



มูลนิธิเพื่อสิทธิมนุษยชนและการพัฒนา (นพว.)
Human Rights and Development Foundation

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Press Release

Provincial Court of Ranong acquitting defendants in Black Case no.KM 2,4/2559 in trafficking cases against 11 migrant fishing workers from Cambodia

On 23 March 2017, the Provincial Court of Ranong read the verdict in the case indicted against Mr. Ruengchai Pewngam, captain of K Nawamongkholchai 1, as defendant no. 1 and Mr. Somchai Jettanapornsamran, owner of fish market in Samut Sakhon, as defendant no. 2 (Black Case no.KM 2 and 4/2559) in a trafficking in person offence, being complicit in the collaboration of three persons and upward to commit forced labour, coercing other person to do something or to not do anything as a result of fear for the harm to be inflicted on their lives, bodies, and freedoms of the persons so coerced or by the use of violence, depriving other person of liberty or do anything to deprive other person of liberty and commit an injury to other person against the 11 migrant fishing workers from Cambodia. The injured parties have appointed attorneys from the Human Rights and Development Foundation (HRDF) as their legal counsels to provide them legal counseling and legal representation including to submit a request to the Provincial Court of Ranong asking to become a co-plaintiff along with the public prosecutor (for more detail, please see <http://hrdfoundation.org/?p=1561>)

The Provincial Court of Ranong's ruling can be summarized as follows;

1. It has been heard that the injured parties had been brought to Thailand through a legal means and were accommodated on K Nawamongkholchai 1 boat awaiting half a month before setting sail for work. They were aware that they were going to work on board a fishing boat, not in a fish screening facility. As a result, some co-plaintiffs had decided to escape and seek help from the police making themselves arrested by the police in order to be deported home. But upon encountering the police, they did not make any gesture to indicate that they had been lured or forced to work and had boarded a pickup truck to return to their accommodation. The injured parties had got to meet the authorities a few more times including when they had gone to apply for seaman books or the day they first set sail. Even though the injured parties could not communicate in Thai, they could have made any resistance which would have been understandable. Therefore, the acts of the injured parties could not be construed as an act of being subjected to the control of other persons.

2. After the injured parties' escape and their return to the accommodation, a meeting was called to explain to them to the effect that should any of them want to return home, they would have to bring to the agent 30,000 baht each for all the incurred expenses and passports. Once, a relative of a worker had brought the money and given it to the agent and the worker was allowed to return home without any restriction. As to the injured parties, the agent had taken care of them and even brought them to buy things needed when they set sail for work. And the agent was waiting there until all the injured parties boarded the fishing boat. Had the agent lured them to work, he would not have to wait. In addition, while the injured parties were accommodated in the house prior to boarding the boat, the accommodation was not locked and it did not appear that anyone was subjected to physical violence. This was inconsistent with the accusation of forcing or luring other person aiming to sell them as labour.

3. Fishing boats operate in international waters need to have equipment to help the fishing workers. Their work shifts would vary according to the amount of the catch made. The injured parties would have time to rest after laying down the nets and before lifting the nets. In addition, during the time the boat moved to

another fishing ground, the workers would have time to rest as well. The continuous working condition is dictated by the nature of work to prevent fish from getting spoiled.

4. According to evidence from the injured parties and their claim for having been physically abused by the captain, it has been heard that some co-plaintiffs might not have worked in marine fishing before, and during their inception period, with a lack of skills, they could have been subjected to harsh word and abuse by the first captain. But the captain is not an accused in this case. It is obvious to the Court that the working approach on board would vary to the management style and behavior of each of the captains.

5. As to the evidence from the injured parties and their claim that some Thai fishing crew had decided to jump from the boat to escape, it has been heard that such Thai fishing crew had later returned to work on the fishing boat again and none of the Thai fishing crew had ever complained about being forced to work. And according to the interviews, none of the Thai fishing crew had been a victim of trafficking in persons.

6. As to the withholding of passports of the co-plaintiffs by the captain, the President of the Fishery in International Waters, Mr. Abhisit Techanithisawat, has given evidence as a witness that after the fishing boat sets sail, the captain would collect the passports and the seaman books with them to make it easy when being subjected to inspection by the authorities and if such documents are missing, the fishing crew could be subjected to arrest. Upon their return on shore, the captain would return all the documents to the workers. So the Court believes the collection of all passports belonging to the co-plaintiffs was made to serve such purpose rather than to prevent them from escaping.

7. The families of the injured parties have confirmed their receipt of the money from the agent for the remuneration of the injured parties. That how much the deduction has been made by the agent is a separate issue. As to the overdue pay, this is subjected to the working condition on fishing boats which is distinctly different from other kinds of work. And the payment can be arranged with mutual consent between the employer and the employee. But upon their return on shore, the injured parties have been brought to stay at the Welfare Protection of Trafficking Victims Center in Ranong, and that has deprived their employer the opportunity to bring the overdue wages to them. Nevertheless, Mrs. Kamnungnuan has already deposited with the labour inspection officer the full amount of overdue pay for all the co-plaintiffs and it has all been disbursed to them.

8. Based on the evidence, it could not prove beyond doubt that the offence had been committed and that the injured parties had been unwilling to work as they felt so exhausted from such hard work. And the reason they and had been scolded by the first captain stemmed from their clumsiness in their work rather than being a part of an act of exploitation through forced labour. The case is dismissed.

Meanwhile, the Assistant to the Coordinator of the Human Rights and Development Foundation (HRDF)'s Anti Human Trafficking in Labour Project, Ms. Kanchana Akkarachart has found the verdict a back-step on the contrary to the effort by the government of Thailand to ensure compliance of Thailand's fisheries with international standards. It indicates a lack of understanding among the law enforcement officials about the employment of migrant workers, their working condition and relevant laws concerning fisheries. Such a lack of understanding fails to correspond to the need at present to proactively move toward preventing forced labour or exploitation. What should be noted is the transformation of the trafficking procedure from the Accusatorial System to the Inquisitorial System. This shall warrant full authority of the law enforcement officials as to the different contexts of trafficking in persons and the current situation. Such knowledge and understanding would ensure efficient prosecution and serve the best the interest of justice.

Background

On 21 January 2016, the Commander of the Provincial Police of Ranong, Commander of the 25th Infantry Regiment Task Force, Thepsatree Command and concerned authorities have raided to inspect the living condition of crew members in the three fishing vessels which have been fishing in Indonesian and Papua New Guinean waters including the K Nawamongkholchai 1 with 21 crew members including three from Thailand and 18 from Cambodia, the K Nawamongkholchai 5 (unknown number of boat crew) and the K Nawamongkholchai 8 with 24 boat crew members including eight from Thailand and 16 from Cambodia. The raid was conducted as a result of tipoffs from the authorities in Samut Sakhon that five Thai crew

members had jumped from the boat prior the sail into the Thai waters. It has led to a prosecution on trafficking charges, the case of which is being tried at the Provincial Court of Samut Prakan. By inspecting the living condition on board and by bringing all crew members into the trafficking screening process, incidences of trafficking in person on board were found in two of the three boats including Nawamongkholchai 1 with 11 victims from Cambodia and Nawamongkholchai 8 with four victims from Cambodia, altogether 15.

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