

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.984 of 2016 and
CRA-D No.1189-DB of 2015
DATE OF DECISION: February 9, 2016

Balwinder Kaur

...Applicant/Appellant

versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.P.S. Ahluwalia, Advocate for the applicant.

RAMENDRA JAIN, J.

Applicant claiming herself to be adopted daughter of deceased Baldev Singh filed an application on 6.9.2011 to the police that her adoptive father has been killed by administering some poisonous substance by her cousins respondent Nos.2 and 3 after keeping him in wrongful confinement for about three years with an intent to grab his land. Inquest proceedings under Section 174 CrPC were conducted. The post mortem examination of dead body of Baldev Singh was got conducted. His viscera was sent to the Chemical Examiner. Some poisonous substance was found in the viscera. DSP Samana agreeing with report of ASI Lakha Singh, recommended

registration of case under Sections 302,365,342,120-B IPC against respondent Nos.2 and 3. A Special Investigating Team was constituted consisting of Superintendent of Police (HQ), DSP (Detective) and SHO, P.S. City Samana vide order dated 12.1.2012. The Special Investigating Team vide its report dated 25.12.2012 observed that since Baldev Singh had no issue from his wife, so he brought Balwinder Kaur, daughter of his sister in law to his house at a tender age. She was brought up and her marriage performed with Gobind Singh, who also later on became Ghar Jawai. Ram Singh, the father of deceased Baldev Singh had transferred 21 bighas of land at village Fateh Majri in favour of the complainant Balwinder Kaur vide two sale deeds dated 8.5.2008 and 27.10.2008. The deceased Baldev Singh and his cousins, namely, respondent Nos.2 and 3 were opposed to the said transaction of Ram Singh in favour of the complainant Balwinder Kaur. Hence, litigation ensued between them and the complainant. The Special Investigating Team found that the allegations of kidnapping of Baldev Singh and his wife by respondent Nos.2 and 3 were untrue. But since the poison was found in the viscera of the deceased Baldev Singh and complainant Balwinder Kaur had levelled allegations of his murder by respondent Nos.2 and 3, therefore, the Special Investigating Team recommended for registration of case under Section 304 IPC. Accordingly, case under Section 304 IPC was

registered against respondent Nos.2 and 3, but upon the complaint of complainant, Section 304 IPC was converted into Section 302 IPC. During investigation, it was found that deceased Baldev Singh had transferred land measuring 12 bighas of land in favour of four ladies vide registered sale deed dated 29.7.2011 out of whom two were wives of the respondent Nos.2 and 3 and the remaining two were of their brothers Rattan Singh and Aman Singh showing sale consideration of ₹31,32,000/-. As per complainant Balwinder Kaur, the aforesaid sale deed allegedly executed by Baldev Singh was without any consideration, because respondent Nos.2 and 3 did not pay him even a single penny. Since there was a dispute between deceased Baldev Singh and respondent Nos.2 and 3 regarding sale consideration, therefore, respondent Nos.2 and 3 committed the murder of Baldev Singh on 5.9.2011. Statements of relevant witnesses were recorded. Respondent Nos.2 and 3 were arrested. Initially, final report under Section 173 CrPC was filed against respondent No.2, because at that point of time, respondent No.3 was evading his arrest. However, on surrender of respondent No.3, his supplementary challan was also presented before the Area Magistrate.

On finding a prima facie case, learned Additional Sessions Judge, Patiala, charge sheeted both the respondent Nos.2 and 3 under Sections 302,201,34 IPC vide order dated 12.4.2013 to which they pleaded not guilty and claimed trial.

PW1 Dr.Deepak Kumar Monga, Medical Officer conducted the post mortem examination of dead body of Baldev Singh on 6.9.2011.

PW2 complainant Balwinder Kaur supported the prosecution story in toto.

PW3 Jagtar Singh has deposed that at around 4.00 p.m. on 30.7.2011, he had seen deceased Baldev Singh asking loudly respondent No.2 to make payment of sale consideration of ₹31,32,000/- to him. However, respondent No.2 was telling the deceased Baldev Singh that he has already paid the aforesaid sale consideration and in case he would raise demand, he would kill him. On his advise, Khem Chand, PW5, telephonically contacted Gobind Singh, son-in-law of aforesaid Baldev Singh. He further testified that Baldev Singh and his wife Gurbachan Kaur were in the captivity of respondent No.2, since last 2-1/2 years. There was a dispute between respondent No.2 and husband of the complainant qua the land of village Mehmadvpur.

PW5 Khem Singh has corroborated the aforesaid deposition of PW4 Jagtar Singh. He further stated that prior to death of Baldev Singh, there was a rumour in the village that respondent No.2 would kill him. He told complainant Balwinder Kaur in this regard about 5/7 days prior to the incident.

PW4 Harbhajan Singh deposed that Baldev Singh and his wife Gurbachan Kaur had adopted Balwinder Kaur and had

solemnized her marriage with Gobind Singh. He has stated that respondent Nos.2 and 3 had got executed a sale deed from deceased Baldev Singh without payment of any sale consideration. Deceased Baldev Singh was demanding money from them. Respondent No.2 had taken Baldev Singh to their house with his consent at village Fateh Majri. However, he cannot say whether deceased Baldev Singh was living at the house of respondent Nos.2 and 3 with his free will and consent or was kept by them at their house against his wishes. He also cannot tell under what circumstances the death of deceased Baldev Singh had taken place.

PW6 MHC Surjan Singh has simply testified about the deposit of the case property with him and further sending it to the Chemical Examiner.

PW7 ASI Mewa Singh deposed regarding arrest of one Paramjit Singh in this case who was finally not challaned. He deposed about the arrest of respondent Nos.2 and 3.

PW8 Constable Satnam Singh proved the copy of FIR No.572 dated 6.11.2009, Ex.PW8/A under Sections 420,465, 467,468,471,120-B IPC and another FIR No.208 dated 19.6.2009 under Sections 420,120-B IPC, Ex.PW8/B.

PW9 DSP Pritpal Singh deposed regarding addition of section 302 IPC and the arrest of respondent Nos.2 and 3.

PW10 Harbans Singh while deposing about the adoption of complainant by deceased Baldev Singh, corroborated her testimony in toto.

PW11 HC Sarabjit Singh is also a formal witness.

PW12 Gobind Singh, husband of the complainant Balwinder Kaur, corroborated her story in toto.

PW13 Manjit Singh DSP was the member of Special Investigating Team at the relevant time. He has proved its report on the basis of which case was registered

PW14 Mian Singh and PW15 Inspector Jaswinder Singh are the formal witnesses. They have deposed about the steps taken during the course of investigation.

Statement of respondent Nos.2 and 3 under Section 313 Cr.P.C. were recorded putting the entire incriminating evidence which had come on record against them to which they denied and pleaded false implication.

In defence, they examined DW1 Sukhdev Singh, Lambardar of village Mehmadpur, who testified about passing of sale consideration in the hands of Baldev Singh while executing the sale deed on 29.7.2011 in favour of the wives of the respondents and two other ladies. He categorically testified that Baldev Singh had executed the sale deeds voluntarily in his presence. DW2 Gurbachan Kaur wife of the deceased, deposed that she and her deceased husband were living in the house of

respondent Nos.2 and 3 since last $\frac{3}{4}$ years voluntarily without any use of force against them. Her deceased husband Baldev Singh had sold the land to Mukhtiar Kaur etc. for a consideration of ₹31 lacs after receiving the entire sale consideration.

Learned counsel for the applicant argued that the impugned judgment of trial Court is based on surmises and conjectures. Deceased Baldev Singh was murdered on 5.9.2011 immediately after the execution and registration of sale deeds by him on 29.7.2011 in favour of the wives of respondent Nos.2 and 3 and two other ladies. This fact in itself was sufficient to hold both the respondents guilty. It was also evident on the record from the testimonies of PW3, PW4 and PW5 that a dispute had ensued between deceased Baldev Singh and respondent Nos.2 and 3 as they did not pay any sale consideration to the deceased even after getting transferred the land in favour of their wives. Despite finding the poison in the viscera of the deceased, the trial Court has erred in acquitting the respondent Nos.2 and 3. As per statement of PW1 Dr.Deepak Kumar Monga, Medical Officer, three injuries were found on the person of deceased Baldev Singh at the time of post mortem examination. The trial Court has erred in placing reliance upon the deposition of DW2-Gurbachan Kaur wife of Baldev Singh.

We have given our thoughtful consideration to the submissions made by learned counsel for the applicant.

Admittedly, the applicant Balwinder Kaur was not the real daughter of deceased Baldev Singh and his wife Gurbachan Kaur DW2. Throughout, she is claiming herself to be the adopted daughter of Baldev Singh. However, she has miserably failed to lead any evidence in this respect. No adoption deed was ever executed or registered, nor any ceremonies in this respect were performed. It has also not come on the record that deceased Baldev Singh or his wife DW2 Gurbachan Kaur had ever admitted or treated the applicant as their adopted daughter. However, it is not disputed that that Balwinder Kaur is the daughter of the sister of DW2 Gurbachan Kaur and was brought up by DW2 Gurbachan Kaur and her husband. Her marriage was also solemnized by them with PW12 Gobind Singh, who later on became Ghar Jawai. As per own admission of the applicant, respondent Nos.2 and 3 were cousins of deceased Baldev Singh. It has also come on record that the applicant got transferred 21 bighas of land of Ram Singh, father of the deceased, vide two registered sale deeds dated 8.5.2008 and 27.10.2008. The said action of Ram Singh was not liked by deceased Baldev Singh and resultantly, he challenged those sale deeds. It has come on record that Ram Singh died on 2.12.2008 within two months of the execution of last sale deed of 9 bighas of land in favour of the applicant on 27.10.2008 and within about seven months of execution of first sale deed of 12 bighas

of land on 8.5.2008 in favour of the applicant. It has also come on record that various civil and criminal litigations started in between deceased Baldev Singh and the applicant. It has also come on record that deceased was suffering from Tuberculosis. PW1-Dr.Deepak Kumar Monga has testified that the person suffering from such a disease, if comes into contact with pesticides, while passing from a field can inhale pesticide. Since as per wife of deceased Baldev Singh, the condition of his lungs had deteriorated extensively, therefore, possibility of inhaling of some pesticide by deceased Baldev Singh cannot be ruled out.

DW2 Gurbachan Kaur, wife of deceased Baldev Singh, has categorically deposed that she was with him at the time of his death. No poison was administered to her husband by anyone. Her husband had died a natural death.

The above deposition of wife of the deceased Baldev Singh is the clincher of the whole controversy that respondent Nos.2 and 3 had no role in his death, because no woman would ever try to screen the killers of her husband.

From the above factual position on the record, it is evident that the applicant had nothing to do with the well being of Baldev Singh or widow Gurbachan Kaur, rather was out and out after his property. Her conduct speaks volume that she had no concern with the welfare, health and other day to day requirements of the deceased and his widow Gurbachan Kaur.

Though there was no adoption deed in her favour, but taking advantage of the fact that the deceased Baldev Singh had no real son or daughter, she started claiming herself to be his adopted daughter, only to grab his property. Upbringing and maintaining a child is altogether different from adoption of a child. The fact of upbringing of applicant by deceased Baldev Singh and his wife DW2 Gurbachan Kaur by itself do not prove that she was ever treated as adopted daughter by them. Had the applicant been concerned about taking care of deceased Baldev Singh or Gurbachan Kaur, in that eventuality, she would have kept her parents in her house.

In view of the aforesaid discussion, we find no merit in the present application seeking leave to appeal against the judgment of acquittal dated 29.5.2015 passed by the Additional Sessions Judge, Patiala. The application is accordingly declined and the appeal is dismissed.

(T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 09,2016
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