

State of M.P. Vs. Sumitrabai and ors.

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Court : Madhya Pradesh

Decided On : Feb-16-2006

Reported in : 2006(2)MPLJ408

Judge : A.K. Gohil, J.

Acts : Child Labour (Prohibition and Regulation) Act, 1986; Code of Criminal Procedure (CrPC) - Sections 378; [Indian Penal Code \(IPC\), 1860](#) - Sections 374

Appeal No. : Criminal Appeal No. 467 of 1999

Appellant : State of M.P.

Respondent : Sumitrabai and ors.

Advocate for Def. : Pradeep Shrivastava, Adv.

Advocate for Pet/Ap. : Mukund Bhardwaj, Panel Lawyer

Disposition : Appeal allowed

Judgement :

A.K. Gohil, J.

1. Appellant-State has filed this appeal under Section 378 of Code of Criminal Procedure against the acquittal of respondents from charge under Section 374, IPC by Judicial Magistrate First Class, Guna in Criminal Case No. 84/97.

2. As per prosecution story, on 25-5-1997, complainant-Ramcharan, father of Prakash, lodged a report at P. S. Dharnavda, District Guna that respondent No. 1-Sumitrabai resident of village Hariuman Moodra has forcibly sent his son Prakash who was aged about 13 years to Delhi and she says that if he will not return her money, his son will be forced to work in lieu of that without money. He further mentioned that one year back, he and his son were engaged to work for respondent-Sumitrabai in lieu of Rs. 12000/- and nine quintals of grain, and now Sumitrabai is demanding Rs. 20,222/- from him and that is the reason why she has sent his son Prakash to Delhi where he will compulsorily work as forced labourer without money. It was also mentioned that his son is being forced unlawfully to compulsory labour and respondents are saying that until the accounts are settled, they will not release his son. On the basis of the aforesaid report, crime was registered, matter was investigated and charge-sheet was filed.

3. During trial, respondents abjured their guilt. Prosecution examined Ramcharan (P.W. 1), father of victim Prakash, Prakash (P.W. 2), Ramratan (P.W. 3), A.S.I.M.C. Bhardwaj (P.W. 4), Raghuvir Singh (P.W. 5) and in defence Bhangwar Singh was examined as D.W. 1. Trial Court after considering the evidence of all the witnesses found that Prakash was not working under compulsion but he was working for Sumitrabai under contract for which she had paid money and, therefore, there is no illegality in the working of Prakash and accordingly acquitted the respondents from the charge under Section 374, I.P.C. against which State has preferred this appeal after obtaining leave.

4. I have heard Shri Mukund Bhardwaj, learned panel lawyer for appellant-State and Shri Pradeep Shrivastava, Advocate, for Respondents.

5. Learned Counsel for the appellant submitted that from the prosecution evidence and from the findings recorded by the trial Court, it is an admitted position on record that Prakash was compelled to work for respondents and he was sent to Delhi. Admittedly, Prakash was a minor and below fourteen years of age. Therefore, there cannot be any valid agreement and if there was any such agreement, the same was void in the eyes of law. Therefore, respondents are liable to be convicted.

6. In reply, Shri Pradeep Shrivastava, learned Counsel for respondents supported the judgment of trial Court and prayed for dismissal of appeal.

7. Having heard learned Counsel for the parties, I have perused the evidence on record.

8. Even the defence of the respondents is that there was an agreement for a sum of Rs. 12000/- with some grain and on the basis of the said agreement, as his father was on leave, Prakash was compelled to work in the house of respondents and was also sent to Delhi. It was also their defence that a sum of Rs. 20,222/- was due against the complainant because of which Prakash was made to work. Therefore, their defence is that Prakash was working under some contract and on the basis of the same analogy, trial Court has recorded a finding that it is not a case of unlawfully compelling a person to work as a compulsory or forced labourer.

9. Ramcharan (P.W. 1), father of Prakash has stated that he had taken Rs. 12000/- as advance from Sumitrabai along with grain. Sumitrabai has taken his son for want of money. Sumitrabai used to say that when her Rs. 20,000/- will be paid, she will return his son. He has further stated that he had agreed to work as a labourer for Rs. 12000/- but there was no agreement that his son would also work. Prakash (P.W. 2), who is the victim of the offence has stated that his father used to work in the house of accused along with him. When his father had gone somewhere as a guest, Sumitrabai thought that his father had run away and then she took him to Delhi. He has further stated that when he requested the accused persons to send him to his home, they told him that when his father will give Rs. 20000/-, they will send him back. In the cross-examination, he has stated that after ascertaining the amount to be paid, his parents had asked the accused persons to send him back, but accused persons did not send him back. Ramratan (P.W. 3) has turned hostile. Raghuvir Singh (P.W. 5) has stated that police had recovered Prakash from the house of Sumitrabai in his presence because Sumitrabai was compelling him to work as a labourer. He has proved recovery memo (Ex. P/3) and Supurdgi memo (Ex. P/4) of Prakash and arrest memo of respondents (Ex. P/5). A.S.I. M. C. Bhardwaj (P.W. 4) has stated that he had recovered Prakash on

7-6-1997 from the house of Sumitrabai. Respondents were compelling him to perform agricultural operations. Recovery memo is Ex. P/3 on which he has signed on A to A part, It is also signed by Sumitrabai and thumb marked by other witnesses. Then he had given Prakash in the Supurdgi of his father vide Ex. P/4 which is signed by him on A to A part. Thus, in nutshell all the witnesses have categorically stated that Prakash was compelled to work as some money was due against his father Ramcharan towards the respondents.

10. Thus, from the aforesaid evidence, it appears that the trial Court has not recorded proper finding in this case. Trial Court prima facie has committed a mistake and has not considered the case from this aspect that at the time of incident, Prakash was a minor boy of 13 years and there cannot be any agreement of labour with him. Even under the provisions of Child Labour (Prohibition and Regulation) Act, 1986. employment of children below 14-15 years has been prohibited by the aforesaid Act as well as under various other acts. The age of the child has been defined under the aforesaid Act as a person who has not completed fourteen years of age. Though, the provisions of the said Act are not applicable in this case, but for forced domestic labour provisions of Section 374, IPC will be applicable. Admittedly at the time of incident, victim Prakash was a minor and was below 14 years. Even under general law, a contract or agreement with a minor is void. Therefore, acquittal of respondents on the ground that there was an agreement between respondents and Prakash for domestic work prima facie appears to be illegal. Even his father could not have entered into such kind of agreement or contract for minor. It is nobody's case that Prakash had not worked or he was not sent to Delhi to work forcibly. Sufficient and reliable evidence is available on record against the respondent for unlawfully taking compulsory labour from minor Prakash. Even Bhanwar Singh (D.W. 1) has admitted in his cross-examination that Prakash was working in the house of respondent No. 1- Sumitrabai and he is the son of Ramcharan. Ramcharan had taken money from Sumitrabai and some money was due from Ramcharan. Therefore, even from the evidence of Bhanwar Singh (D.W. 1), it is found proved that money was due and from the prosecution evidence it is also found proved that Prakash was unlawfully compelled to work as a forced and compulsory, labourer in lieu of some money which was taken by his father. If minor Prakash was forcefully compelled to work

or labour, it constitutes an offence punishable under Section 374, IPC.

11. Thus, considering in totality the evidence on record, this appeal deserves to be allowed and is accordingly allowed. Judgment of acquittal delivered by trial Court is hereby set aside. Respondents who are mother and son are held responsible for committing the offence under Section 374, IPC and thus convicted under Section 374, IPC.

12. On the question of sentence, learned Counsel for the respondents prayed that jail sentence may not be awarded as respondent No. 1 is a widow lady of more than 55 years and respondent No. 2 is a young boy. There are no allegations against respondent No. 2 and all the allegations have been made against respondent No. 1. He further submitted that they have been facing the agony of criminal trial for last more than 10 years therefore sentence of fine will meet the ends of Justice for which learned Counsel for the appellant has no objection.

13. Consequently, this appeal is allowed. Respondents are convicted under Section 374 of IPC and instead of awarding any jail sentence they are awarded with fine sentence of Rs. 5000/- each. Respondents are directed to deposit the fine amount of Rs. 5000/- (rupees five thousand only) each within sixty days from today failing which each of the respondents shall further undergo S.I. for three months. Out of the fine amount so deposited, a sum of Rs. 5000/-(rupees five thousand only) be paid to victim Prakash as compensation. Bail bonds and sureties of respondents shall stand discharged on their depositing the amount of fine as indicated above.