

(2018) 03 P&H CK 0149

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 2121 of 2017 (O&M) In Civil Writ Petition No. 13447 of 2017

Nirbhai Singh

APPELLANT

Vs

Financial Commissioner Revenue Punjab Chandigarh And Ors

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 84, 302, 304(I)
Hindu Succession Act, 1956 — Section 25, 27

Citation : (2018) 03 P&H CK 0149

Hon'ble Judges : Rajesh Bindal, J;B. S. Walia, J

Bench : Division Bench

Advocate : Sanjeev Goyal

Final Decision : Dismissed

Judgement

1. The order passed by the learned Single Judge dismissing the writ petition has been impugned by filing the present intra-court appeal.

2. The issue considered by the learned Single Judge was as to whether a person can succeed to the property of a person killed by him even if he

is convicted under Section 304 (Part-I) and not under Section 302 of the Indian Penal Code, 1860 and can claim non-application of Section 25 of the

Hindu Succession Act, 1956 (for short, 'the Act')?

3. The answer was in negative.

4. The contention raised by learned counsel for the appellant was that though the trial court had convicted the appellant under Section 302 IPC,

however, his conviction under Section 302 IPC has been set aside by this court vide judgment dated 11.8.2015 passed in Criminal Appeal No. 925-DB

of 2009?"Nirbhai Singh v. State of Punjab and he was convicted under Section

304 (Part-I) IPC which is culpable homicide not amounting to murder. Once it was not a case of murder, the appellant could not be deprived of inheritance of the property left by the deceased. In support of his argument, reference was made to judgment of Hon'ble the Supreme Court in Anil Behari Ghosh v. Smt. Latika Bala Dassi and others, AIR 1955 SC 566, judgment of this court in Mst. Biro and another v. Banta Singh, AIR 1980 Punjab 164, judgment of Kerala High Court in RFA No. 888 of 2012, Jyothish Kumar and others v. B. Chithra, decided on 5.2.2014, judgment of Calcutta High Court in Ram Chatterjee and another v. Smt. Tapati Mukherjee and another, 2003 (1) RCR (Criminal) 356 and judgment of Andhra Pradesh High Court in Talla Palli Kasi Visalakshmi v. Tallapalli Venkata Vijayalakshmi and another, AIR 2004 AP 160.

5. After hearing learned counsel for the appellant, we do not find any merit in the submissions made. Mere fact that the appellant is claiming inheritance shows that he is a part of the family. Deceased-Maghar Singh was unmarried and was killed by the appellant. The allegations in the FIR got registered by the sister of the deceased were that the appellant suspected that deceased-Maghar Singh was having illicit relations with his mother-Surjit Kaur. It has been recorded by the Division Bench of this Court in the Criminal Appeal filed by the appellant that in a fit of anger and being over-swayed under the impression that deceased-Maghar Singh was having illicit relations with his mother, he took out a knife from his pent and gave a fatal blow to deceased-Maghar Singh on the left side of his chest. The aforesaid facts clearly establish that it was the single fatal blow given by the appellant, which resulted in death of Maghar Singh. The conversion/ alteration of conviction of the appellant from Section 302 IPC to Section 304 (Part-I) IPC will not come to the rescue of the appellant, as he is seeking inheritance to his property, though he caused his murder.

6. Similar issue came up for consideration before Bombay High Court in Minoti v. Sushil Mohan Singh Malik and another, AIR 1982 Bom.

68. In that case as well, initially a person who wanted to inherit the property of the deceased was prosecuted for the offence punishable under Section 302 IPC, however, he was finally convicted for the offence punishable under Section 304 (Part-I) IPC. Considering the issue, the contention raised by the convicted person was that the term 'murder' having not been defined under

the Act, the meaning as assigned should be considered and Section 304

(Part-I) IPC being culpable homicide not amounting to murder, he cannot be debarred from inheriting the property, was rejected. The court found that

though the word 'murder has not been defined under the Act, however, Section 25 of the Act was introduced in the Act to give statutory sanction to

the view expressed by Privy Council in *Kanchawa v. Girimallappa*, AIR 1924 PC 209. The underlying principle is that a man cannot take advantage of

his own wrong. The principle of equity, justice and good conscience was invoked. Relevant para thereof, is extracted below:

“7. It is an admitted position that the word ‘murder’ is not defined in the Hindu Succession Act. It appears that S. 25 was introduced in the

Hindu Succession Act practically to give statutory sanction to the view expressed by the privy council in *Kanchawa v. Girimallappa*, AIR 1924 PC

209 while dealing with such a contention the privy Council; observed that there is much to be said in support of the principles of jurisprudence which

can be traced in Hindu Law, which would warrant in interference that a man cannot take advantage of his own wrong. The privy council further

observed that this principle is the principle of equity, justice and good conscience, which disqualifies and excludes the murderer from inheriting any

interest in the property of the person murdered. The privy council also held that the murderer in such case should be treated as non-existent and not as

one who forms the stock for fresh line of descent. Thus, it appears that Ss. 25 and 27 were enacted by the legislature to give statutory approval to the

principles of equity, justice and good conscience which disqualifies murder from inheriting the property of the person murdered. Therefore, the words

and phrases used in S. 25 will have to be considered in the light of these principles viz. the principles of equity, justice and good conscience. This is

also the well established principle of public policy.”

7. The Court observed that two enactments, which are sought to be compared to take benefit of by the appellant are neither cognate nor *pari materia*,

as these operate in their respective fields. The opinion expressed was that the words and phrases used in Section 25 of the Act should be considered

and interpreted harmoniously keeping in view the object of the legislation and not in technical sense as defined in IPC, where the principle applied is

for proving the guilt beyond reasonable doubt and an accused is always given

benefit of doubt. Reference was also made to the observations in

Halsbury's Laws of England, Third Edition, vol. 39, para 1315, p. 869:-
Murder or manslaughter. It is contrary to public policy that a man should

be allowed to claim a benefit resulting from his own crime. Accordingly a donee who is proved to be guilty of the murder or manslaughter of the

testator cannot take any benefit under his will.

8. The court opined that the approach while dealing with the issue of succession in terms of Section 25 of the Act should not be from the point of view

of punishment for murder, rather, keeping in view the principle of equity, justice and good conscience so that the person is not able to take advantage

of his own crime. Relevant para 12 thereof is extracted below:

12. In my opinion this is the correct approach for interpreting the provisions of section 25 of the Act, which incorporates a paramount principle of

public policy based on principle of public policy based on principles of justice, equity and good conscience, so that the person will not be able to take

the advantage of his own crime. In this context it is pertinent to note that the words used are "commits murder or abets commission of murder"

and not "is convicted of an offence of murder and not is convicted of an offence of murder or abetment of offence of murder". Therefore, it

is clear that the legislature has used the term "murder" in S. 25 of the Hindu Succession Act not in a technical sense as defined in S. 300 of the

IPC., but in a wider and popular sense, which must include in its import even culpable homicide or unlawful manslaughter. It is neither possible nor

desirable to lay down general rule in this behalf, because to some extent it must depend on the facts and circumstances of each case.

9. The aforesaid judgment of Bombay High Court was referred to by Hon'ble the Supreme Court in Vellikannu v. R. Singaperumal and another, AIR

2005 SC 2587. Hon'ble the Supreme Court had even referred to the object and reasons while enacting Section 25 of the Act, where reference had

been made to the judgment of Privy Council in Kanchawa's case (supra). Section 25 of the Act and relevant paras from the aforesaid judgment are

extracted below:

Section 25 of the Act. Murderer disqualified.- A person who commits murder or abets the commission of murder shall be disqualified from

inheriting the property of the person murdered, or any other property in

furtherance of the succession to which he or she committed or abetted the commission of the murder.â?? Relevant paras of the judgment

â??A murderer must for the purpose of the inheritance, be treated as if he were dead when the inheritance opened and as not being a fresh stock of

descent; the exclusion extends to the legal as well as beneficial estate, so that neither he can himself succeed nor can the succession be claimed

through him.

This Privy Council decision made reference to the decisions of the High Courts of Madras and Bombay and their Lordships have approved the ratio

contained in those decisions that a murderer should be totally disinherited because of the felony committed by him. This decision of the Privy Council

was subsequently followed in the following cases : i. AIR (29) 1942 Madras 277 (K. Stanumurthiayya and others v. K. Ramappa and others.) ii. AIR

1953 All. 759 (Nakchhed Singh and Ors. vs. Bijai Bahadur Singh & Anr.) iii. AIR 1956 All. 707 (Mata Badal Singh & Ors. vs. Bijay Bahadur Singh

& Ors.) iv. AIR 1982 Bomb. 68 (Minoti vs. Sushil Mohansingh Malik & Anr.). This position of law was incorporated by way of Section 25 of the

Hindu Succession Act, 1956 as quoted above, which clearly enunciates that a person who commits murder or abates the commission of murder shall

be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she

committed or abetted the commission of the murder. In fact, the objects and reasons also makes a reference to the Privy Council judgment (supra).

The objects and reasons for enacting Section 25 read as under :

A murderer, even if not disqualified under Hindu Law from succeeding to the estate of the person whom he has murdered, is so disqualified upon

principles of justice, equity and good conscience. The murdered is not to be regarded as the stock of a fresh line of descent but should be regarded as

non- existent when the succession opens.

10. As far as judgments referred to by learned counsel for the appellant are concerned, those do not come to his rescue. In Anil Behari Ghosh's case

(supra), Hon'ble the Supreme Court opined that the judgment of the criminal court is relevant only to show that there was such a trial resulting in

conviction and sentence of the person. It was further held that the judgment of the criminal court is not binding on the civil court. The question has to

be decided on evidence independently. In Mst. Biro and another's case (supra), this Court, while relying upon the judgment of Hon'ble the Supreme Court in Anil Behari Ghosh's case (supra), held that though the person is convicted under Section 304 IPC, but he is guilty of murder which clearly attracts Section 25 of the Act. In Jyothish Kumar and others' case (supra), High Court of Kerala opined that a woman not found guilty by a competent criminal court by extending the protection under Section 84 IPC, she cannot be termed as 'murderer' within the meaning of Sections 25 and 27 of the Act. In Ram Chatterjee and another's case (supra), Calcutta High Court took similar view as opined by Hon'ble the Supreme Court in Anil Behari Ghosh's case (supra). In Talla Palli Kasi Visalakshmi's case (supra), Andhra Pradesh High Court held that husband committing suicide because of unchastity of wife is not a murder by the wife, so Section 25 of the Act is not a statutory bar for the wife to inherit the estate of her deceased husband.

11. If the facts of the case are considered in the light of enunciation of law, as referred to above, in our considered opinion, the appellant is clearly debarred to inherit the property of the person, who was killed on account of fatal blow given by the appellant even though his conviction may have been altered from Section 302 IPC to Section 304 (Part-I) IPC.

12. For the reasons mentioned above, we do not find any error in the order passed by the learned Single Judge. Accordingly, the appeal is dismissed.