

Most. Bimla Devi Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-20-2002

Judge : B.N.P. Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 420

Appeal No. : Criminal Appeal No. 4 of 1991

Appellant : Most. Bimla Devi

Respondent : State of Bihar and ors.

Advocate for Def. : B.P. Singh, Addl. Public Prosecutor and Arun Kr. Arun, Adv.
for Respondent Nos. 2 to 7

Advocate for Pet/Ap. : Arbind Kumar, Adv.

Disposition : Appeal dismissed

Prior history : B.N.P. Singh, J. 1. Respondent Nos. 2 to 7 were prosecuted on behest of appellant for offence punishable under Section 420/34 of the Indian Penal Code on accusation that pursuant to negotiation between the parties for execution of a deed of exchange of land, the details of which are wanting, when Most. Bimla Devi went to Registration Office at Barh in the company of her brother Ramdeo Singh P.W. 5, though a deed was scribed and her thumb impression was secured on them, she was not taken befor

Judgement :

B.N.P. Singh, J.

1. Respondent Nos. 2 to 7 were prosecuted on behest of appellant for offence punishable under Section 420/34 of the Indian Penal Code on accusation that pursuant to negotiation between the parties for execution of a deed of exchange of land, the details of which are wanting, when Most. Bimla Devi went to Registration Office at Barh in the company of her brother Ramdeo Singh P.W. 5, though a deed was scribed and her thumb impression was secured on them, she was not taken before Registrar for execution of the deed and eventually when she came back to her in-laws house, she was on being maltreated by them, made enquiries and on getting certified copy of the deed, was surprised to find that, instead of deed of exchange, a deed of gift purported to have been executed by her was on the record. The petition of complaint filed by the appellant was firstly dismissed but eventually on another petition having been filed, judicial process was set in motion, pursuant to which trial commenced, in course of which, seven witnesses were examined at trial which include one normal witness, Most. Bimla Devi and also other witnesses who claimed conversant with the facts of the case, and the trial Court on appreciation of evidences placed on the record, while negative contentions raised at bar on behalf of the appellant about respondents having got executed a deed of gift instead of deed of exchange, exonerated the respondents of the ' charge levelled against them which has been challenged in this appeal with leave of the Court. Learned counsel for the appellant and also respondents were heard at length.

2. The finding recorded by the trial Court was sought to be assailed by learned counsel appearing of the appellant on the premises that the prosecution case has been negatived by the trial Court primarily on twin premises. It is urged that the Court below rushed to erroneous conclusion about there being not good evidence for committing mischief by the respondents for the reason that as five daughters of Most. Bimla Devi were residing with the respondents, there was no need to get deed of gift executed from her. Next limb of argument canvassed on behalf of the appellant was that the prosecution case was negatived by the Court below also on

the premises that the prosecution case was not worthy of credence and no relief can possibly be granted by the Court unless the deed of gift allegedly executed by Most. Bimla Devi was declared null and void by a competent Court. It is urged that there is no absolute proposition of law that a criminal case can be negated only on the premises that a civil remedy was available. Contention raised at her on behalf of the appellant was strongly resisted by the learned counsel appearing for the respondents and it is sought to be urged that in view of candid admission of Most. Bimla Devi before the trial Court about, she having appeared before the Registrar for execution of deed, assertion made by other witnesses otherwise, about Most. Bimla Devi having not appeared before the Registrar did not have probative value. It is urged that even Ramdeo Singh (Yadav) P.W. 5, brother of Most. Bimla Devi, who was the lone witness about the respondents allegedly committing mischief with his sister was not tendered for cross-examination after framing of charges and rightly on this score, his evidence was expunged by the Court below.

3. Certain facts are however undisputed. The registration of deed was not denied and rightly it is urged that it was not a case of impersonation or forgery in the deed. In face of candid admission of Most. Bimla Devi before the Court that she came down to Barn for execution of deed and admitted execution of deed before the Registrar, the evidence of other witnesses which we are negative in nature, had to be rejected. It is a matter of common law that after the executant appears before the Registrar, he or she as the case may be, was required to admit execution of deed and only after admission of execution of deed, that the Registrar makes endorsement on the document. Even on the point of repetition, it can be stated that Most. Bimla Devi, had admitted her appearance before the Registrar for execution of the deed. The Registrar has not been examined by the State and hence no other presumption can be drawn. The witnesses had been stating before the Court including that of Most. Bimla Devi and also P.W. 4 that daughters of Most. Bimla Devi had been residing with the respondents who were maintaining them. The trial Court had also taken into consideration the other attending circumstances of the case and rightly came to the conclusion that in this backdrop, there is no occasion for the respondents to commit mischief and get a deed of gift instead of deed of exchange, as alleged by the prosecution, executed by her, and

on this premises I find that the finding recorded by the trial Court did not merit interference and that apart, the basic concept cannot be lost sight of that for reversal of judgment of acquittal, the appellant must place some mitigating circumstances which could suggest finding to be perverse or illegal, and as such finding no merit, this appeal is dismissed.

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