, they inspected the quarry and rescued the bonded labourers. In fact, after recorded their statement, they were sent to their respective villages. Whereas Ex.P.2



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revealed that it was given only at 9.00 p.m., on 10.02.2012. Therefore, the prosecution failed to prove about the information received from the International Justice Mission and the rescue operation was taken place at about 11.30 am., on 10.02.2012 and rescued the bonded labourers.

15. That apart, the respondent conducted investigation and recorded statement from the victims on 10.02.2012. It is curious that according to the case of the prosecution, the victims were brought to the office of the Revenue Divisional Officer on 10.02.2012 at about 2.00 p.m., to 2.30 p.m., and thereafter all the victims were sent to their respective villages at about 5.30 p.m. Therefore, the deposition of P.W.34 and P.W.35 contradicted to each other and they failed to prove that they were recorded the statement of the victims on 10.02.2012, since FIR itself registered only at 9.00 p.m., on 10.02.2012.

16. It is also seen that all the statement recorded under Section 161 of Cr.P.C., were reached the Court only on 07.01.2013, i.e., after the period of one year. According to Rule 7 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules 1995, the



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Superintendent of Police should take into account of the past experience of the Police Officer not below the rank of the Deputy Superintendent of Police and to authorize such person to investigate. Accordingly, the Investigation Officer viz., the Deputy Superintendent of Police was examined as P.W.35. After registration of FIR, he had taken up the investigation in Crime No.92 of 2012. He did not even whisper about the sanction as per the Rule 7 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules 1995, issued by the Superintendent of Police. As per Rule 7(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules 1995, the Investigation Officer shall complete the investigation and submit report within a period of 60 days. Whereas in the case on hand, the investigation completed the investigation and filed final report only after the period of 11 months. Therefore, the entire investigation is vitiated and the prosecution failed to bring the charges to home in accordance with law.

17. Section 18 of the Bonded Labour Act, will be applicable only if there is an established bonded debt. The bonded labour system is defined under Section 2(g) of the Bonded Labour Act and it says that it is



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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, it may have actually a bonded debt. In the case on hand, there is no proof to show that any bonded debt paid to the victim as defined under the Act. Mere allegations are not sufficient to satisfy the ingredients of the bonded debt.

18. Further the appellants were not identified by the victims. The revenue officials also failed to recover any document to prove the ownership of the third appellant in respect of the quarry. Though P.W.1 & P.W.2 deposed that they had inspected the appellants quarry, they never whispered about the identification of the appellants. The informers viz., P.W.28 and P.W.29 had also deposed that they did not know about the identification of the appellants. Totally the prosecution failed to prove its case beyond any doubt and the investigation also so shabby and highly condemnable.



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19. In view of the above discussions, conviction and sentence imposed upon the appellants in the judgment dated 08.10.2018 passed in S.C.No.44 of 2014 by the learned Principal District and Sessions Judge cum Special Judge for SC/ST Act, Thiruvannamalai, are hereby set aside and the appellants are acquitted from all charges. Fine amount, if any, paid shall be refunded to the appellants forthwith. Bail bonds, if any, executed shall stand cancelled.

20. Accordingly, the Criminal Appeal stands allowed.

09.12.2022
(2/2)

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order

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To

1. The Principal District and Sessions Judge
cum Special Judge for SC/ST Act,
Thiruvannamalai.

2.The Deputy Superintendent of Police,



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Cheyyar Division,
Dusi Police Station,
Thiruvannamalai District.

3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.,

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PRE-DELIVERY JUDGMENT IN
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