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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA Nos.126, 122, 133 of 2017, 887 of 2019, 247 of 2020,
JCRLA Nos.76 & 82 of 2018 and CRLA No.583 of 2022

In CRLA No.126 of 2017

Bana Majhi *Appellant*
Mr. Mithun Das, Advocate
-versus-
State of Odisha *Respondent*
Mr. Sonak Mishra, ASC

In CRLA No.122 of 2017

Mantu Nial *Appellant*
Mr. S.K. Mohanty, Advocate
-versus-
State of Odisha *Respondent*
Mr. Sonak Mishra, ASC

In CRLA No.133 of 2017

Prabesh Dundi @ Parme Dundi *Appellant*
Mr. D. Nayak, Sr. Advocate
-versus-
State of Odisha *Respondent*
Mr. Sonak Mishra, ASC

In CRLA No.887 of 2019

Bimal Rout *Appellant*
Mr. S.K. Mohanty, Advocate
-versus-
State of Odisha *Respondent*
Mr. Sonak Mishra, ASC

In CRLA No.247 of 2020

Arjun Bhoi *Appellant*
Mr. S.K. Mohanty, Advocate

State of Odisha *Respondent*
Mr. Sonak Mishra, ASC

In JCRLA No.76 of 2018

Bimala Rout *Appellant*
Ms. Gayatri Patra, Advocate
(Amicus Curie)

State of Odisha *Respondent*
Mr. Sonak Mishra, ASC

In JCRLA No.82 of 2018

Arjun Bhoi *Appellant*
Mr. S.K. Mohanty, Advocate

State of Odisha *Respondent*
Mr. Sonak Mishra, ASC

In CRLA No.583 of 2022

Baikuntha @ Baijanth Rauti *Appellant*
Mr. S.K. Mohanty, Advocate

State of Odisha *Respondent*
Mr. Sonak Mishra, ASC

CORAM:
JUSTICE B.P. ROUTRAY
JUSTICE CHITTARANJAN DASH

DATE OF JUDGMENT : 29.09.2023

Chittaranjan Dash, J

1. Heard learned counsel for the parties.

2. Chief Justice P.N. Bhagwati has aptly described “the bonded labourers as “non-beings, exiles of civilization living a life worse than that of animals, for the animals are at least that of animals, for the animals are at least free to roam about as they like and they can plunder or grab food whenever they are hungry, but these outcasts of society are held in bondage and robbed of their freedom even.”

3. Thus bonded labour is a situation or circumstance whereby a person is robbed off his basic human rights guaranteed to him by the constitution and is devoid of even the primary human necessities. It is a heinous act that requires be reprimanding and abolishing in letter and spirit. In the present, we are in seisin over a matter where the bonded labourers are encountered with an absolute barbaric act in the hands of so called labour contractor who not only fooled the labourers and fraudulently took away the money owed to them but also subjected them to the most monstrous act, before which even death would appear as an alluring option.

4. The sordid incident is before us in these eight Appeals which are directed against the judgment and order dated 24th December 2016 passed by the learned Addl. Sessions Judge-cum-Special Judge, Dharamgarh, Kalahandi in C.T. (Special Act) Case No.11 of 2014/C.T. (Special Act) Case No.27 of 2014. The learned court having framed charges against the Appellants in the offences U/s. 364-A, 365, 342, 323, 326, 307, 201, 506, 294, 370, 371, 420 read with Section 34 and 120-B IPC along with offence under section 3(2)(V) of the SC&ST (PA) Act 1989; Section 26 of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979; Section 16 & 17 of Bonded Labour System (Abolition) Act 1976 while found them not guilty in the offences U/s 294/371/34 IPC; under section 3(2)(V) of the SC & ST (PA) Act,1989 and under section 26 of the Inter State Migrant Workmen

(Regulation of Employment of Condition of Service) Act 1979, found guilty in other offences and having convicted them there for sentenced as under:

(I) The convicts Bimal Rout, Mantu Nial, Jaysen Thela, Arjun Bhoi, Bana Majhi and Parbesh @ Parme Dundi each are sentenced to undergo imprisonment for life and payment of fine of Rs.20,000/-(Rupees Twenty Thousand) each, in default of payment of fine to undergo R.I for one year each for the offence U/s. **364-A/34** of the IPC.

(II) The convicts Bimal Rout, Mantu Nial, Jaysen Thela, Arjun Bhoi, Bana Majhi and Parbesh @ Parme Dundi) each are sentenced to undergo R.I. for five years and to pay fine of Rs.10,000 (Rupees Ten Thousand) each in default of payment thereof to undergo R.I. for six months each for the offence U/s. **365/34** of the IPC.

(III) The convicts Bimal Rout, Mantu Nial, Jaysen Thela, Arjun Bhoi, Bana Majhi and Parbesh @ Parme Dundi each are sentenced to undergo R.I. for six months for the offence U/s. **342/34** of the IPC.

(IV) The convicts Bimal Rout, Mantu Nial, Jaysen Thela, Arjun Bhoi, Bana Majhi and Parbesh @ Parme Dundi each are sentenced to undergo R.I. for ten years and pay fine of Rs.20,000/- (Twenty Thousand) each in default of payment of fine to undergo R.I. for one year each for the offence U/s. **370/34** of IPC.

(V) The convicts Bimal Rout, Mantu Nial, Jaysen Thela, Arjun Bhoi, Bana Majhi and Parbesh @ Parme Dundi each are

sentenced to undergo R.I. for two years for the offence U/s. **506/34** of IPC.

(VI) The convicts Bimal Rout, Mantu Nial, Jaysen Thela, Arjun Bhoi, Bana Majhi and Parbesh @ Parme Dundi each are sentenced to undergo R.I. for three years and to pay fine of Rs.5,000/-(Rupees Five Thousand) each and in default, to undergo R.I. for six months each for the offence U/s. **420/34** of IPC.

(VII) The convicts Bimal Rout, Mantu Nial, Jaysen Thela, Arjun Bhoi, Bana Majhi and Parbesh @ Parme Dundi) each are sentenced to undergo R.I. for two years and to pay fine of Rs.2,000/- each separately for the offence U/s. **16 & 17** of the Bonded Labour System (Abolition) Act, 1976 in default of payment of fine to undergo R.I. for three months for each of the offence U/s. **16 & 17** of the Act, 1976.

(VIII) The convicts Jaysen Thela, Arjun Bhoi, Bana Majhi, Parbesh @ Parme Dundi and Baikuntha Rauti are sentenced to undergo R.I. for six months for the offence U/s. **323/34** of the IPC.

(IX) The convicts Jaysen Thela, Arjun Bhoi, Bana Majhi, Parbesh @ Parme Dundi and Baikuntha Rauti each are sentenced to undergo R.I. for ten years and to pay a fine of Rs.10,000/-(Rupees Ten Thousand) and in default of payment of fine to undergo R.I. for one year each for the offence U/s. **326/34** of the IPC.

(X) The convicts Jaysen Thela, Arjun Bhoi, Bana Majhi, Parbesh @ Parme Dundi and Baikuntha Rauti each are sentenced to undergo imprisonment for life and to pay a fine of Rs.20,000/- (Rupees Twenty Thousand) in default of payment of fine to undergo R.I. for one year each for the offence U/s. **307/34** of the IPC.

(XI) The convicts Jaysen Thela, Arjun Bhoi, Bana Majhi, Parbesh @ Parme Dundi and Baikuntha Rauti each are sentenced to undergo R.I. for one year and to pay a fine of Rs.5,000/- (Rupees Five Thousand) in default to payment of fine to undergo R.I. for three months each for the offence U/s. **201/34** of the IPC.

(XII) All the convicts, i.e. Bimal Rout, Mantu Nial, Jaysen Thela, Arjun Bhoi, Bana Majhi, Baikuntha Rauti, and Parbesh @ Parme Dundi each are sentenced to undergo imprisonment for life with payment of fine of Rs. 20,000/- (Rupees Twenty Thousand) each and in default of payment of fine to undergo R.I. for one year each for the offence, i.e. criminal conspiracy U/s. **120-B** of the IPC for having conspired for offence U/s. **364-A/365/342** and **307** read with **34** of the IPC and section **16 & 17** of the Bonded Labour System (Abolition) Act, 1976 with further direction that the substantive sentences are to run concurrently.

5. Succinctly, the prosecution case, as reveals from the FIR and the case record, is that the Appellant Bimal Rout, Mantu Nial and the absconded accused Parsuram Naik persuaded Nilambar Dhangda Majhi, Dialu Nial and other labourers of their village as well as the nearby village to go to Raipur

with them for being engaged for work in brick-kiln in order to earn more wages, i.e. @ Rs.20,000/- per month. Being allured by the said Appellants Bimal Rout, Mantu Nial and Parsuram Naik, the persons namely Nilambar Dhangda Majhi and his wife Manjula Majhi, Amarsingh Naik and his wife Ambika Naik, Jaya Parabhoje, Bhumisuta Parabhoje, Dialu Nial, Mahendra Kar and Pipula Naik were taken by the said three Appellants initially to village Sinapali in a vehicle. At Sinapali three other Appellants, namely, Arjun Bhoi, Bana Majhi and Jaysen Thela joined the above named three Appellants. All the above said Appellants thereafter proceeded to the house of the other Appellant, namely, Parbesh @ Parme Dundi at village Kotamal where the labourers were kept in the house of Parbesh Dundi for about eight days. During the said period, the owner of the brick-kiln came to the house of Parbesh Dundi. The Appellant Parbesh Dundi allegedly gave some amount to the Appellant Bimal Rout, and Bimal Rout out of the said money gave some amount to the labourers including Nilambar Dhangda Majhi and Dialu Nial. However, immediately thereafter, Appellant Bimal Rout took away the said amount from all the labourers on the plea that he would give the said money to their respective family members in the village. In the same night the Appellants Parbesh Dundi and Jaysen Thela asked all the labourers to get ready to proceed to Hyderabad for being engaged in the work. Thereafter, the Appellants Parbesh Dundi, Jaysen Thela, Arjun Bhoi, Bana Majhi, Mantu Nial, Bimal Rout and Parsuram Naik took them to Khariar and from there to Raipur Railway Station.

6. At Raipur Railway Platform, Parbesh Dundi and Parsuram Naik picked up quarrel with each other for their respective share in money. Appellant Parbesh Dundi forced the labourers including Nilambar Dhangda Majhi and Dialu Nial to get into the train to proceed to Hyderabad but the labourers did not agree for the same. Appellant Parbesh Dundi and other Appellants threatened

to kill them if they would not proceed to Hyderabad for being engaged in labour work. So, out of fear all the labourers boarded the train at Raipur Railway Station. The Appellants too moved in the train along with them. While they were proceeding, the labourers namely Amarsingh Naik, his wife Ambika Naik and Mahendra Kar got down from the train in the next railway station and managed to escape. When the train stopped in the subsequent railway station, other three labourers namely, Jay Parabhoje, his wife Bhumisuta Parabhoje and Manjula Dhangda Majhi wife of Nilambar Dhangda Majhi managed to escape from the train. Thereafter when the train reached in another railway station, the Appellants forced the two labourers Nilambar Dhangda Majhi and Dialu Nial to get down from the train. They took Nilambar Dhangda Majhi and Dialu Nial to Raipur by train. At that time some other persons were waiting for them in that station at the instance of Appellant Parbesh Dundi. The Appellants namely, Bimal Rout and Parsuram Naik along with his sister Pipula Naik managed to escape from the railway station leaving Nilambar Dhangda Majhi and Dialu Nial in the custody of other Appellants. Thereafter, Appellant Parbesh Dundi, Arjun Bhoi, Bana Majhi threatened to kill Nilambar Dhangda Majhi and Dialu Nial and also assaulted them. The Appellants Bana Majhi, Parbesh Dundi and Arjun Bhoi took Nilambar Dhangda Majhi and Dialu Nial to Kantabanji by train.

7. From Kantabanji said Nilambar Dhangda Majhi and Dialu Nial were taken to the house of Parbesh Dundi at village Kotamal. The above mentioned three Appellants, namely, Bana Majhi, Arjun Bhoi and Parbesh Dundi assaulted Nilambar Dhangda Majhi and Dialu Nial in the house of Parbesh Dundi and demanded Rs.2,00,000/- (Two Lakhs) from Nilambar Dhangda Majhi and Dialu Nial under threat of being killed. Dialu Nial contacted his family members and his elder brother Arjun Bhoi over phone to bring Rs.2,00,000/- and to rescue them. When the Appellants did not get the demanded money,

they assaulted Nilambar Dhangda Majhi and Dialu Nial time and again. The Appellants thereafter engaged Nilambar Dhangda Majhi and Dialu Nial forcibly in the cotton field of Appellant Parbesh Dundi to do the labour work. Out of fear and compulsion both Nilambar Dhangda Majhi and Dialu Nial got engaged in labour work in the cotton field of Parbesh Dundi for about 8 to 10 days. Both Nilambar Dhangda Majhi and Dialu Nial were then forcibly confined in a room in the house of the Appellant Parbesh Dundi and the door of the room was locked from outside. On one night the Appellants Arjun Bhoi, Parbesh Dundi, Baikuntha Routi, Jaysen Majhi, Gangadhar Dash and Bana Majhi took Nilambar Dhangda Majhi and Dialu Nial from the house of Parbesh Dundi to the house of Jaysen Majhi and carrying a Tangia (axe) from the house of Jaysen they took them to the nearby village. On the way, said Appellants consumed liquor, and after reaching that place inside a forest, the Appellants Arjun Bhoi, Parbesh Dundi, Baikuntha Routi, Jaysen Majhi, Gangadhar Dash and Bana Majhi asked Nilambar Dhangda Majhi and Dialu Nial to give them either their life or limbs. When they did not agree to give their lives or limbs, the Appellant Parbesh @ Parme Dundi told the other Appellants to chop the hands of Nilambar Dhangda Majhi and Dialu Nial.

8. Accordingly, on the direction of Parbesh Dundi, the Appellants caught hold of Nilambar Dhangda Majhi and Dialu Nial separately. Appellant Baikuntha Routi and Jaysen Majhi chopped the right hand from the wrist of Nilambar Dhangda Majhi and Dialu Nial one after the other by means of Tangia (axe) resulting in decapitating the hands with severe bleeding. Being injured, both Nilambar Dhangda Majhi and Dialu Nial screamed on the spot at the top of their voice and managed to escape from the sight of the Appellants, and after walking down for an hour reached a village and went to a hotel available there. They disclosed about the incident to the owner of the hotel. The hotel owner provided polythene by which the injured tied their chopped hands and

with the assistance of some of the villagers they boarded a bus and came to the District Headquarters Hospital at Bhawanipatna and underwent treatment.

9. While the injured were undergoing treatment at DHH, Bhawanipatna, their respective family members met them and attended, where-after the IIC, Town PS, Bhawanipatna proceeded to the hospital and informed the IIC, Jaipatna, the jurisdictional police. On the basis of the information, the IIC, Jaipatna made the Station Diary Entry bearing No.296 of 2013 and proceeded to DHH, Bhawanipatna. On the very next day, i.e. on 16.12.2013 the elder brother of the injured Arjun Nial of village Pipalguda lodged a written report under Ext. 2. Pursuant to the FIR vide Ext.2, the IIC, Jaipatna P.S. took up the investigation. In course of investigation, the IIC, Jayapatna P.S. examined the Informant Arjun Nial, the injured victims Nilambar Dhangada Majhi and Dialu Nial, at the District Head Quarters Hospital, Bhawanipatana while they were undergoing treatment and issued injury requisition in their favour, recorded the statements of the family members of the aforesaid two injured, visited the spot where the injured Nilambar and Dialu had come to Bhawanipatana by bus, prepared the spot map under Ext.15, examined the co-labourers of the injured to whom the Appellants had also taken for engaging them in work along with Nilambar and Dialu but they managed to escape from the clutches of the Appellants. However, the IIC, Jayapatna P.S. having come to know that injured Nilambar and Dialu belong to Scheduled Tribe and Schedule Caste community, so also some others belonging to the General Caste, requested the S.D.P.O., Dharmagarh to take up the investigation of the case and accordingly the S.D.P.O., Dharmagarh took up the investigation of the case as handed over to him by the IIC, Jayaptana P.S along with the connected papers. On 21.12.2013, one amongst the victim labourers of the alleged incident namely Jaya Parabhoye, who too had lodged another FIR under Ext.1 before the IIC, Jayapatna narrating the same incident as that of

Ext.2, the IIC, Jayapatana P.S. registered Jayapatna P.S. Case No. 246 of 2013 under Ext.1.

10. In course of the investigation the I.O. examined the Informant, i.e. Jaya Parabhoye. In this case too, having come to know the Informant to be from Schedule Caste community with sub-caste Lohara, the IIC requested the S.D.P.O, Dharmagarh to take up the investigation in respect to the Jayapatana P.S Case No. 246 of 2013, as in the case of Jayapatana P.S. Case No. 241 of 2013. So the S.D.P.O., Dharamgarh finally took up the investigation in both the P.S. Cases. The S.D.P.O., Dharamgarh in course of his investigation examined the IIC, Jayapatna P.S, other witnesses, recorded their statements U/s.161 Cr.P.C, visited the spot and prepared the Spot Map in respect to the place from where the labourers were taken first by the Appellants Bimal Rout, Purshuram Naik and Mantu Nial, examined others witnesses, visited the house of the Appellant Prabesh @ Parme in village Kotamal under Khariar Police Station where the victims were kept in confinement, prepared the Spot Map under Ext.20, examined other witnesses, seized the documents and incriminating materials including the vehicle, i.e. Marshal Jeep bearing Regd. No. OR-02-J-2263 from its owner Narayan Ketaki under Ext.21, took the assistance of the scientific team, i.e. DFSL, Bhawanipatna, prepared other Spot Maps under Ext.15 and 22 wherein the hands of Nilambar and Dialu were chopped inside the forest, seized the blood stain and sample earth from the spot on being produced by the Scientific Team after its collection through Seizure List under Ext.6, arrested the Appellants Baikuntha Rauti, Arjun Bhoi, Bana Majhi; arrested the other Appellants namely Bimal Rout, Parsuram Naik, Parbesh Dundi and Mantu Nial and forwarded them to the court on the next day; seized other incriminating materials, the blood stained wearing apparels; made prayer before the learned J.M.F.C., Jayapatana to take Appellant Prabesh @ Parme Dundi on police remand for the purpose of

interrogation; while in police custody as the Appellant Prabesh @ Parme Dundi volunteered to give statement confessing his guilt and to give recovery of the weapon of offence concealed after the commission of crime, his statement was recorded U/s. 27 of the Evidence Act under Ext.4, subsequent to the statement the said Appellant laid the police along with the witnesses to give recovery of the “Tangia” (axe) which the I.O. seized under M.O.-II used in chopping of the right hand from the wrist of the labourers inside forest near Sindhekela; re-examined the injured Nilambar Dhangdamajhi and Dialu Nial, conducted the T.I. Parade in respect of the Appellants namely Baikunta Rauti, Gangadhar Das, Bana Majhi, Jaysen Thela, Arjun Bhoi and Prabesh Dundi, received the injury reports in respect to the injured under Exts.10 & 12 from the doctors at DHH, Bhawanipatana, made queries from the said doctors under requisitions vide Exhibits 11/4 and 13/4; sought for the opinion from the doctors as to whether the chopped wounds of injured Nilambar & Dialu under Exhibits 10 & 12 could be possible by the said weapons, i.e. Tangia (axe) and whether the wounds of the injured are fatal, if would not have been treated in time.

11. As per the order of the court, the I.O sent the seized incriminating articles including the seized weapons of offence under M.Os. I, II, IV and V to the RFSL, Berhampur. He seized the photographs of the spot under Ext.9. Upon completion of the investigation, the I.O. submitted charge-sheet in Jayapatna P.S. Case No. 241 of 2013 and 246 of 2013 against nine accused persons namely Prabesh Dundi, Jaysen Thela, Baikunta Rauti, Arjun Bhoi, Gangadhar Das, Bana Majhi, Bimal Rout, Mantu Nial and Parshuram Naik on 18.04.2014.

12. Upon commitment of the case to the court of Addl. Sessions Judge, Dharamgarh in C.T Case No.11 of 2014 against Jayapatna P.S. Case No. 241 of 2016 and C.T Case No. 27 of 2014 arising out of Jayapatna P.S. Case No.

246 of 2013, both the cases were tagged for hearing under one trial. As one of the co-accused Parsuram Naik remained absent after commencement of trial, his case was split up, and out of the nine accused, the trial proceeded against the eight. One of the convict namely Jaysen thela is not in Appeal before us. Therefore, the rest seven preferred Appeal. However, as one out of the seven namely Gangadhar Das, the Appellant in CRLA No. 107 of 2017 was released prematurely from custody by the order of the Government communicated through the Directorate of Prison and Correctional services, Odisha, Bhubaneswar, he did not want to pursue his Appeal and, as such, the Appeal against the said Appellant Gangadhar Das stood disposed of as withdrawn. In the present, therefore, the Appeals are heard in respect to six Appellants namely Mantu Nial, Bana Majhi, Parbesh Dundi @ Parme Dundi, Bimal Rout, Arjun Bhoi and Baikuntha @ Baijnath Rauti as described in the Cause-title, which, having heard analogous, are disposed of by this common judgment.

13. The plea of the defence for all except Appellant Arjun Bhoi is one of complete denial and false implication. As far as the Appellant Arjun Bhoi is concerned, he disputed the happening of the entire incident.

14. Upon denial of the prosecution gravamen, the learned trial court formulated the points for determination and decided the case.

15. To prove the culpability, the prosecution examined as many as eighteen (18) witnesses and proved 33 documents vide Exts. 1 to 33/1 besides M.O - I to M.O.-VI. The defence on the other hand cited one Narayan Ketaki as D.W.1 but did not rely upon any documents.

16. Primarily the trial court considered the testimonies of the two star witnesses namely Nilambar Dhangada Majhi and Dialu Nial, the injured

victims examined as P.Ws.2 and 6 besides the surrounding circumstances and the evidence of the post occurrence witnesses.

17. Regard being had to the fact that the learned trial court primarily and absolutely relied on the evidence of P.Ws.2 & 6, the injured witnesses, it is worth to reproduce them in verbatim for appreciation. The same are as follows:-

P.W. 2.

1. I know the Informant, I know the accused persons in this case. Occurrence took place about two and half years back. The accused persons namely Bimal Rout, Mantu, and Parsu told us that there will be wage of Rs.20,000/- if we work in the brick kiln at Raipur. I agreed to the same. The said three accused persons took myself and my wife along with 11 others us to Dharamgarh. Thereafter they took us to village Sinapali by a vehicle. At village Sinapali the accused persons namely Arjun, Bana and Thela accompanied with us. Thereafter the accused persons took us to the house of the accused Parme in village Kotaml. The accused Bimal provided rice to us. We stayed in village Kotamal for about eight days. The owner of the brick kiln came to village Kotamal on being called by the accused persons namely Parma and Thela over phone. The accused Thela gave some amount to the contractor of labourers. The contractor gave some amount to the accused Parme. The accused Parme gave the said amount to accused Bimal to give the same to us. The accused Bimal was the supervisor working under the contractor. The accused Bimal gave some amount to each of us and he took the said amount from us immediately saying to give the same at hour home to our family members. Bimal left Kotamal to our village. The accused persons Parme and Thela asked us to get ready to proceed to Hyderabad for labour work

on the same night. The accused persons namely Parma, Thela and another person took all of us to Khariar by a vehicle. The accused persons Parsu, Bimal and Parma took all of us to Raipur by a bus. The said three accused persons took us to Railway Platform at Raipur. The accused persons Parma and Parsu picked up quarrel between themselves relating to sharing of money. The accused Parme wanted us to get into a train to proceed to Hyderabad. Accordingly, we got into a train at Raipur Platform. The accused Parme forced us to get into the train. He threatened to kill us unless we proceed to Hyderabad for labour work. While we were proceeding by the train, the train stopped at a railway station. Three of labourers namely Amar Singh Naik, his wife Ambica Naik and Mahendra Kar got down from the train and managed to escape. When the train stopped at another station, three other labourers namely Jaya Parabhoi, Bhumisuta Parabhoi and my wife Manjula escaped from the train. When the train reached another station the accused persons namely Parsu and Bimal forced us to get down from the train. Accordingly, we got down from the train as per their direction. The accused persons Parsu and Bimal took myself and five other labourers including Dialu Nial to Railway Station wherefrom we proceeded to Raipur by a train. Bimal and Parsu were along with us. Some persons were waiting at Raipur Station at the instance of Parma. We got down from the train at Raipur Railway Station. The accused persons namely Bimal, Parsu and his sister left that place giving us in custody of the persons who were waiting at Railway Station for us. I myself and Dialu Nial were sitting at Railway Station and other labourers managed to escape from that place. The accused persons Parme, Arjun, Bana and two others came to us. They wanted us to proceed with them. They threatened to kill us if we raise shout and wanted

us to proceed to a lodge. The said three accused persons and their associates took us to a hilly area (Dangar area) and assaulted me and Dialu Nial by hands. From that place they took us to a railway station wherefrom they took us to Kantabanji by train. We got down from train at Kantabanji railway station. The accused persons Parme, Arjun and Bana and their two associates took us to another place. They took us to another place by a bus. Thereafter they took myself and Dialu Nial to village Kotamal by a vehicle. They took both of us to the house of Parme. One of the associates of the said accused dealt kicks to me and Dialu Nial at the house of the accused Parme. The accused Parme asked both of us to get Rs.2,00,000/- and to contact our family members over phone accordingly. He also threatened to kill us unless Rs.2,00,000/- was given to him. Dialu Nial contacted his family members over phone. He asked the Informant to bring Rs.2,00,000/-. The accused Parme asked Dialu to contact his family members to collect Rs.2,00,000/- from Parsu and Bimal. Dialu informed the Informant accordingly. Parme also asked the Informant over phone to collect Rs.2,00,000/- from Parsu and Bimal, otherwise he threatened to kill us. I also asked the Informant over phone to inform the matter to our family members. Accused persons namely Arjun Bhoi and Parma Dundi and another person assaulted me and Dialu repeatedly. The accused Parma engaged me and Dialu in his cotton field where we had done labour work. On that evening the accused Arjun assaulted both of us. The accused Parma and his father confined both of us in a room by locking the door from outside. We both were engaged in labour work there for about eight days. On a night six accused persons (Identified the accused persons namely Arjun Bhoi, Parbesh Dundi, Baikuntha Routi, Jaysen Thela, Gangadhar Das and Bana Majhi in dock) took me and

Dialu Nial from the house of Parme near the house of Jayasen Thela by a Marshal vehicle. The wife and son of the accused Jaysen Thela brought a Tangia and a file (Instrument for sharpening) and kept the same in Marshal Vehicle. The said accused persons took me and Dialu to a strange place by the said Marshal vehicle. On the way consumed liquor. On the way Parma himself drove the vehicle. The said accused persons were talking themselves that the place as Beldungri. The said accused persons put Gamuchha on my neck and made attempt to throttle me. The accused Parbesh Dundi restrained others and told not to throttle me. He asked other to chop our hands. The said accused persons took me and Dialu to a hilly area (Dunger area). They asked us whether we want to give our lives or limbs. Parma asked other accused persons to chop our hands, the accused persons Thela and Bana caught hold of me and the accused Baikuntha chopped my right hand by means of a Tangia. I sustained severe bleeding injury by such assault. The said three accused persons also chopped the right hand of Dialu Nial by means of Tangia. We escaped from the spot. The said accused persons were searching for us. We proceeded by walk for one hour and reached a village. Thereafter we reached a hotel and disclosed about the incident to the hotel owner. He gave a polythene by which we tied our hands. With the assistance of some villagers we sat in a bus and went to Bhawanipatana Hospital. I myself and Dialu had undergone treatment at DHH. Bhawanipatana for few days and thereafter we were shifted to Burla Hospital. We had undergone treatment at Burla Hospital for some days. After returning from Burla we had attended T.I. Parade at Sub-Jail, Dharmgarh. I indentified the accused persons namely Parma Dundi, Arjun Bhoi, Jayaseen Thela and Bana Majhi in T.I. Parade. The Informant lodged FIR at the P.S.

P.W.6

1. The Informant Arjun Nial is my brother. I also know victim Nilambar Dhangadamajhi. I know the accused persons standing in the dock as well as the absentee accused Parsuram Naik. The occurrence took place about two years back. The accused persons namely Bimal and Parsu contacted us and told that there would be wage of Rs.10,000/- to each if we do labour work in a brick manufacturing factory at Hyderabad. We 12 labourers including myself and Nilambara agreed to their proposal. The accused persons namely Bimal, Parsu, and Mantu took all 12 labourers including myself and Nilambar Dhangadamajhi to village Sinapali by bus via Dharamgarh. From Sinapali the said three accused persons along with Jaysen Thela and Arjun Bhoi took us to Kotamal village by a pickup van. They took us to the house of accused Parme in village Kotamal. The accused Parme gave to each of us Rs.10,000/-. He also gave me Rs.10,000/- saying that the same will be given to our family members. From village Kotamal, the accused Parme took us to Khariar by a Marshal vehicle. Thereafter, the accused Parme took all 12 labourers including myself to Raipur by bus. From Raipur we were taken by a train by the accused Parme. He told us to proceed to Hyderabad by a train. He was all along with us. The victim Nilambar was also with us. One Parabhoye family was also with us. While we were proceeding by train there was a quarrel among the accused persons who were taking us to Hyderabad. Some of the labourers got down from the train at different Railway Stations. The accused persons Bimal and Parshu with their families, I myself and Nilambar got down from the train at a Railway Station. The accused persons Bimal and Parsu asked me and Nilambar to proceed to Raipur. They took myself and

Nilambar by train. We got down from the train at Raipur as directed by Bimal and Parshu. The accused Parme and four others were waiting for us at Raipur Railway Station. Bimal and Pursu left the Railway Station. Among those four persons who were with us are Parma, Arjun Bhoi, Bana Majhi and the son of Jaysen Thela. The said accused persons forcibly took us to a strange place in Raipur. They also assaulted me and Nilambar. They threatened to kill us and tied our hands and legs. The said accused persons took me and Nilambar to a Railway Station. They took both of us to Kantabanji by train. From Kantabanji they took both of us to a strange place by walk. From that place they took us to Khariar by bus. Thereafter, they took us to village Kotamal by jeep. They took us to the house of accused Parme. All the said accused persons assaulted me and Nilambar at the house of Parme. They forced me to contact my family members over phone to get Rs.2,00,000/- for our release. Parme gave me a mobile phone. Accordingly, I contacted my brother Arjun Nial over phone. I told my brother Arjun over phone to come with Rs.2,00,000/- for our release from the custody of the said accused persons. The accused Parme also asked my brother Arjun over phone to give him Rs.2,00,000/- for our release from their custody. The accused Parme and Arjun were repeatedly assaulting me and Nilambar,. They took both of us to their cotton field and engaged us as labourers. They kept us as such for about ten days there. They confined me and Nilambar in a room by locking the door from outside. The said accused persons wanted both of us to leave at our house. During one night, the accused persons namely Arjun Bhoi, Jayasen Thela along with the accused persons Gangadhar, Bana, Baikuntha, Parme (indentified in dock) threatened me and Nilambar to kill us by cutting our hands and legs. The accused Jayasen Thela had brought a Tangia. All the

said six accused persons took me and Nilambar to a forest by a Marshal vehicle on the same night. The accused Parme drove the vehicle and the driver of the vehicle Gangadhar assaulted both of us. They forced me and Nilambara to get down from the vehicle in the forest in the night. They took Nilambar from the vehicle by tying a Gamuchha on his face. Those six accused persons forcibly took me to a place in the forest. They were saying to cut my limbs. The accused Jayasen Thela chopped my right palm by means of a Tangia and other accused persons caught hold me. I sustained severe bleeding due to chopping of my hand and became senseless. When I regained my sense I heard those accused persons threatening to kill us. So I and Nilambar concealed ourselves in a place. The right hand of victim Nilambar was also chopped by those accused persons. Thereafter the accused persons left that place. I and Nilambara went by walk and reached a hotel nearly in the morning. We narrated the incident to the Hotel Keeper. He gave us polythene by which we tied our cut hands. I and Nilambara went to Bhawanipatna by a bus. We went to DHH, Bhawanipatna. We sent information to our family members. Thereafter our family members came to DHH, Bhawanipatna. I narrated the incident to them. My brother Arjun Nial lodged FIR. We had undergone treatment at Bhawanipatna and thereafter we were referred to Hospital at Burla. I and Nilambar had undergone treatment at Burla Hospital for about 20 days. Police took us to Jaipatna. I indentified all the five accused persons in T.I. Parade at Sub-Jail, Dharamgarh. I identified the accused persons namely Arjun. Jayasen, Parme, driver Gangadhar and Bana Majhi in T.I. Parade in the Sub-Jail, Dharmgarh.

18. The evidence of both the injured witnesses is not only consistent to each other in substratum but is in absolute corroboration to the prosecution

story. The vivid narration made by the witnesses with regard to the manner in which they got allured to proceed from their villages for being engaged in work with a hope to earn huge remuneration, the mode of travel, the confinement made to them in different places, the threat exhorted to them, torture inflicted upon them and above all hurt caused to them are coherent not only in respect to the statements of each other but also to their earlier statements recorded under Section 161 Cr.P.C so also to the medical evidence. Both the witnesses were subjected to incisive cross-examination, but nothing material could be elicited through them to dislodge the consistent evidence in any manner. Rather the robust answer from the witnesses reinforced the unsavory manner of treatment being inflicted to the injured victims and others well substantiates the offences alleged. The testimony of the post occurrence witnesses who are none but the labourers who were allured for being engaged though has been criticized in some way or other to be not in consistent with the prosecution story, the same are not so significant to outweigh those as well as the sterling evidence of the injured witnesses which finds corroboration in substance. Conversely, the defence has not denied the story of the prosecution in its entirety, rather it is admitted in the part of the story through D.W.1 who deposed that discussion was going on by the Appellants present in the Jeep for chopping of hands of some person by them while moving into the forest after parking the Jeep in an isolated place.

19. The M.O. 2 (Tangia) is the weapon of offence wherein the right hand from wrist of the injured, i.e. P.W.2 & P.W. 6 were chopped inside the forest by the Appellants deposed to have been seized from the place of concealment pursuant to the disclosure statements of the Appellant Parbesh. To reiterate, the recovery of the weapon of offence was given by the said Appellant under the Seizure List - Ext.5 has been duly and

consistently stated by P.W.11 and P.W.17. The Tangia was stained with blood. The Chemical Examination Report under Ext.32 in respect to the seized articles, i.e. the wearing apparels of the injured Dialu Nial under M.O. 1 and that of Injured Nilambar under M.O. IV so also the wooden handle of the Tangia which was stained with human blood are proved to be of same blood group that belongs to the injured.

20. The Apex Court in the matter of *Inder Singh and another V. State (Delhi Administration) reported in 1978 CRI.L.J 766 (Supreme Court)* held as follows:

“While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial, if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes.”

21. In the above premises, we do not consider merit in the argument of the Appellants that in course of their cross examination the witnesses have given inconsistent and prevaricating replies which cast cloud to their testimonies either with respect to the presence of the Appellants or in respect to the truth of the incident. We firmly stand by our view as above for the reason that the witnesses are rustic villagers and they cannot be said to have the acumen with regard to the manner of replying to the question put to them by the trained defence counsel so that they could keep their substantive evidence free from doubt since *it is held by Apex Court that cross examination is an unequal battle between the skilled lawyer and a*

naïve or rustic witness. In such an unequal battle it is always probable that a person appearing as a witness, who has no knowledge about the process of the court may fall into traps led by the skilled defence lawyer. In such a case even if the statement of a witness do not come up to the expectation of a judge or a trained lawyer, the same cannot be jettisoned in a mechanical manner.

22. It is also trite law that while appreciating evidence in a case, the socio-economic, cultural and educational background of the witness has to be kept in mind. In the instant case there is absolutely no evidence to refute the fact that the witnesses are daily wage labourers or at best are the persons engaged in cultivation. In such an eventuality, it is fallacious to expect that they would either depose or reply in the case being alive to the various intricacies of law which a trained lawyer is versed with. Consequently, the stray reply of the witnesses during the course of their cross examination here and there cannot jettison their version altogether, which is otherwise consistent and cogent.

23. The Apex Court also held in *Rotash V. State of Rajasthan reported in 2007 Vol. 1 Crimes SC-236* (Paragraph-14) as follows:

“14. The question is as to whether a person was Implicated by way of an afterthought or not must be judged having regard to the entire factual scenario obtaining in the case”.

From the above, it is tacit that a duty is cast upon the court to see whether a person is implicated by way of an after-thought or not must be judged having regard to the entire factual scenario. In the instant case, the witnesses and more particularly the injured witnesses have very

categorically spelt the name of the Appellants as were found present in executing the crime consistently since inception, i.e. right from the narration made in the FIR and the statement made by them before the police till the evidence is adduced during trial. Admittedly, no suggestion was either put to the witnesses or positive evidence was adduced by the defence by laying a foundation that the prosecution witnesses have deliberately implicated the Appellants. Rather, the evidence of the Defence through DW.1 reinforces and vouch safe the factum of chopping of the hands of the injured witnesses. Consequently therefore, nothing could be deduced from the testimony of the witnesses that they have hatched plan to falsely implicate the persons describing their specific overt act as well as specifying their presence leaving the real culprits. Rather it is unambiguously reiterated by these witnesses during cross examination that the Appellants named are the perpetrators of the crime in their respective role and the same is sacrosanct when it gets absolute corroboration from the medical evidence which has not been shaken in any manner.

24. It is stated by PWs. 14 and 15 the Medical officers who examined the injured, opining that the injuries would have resulted fatal had there not been a timely medical intervention. The evidence of the Medical Officers has not been assailed in any manner. Further, the evidence of the Magistrate conducting T.I. parade also goes without challenge. Her report which she proved vide Ext.33 reveals and it is candidly deposed by the Magistrate conducting T.I. parade (P.W.18) that the injured witness, viz. P.W.2 Nilambar Dhangdamajhi correctly identified Appellants namely, Jaysen Thela Arjun Bhoi, Bana Majhi, Parbesh @ Parme Dundi, whereas P.W.6 Dialu Nial correctly identified Appellants namely Jaysen Thela, Arjun Bhoi, Bana Majhi, Parbesh @ Parme Dundi and Gangadhar Das. As such, nothing appears from the evidence that the defence at any point of

time has challenged the factum of identity of the culprits. Cumulatively, therefore, the versions of the witnesses being compatible with the reality and the truth as can be gleaned from the facts established, the prosecution evidence can safely be held free from blemish and is beyond reproach to accord a conviction, as rightly done by the trial court.

25. While analyzing the point as to the offences charged that are embraced by the evidence adduced found substantiated and the Appellants who could be ascribed with the liability, the arguments advanced by Mr. D. Nayak, learned Sr. Counsel is primarily on the offence U/s. 364-A IPC. Mr. Nayak would argue that the learned court below while appreciating the evidence got swayed by the testimony of the injured witnesses without its intrinsic value and arrived at a wrong conclusion particularly in respect to the offence charged U/s 364-A IPC. According to Mr. Nayak there is neither any intention for demand of ransom in the abduction of the injured nor was it the cause of such abduction. The entire prosecution evidence consistently establishes the fact that the injured and others were allured for being engaged as labour for higher remuneration. The abduction of the injured Nilambar and Dialu Nial as forthcoming in the evidence is the result of the vengeance of the Appellant who having invested money could not get the services of the labourer. According to Mr. Nayak, this fact is clear from the evidence of P.W.2 when he stated that the Appellants asked them to tell his brother over phone to realize the money from Bimal and Mantu. No other evidence is adduced by the prosecution that the injured witnesses were abducted for ransom from their village or the place where they were asked by the Appellants to get down from the train. Mr. Nayak, therefore, canvassed to set aside the conviction of the Appellants from the said charge.

26. On the face of the above argument, Mr. Mishra, learned Addl. Standing Counsel submitted that the evidence is clear and candid to deduce that the Appellants having abducted the injured witnesses demanded ransom by threatening to kill and executed the threat into action by chopping the hands and as such the charge U/s. 364-A IPC stands established.

27. A simple reading of the relevant provision U/s 364-A IPC stipulates that “*whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to compel the Government or [any foreign state or international inter-governmental Organization or any other person] to do or abstain from doing any act or to pay ransom, shall be punishable with death, or imprisonment for life and shall also be liable for fine.*”

28. In the case in hand, the evidence is consistent that the Appellants allured the injured and others with the prospect of working as migrant labourer in exchange of high remuneration, whereas the *interse* dispute between the Appellant and absconded accused namely Parsu gave a different turn to the whole episode whereby all the labourers including the wife of injured Nilambar managed to escape from the train while they were travelling by train. Having seen all the labourers including the middleman such as the Appellants Bimal and Mantu to have escaped with money leaving the injured witnesses under the custody of other Appellants namely Arjun Bhoi, Bana Majhi, Parbesh @ Parme Dundi, Baikuntha Rauti and others, they kept the injured witnesses under confinement to realize the money paid to the Appellants Bimal and Mantu. However, having failed in their endeavour in realizing the money, took revenge by causing grievous hurt to the injured. So the ingredients constituting the offence as to the factum of abduction for ransom is found absent. The learned trial court

while analyzing the evidence at paragraph - 42 of the impugned judgment, observed as under:

“By conjoint reading of the observations made above in respect of offences alleged U/s. 364A/365/342/323/326/307/506/370/420 read with section 34 IPC and Section 16 & 17 of the Bonded Labour System (ABOLITION) Act 1976 against the accused persons, it can safely be concluded that, the main object / purpose of all the accused persons in abducting P.Ws. 2 and 6 from their village by inducing them to pay high wages was for no other reason but to engage them as bonded labourers without any payment and to demand money from them and their relatives after keeping them under wrongful confinement with their attempt to kill for their unlawful gain”

29. The above conclusion of the learned trial court is somewhat irreconcilable vis-à-vis the prosecution evidence. While it is tell tale clear from the evidence that the entire episode started with the purpose to see the migration of labour for getting engaged as bonded labourer, the act alleged as regards demand of ransom and chopping of the hands have no nexus with the demand of money. As discussed above, it is deposed by P.W.2 that the Appellants wanted the money to be realized from co-Appellants Bimal and Mantu under threat of being killed extended to them. This further reassures that the abduction was not for the sake of demand of ransom from the injured but through them from Appellants Bimal and Nial who played the role of middleman assuring the six other Appellants to fetch labourer from the villages to move out for their engagement in brick-kiln but took

away the money acting contrary to their commitment. It is an act that suggests an absolute vengeance and not demand of ransom, and as such does not attract the provision U/s 364-A IPC. The overt act shown, however, clearly embraces the offence U/s 367 IPC and the offence U/s. 367 IPC being lesser in the same order can safely be imposed against the Appellants instead of the offence U/s 364-A IPC. While in agreement with the argument advanced by Mr. Nayak in part, we hold the act alleged by the six Appellants in chopping of the hand squarely covers the offence under section 367 IPC.

30. Further, the evidence adduced by the Prosecution in respect to the offences viz; under section 365/342/370/506/420/323/326/307/201/34 IPC once again the versions of P.Ws 2 and 6 vouchsafe the role played by each of the Appellants is unblemished. It is consistent and coherently deposed by both P.Ws. 2 and 6 that the Appellants abducted them from the Railway Station to Kantabanjhi and from there to the village of Appellant Parbesh Dundi, where they forced them to work without remuneration. The Appellants kept them under confinement in the house under lock and finally took them to the isolated place in a vehicle where they extended threat and an intimidation and finally executed it in action by causing grievous hurt with a clear knowledge and in complete depravation that the chopping of the hand would render the conditions of the injured fatal. The weapon used as proved vide M.O II, the place chosen where the hands were chopped thereby depriving an immediate attention of anyone to come to their rescue was all conspired and so planned that the injured could not but to suffer and succumb to the injuries. Further, severing of the wrist from rest of the body are tacit to deduce an active knowledge of the Appellant that such injury is likely to cause death, are the acts not only of gruesome

nature but diabolic and dreadful than the death of a human being. In true sense it is barbaric.

31. The said Appellants also in furtherance of their overt act, in order to disappear the evidence and screen them from legal punishment threw the cut wrist in a pond popularly called "Deheli bandh" which of course could not be traced but volunteered by Appellant Parbesh Dundi in his statement recorded U/s 27 of the Evidence Act, which found fairly established and could not be contradicted in any manner making them liable in the offence U/s. 323/342/326/307 and U/s 201/34 IPC. There is ample of evidence that the injured and others were cheated by the Appellants who having intention to deceive the labourer since inception misrepresented alluring them to give high wages did not pay any wages as conspired by them along with Appellants Bimal, Mantu and absconded accused Parsuram Naik thereby bringing them under the purview of the offence U/s 420 IPC.

32. Another crucial area requires discussion is the offence U/s 120-B IPC. As discussed above, the very act of the Appellants namely Bimal, Mantu, Arjun Bhoi, Bana Majhi, Parbesh @ Parme Dundi and Baikuntha Rauti since inception is to get the labourers migrated being allured of higher wages for being engaged in work in the brick-kiln. In such eventuality all other acts that followed, as deposed by the injured witnesses P.Ws. 2 & 6 and others accompanying them for engagement, are held to be part of such conspiracy only and even though the Appellants Bimal and Mantu were not present at the scene of occurrence when the other Appellants got engaged in hacking the hands of the injured cannot escape the liability of the criminal conspiracy. The very act of the Appellants Bimal and Mantu in accompanying the injured and others from their village to Kotamal and from there to Raipur and further receiving money and subsequently

escaping from the clutch of the other Appellants with a view to grab money taken in lieu of the arrangement of labourer leaving the injured in the custody of the Appellants are acts within the ambit of Section 120-B/34 IPC.

33. In view of the discussions as above, on a close scrutiny of the evidence and analysis thereof made by the learned trial court nothing borne out in the arguments advanced by the learned counsels for the respective Appellants to disturb the findings in respect to its conclusion drawn in holding the Appellants guilty.

34. As far as punishment imposed on the Appellants, the learned Senior Counsel as well as respective learned counsels submitted that the punishment being not proportionate to the offences proved may be considered leniently and be awarded with the imprisonment already undergone.

35. This Court referring to the decisions in *(1983) 2 SCC 28*; *(2004)3 SCC 793*; *JT (2004) 2 SCC 348*; *(2005) (5) SCC 554*; *AIR(1991) SC 1463*; extracted the various principles enunciated by the Apex Court for appreciation and evaluation if the punishment imposed by the learned trial court is appropriate and/or requires interference. The Apex Court held as follows:

“Undue sympathy to impose inadequate sentence would do more harm to justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc”.

“after giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be act of balancing of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.”

“The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

“Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to

and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". *Sevaka Perumal etc. v. State of Tamil Naidu* AIR (1991) SC 1463, relied on.”

“In the present case, the High Court completely overlooked the evidence on record and the impugned judgment passed by it shows total non-application of mind. PW1 had noted that 1/3 of the leg was chopped off below the knee. He had categorically stated that the injury could have caused death. The Radiologist (PW14) clearly stated that the aforesaid chopping of the leg was grievous in nature. With some strange logic the High Court observed that merely on the testimony of PW1 it cannot be assumed that the injury was sufficient to cause death in ordinary course of nature. The evidence of PW5 clearly shows the gruesome nature of the attack and the intention of the accused persons. The trial court noticed that the leg was chopped out between the knee and the ankle.

It is baffling as to how the High Court uniformly directed reduction of sentence to the period already undergone. There was no similarity in the period of sentence already suffered by the accused persons when the High Court passed the impugned judgment.

Looked at from any angle, the judgment of the High Court is clearly unsustainable. The judgment of the trial court stands restored so far as conviction as well as the sentences are concerned.”

36. Having regard to the principles above noted when the case in hand is examined, it appears that the overt act shown by the Appellants in totality right from alluring the labourers to migrate for work with higher wages, fooled them of no wages at all, keeping the injured labourer in confinement, forced them for labour without wages for days and above all inflicting injuries as said being one of gruesome nature, deserves no

leniency in punishment for any offence proved. On the contrary, the second limb of the offence U/s 307 IPC to the effect that the act done wherein grievous hurt is caused to the abducted labourer, the Appellants have rightly been convicted and awarded with the punishment which is proportionate to the act done against the offences proved and require no interference. As discussed above, for the reason assigned as this Court found the evidence is short of the offence U/s.364-A IPC but established U/s 367 IPC, set aside the same and while convicting the Appellants namely Bimal Rout, Mantu Nial, Arjun Bhoi, Bana Majhi, Baikuntha Rauti and Parbesh @ Parme Dundi in the offence U/s 367 IPC sentenced them to undergo rigorous imprisonment for 10 (ten) years each and to pay fine of Rs.2000/- (Rupees Two Thousand) each in default to undergo three months rigorous imprisonment each to follow concurrently.

37. In the result, the impugned judgment, except to the extent modified as above, stands confirmed. All the eight Appeals preferred by the six Appellants being devoid of merit, fails and stand dismissed.

38. The Appellants not in custody are directed to surrender forthwith before the trial court within 15 days from the date of this order to serve out the sentence.

(Chittaranjan Dash)
Judge

(B.P. Routray)
Judge

KC Bisoi /A.R.-cum-Sr. Secretary
Dated the 29th September, 2023