

Chattar Singh Vs. Subhash and Others

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Court : Delhi

Decided On : Jan-07-2011

Judge : Badar Durrez Ahmed; Manmohan Singh, Jj.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 372; Indian Penal Code,(IPC) - Sections 120-B, 364 r/w 120-B, 302 r/w 120-B, 201 r/w 120-B

Appeal No. : CRL.A. 443/2010

Appellant : Chattar Singh

Respondent : Subhash and Others

Advocate for Def. : Mr K.B. Andley; Mr Mohd. Shamikh, Advs.

Advocate for Pet/Ap. : Mr Saurabh Kirpal; Mr B.B. Bhatia; Mr Navjot Kumar; Ms Rashmi Sharma, Advs.

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment Yes
2. To be referred to the Reporter or not Yes
3. Whether the judgment should be reported in Digest Yes BADAR DURREZ AHMED, J

1. Mr Chattar Singh has filed this appeal under the proviso to section 372 of the Criminal Procedure Code, 1973 (hereinafter referred to as the Code'), claiming

himself to be a victim. The appeal is directed against the judgment dated 06.01.2010 delivered by the learned Additional Sessions Judge, North East, Karkardooma Courts, Delhi whereby the respondent nos. 1 to 4 who had been charged under sections 120-B, 364 r/w 120-B, 302 r/w 120-B and 201 r/w 120-B IPC, were acquitted.

2. The primary question which arises in this case is with regard to the maintainability of the appeal. Can Mr Chattar Singh, the father of the deceased Satish, be regarded as a victim for the purposes of the proviso to section 372 of the Code? Who is a victim' for the purposes of the proviso to section 372 of the Criminal Procedure Code, 1973?

3. The proviso to section 372 of the Code stipulates that a victim shall have a right to prefer an appeal against any order passed by the court whereby :-

(a) the accused is acquitted; or

(b) the accused is convicted for a lesser offence; or (c) inadequate compensation is imposed.

The word victim is defined in section 2(wa) of the Code as under:-

2. Definitions. In this Code, unless the context otherwise requires,

xxxxxx xxxxxx xxxxxx xxxxxx

(wa) victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir;

A victim of crime is a person who suffers any loss or injury as a result of the crime. Although the expression any loss or injury is an expansive expression, it appears that it has been used in the context of the person whose suffering is the direct and most proximate result of the crime. Let us take the case of theft. The person whose suffering is the direct and most proximate result of the crime is the person whose property is stolen. Surely, that person's wife, children or parents would also suffer some mental pain and anguish and may even suffer financially but, the real

victim is that person, that is, the owner of the property stolen. In the case of grievous hurt also, the victim would be the person on whom the hurt was inflicted although, there would be other family members and friends who may also indirectly suffered the trauma. The victim of rape is the woman or girl who has been raped. Although her parents and other family members must have also suffered to some extent, it is only she who could be regarded as the victim. Of course, where the person on whom the crime is committed loses his or her life, his or her heirs would fall within the meaning of victim. Similar is the case of a minor or a person of unsound mind. It is his or her guardian who would also be regarded as a victim'. This is clear from the means ... and includes definition found in section 2(wa) of the Code.

4. Mr Kirpal, the learned counsel for the appellant, referred to *Black Diamond Beverages v. CTO*: (1998) 1 SCC 458 wherein the definition of sale-price in section 2(d) of the West Bengal Sales Tax Act, 1954, which employed a means ... and includes definition, was considered. The Supreme Court observed that the first part of the definition defined the meaning of the word sale price and ought, therefore, be given its ordinary, popular or natural meaning and that the interpretation thereof was in no way controlled or affected by the second part which includes certain other things in the definition. The Court recognised this as a well- settled principle of construction. In other words, the means part of the definition was taken as its ordinary and natural meaning and the includes part was considered to extend the word to something it would not ordinarily cover.

5. Another decision referred to by Mr Kirpal was that of *P. Kasilingam v. P.S.G. College of Technology*: 1995 Supp (2) SCC 348, where, at pages 355-356, the Supreme Court observed as under:- It has been urged that in Rule 2(b) the expression means and includes has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word means' or the word includes'. Sometimes the words means and includes' are used. The use of the word means' indicates that definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition. (See : *Gough v. Gough*

[(1891) 2 QB 665]; Punjab Land Development and Reclamation Corpn.

Ltd. v. Presiding Officer, Labour Court [(1990) 3 SCC 682, 717]). The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions. (See : *Dilworth v. Commissioner of Stamps* [1899 AC 99, 105-106](Lord Watson); *Mahalakshmi Oil Mills v. State of A.P.*[(1989) 1 SCC 164, 169]. Of course, the definition in *Kasilingam* (supra) was one where the expression employed was 'means and includes' whereas in section 2(wa) of the Code the expression is 'means ... and includes' which is in the form 'means A and includes B'.

6. Finally, as regards the meaning to be ascribed to the word 'includes', Mr Kirpal referred to the Supreme Court decision in *N.D.P. Namboodripad v. Union of India*: (2007) 4 SCC 502. After referring to Justice G.P. Singh's treatise - *Principles of Statutory Interpretation* (10th Edn., 2006) the Court noticed that where a word defined is declared to include such and such, the definition is prima facie extensive, but the word 'include' when used while defining a word or expression, may also be construed as equivalent to 'mean and include' in which event, it will afford an exhaustive explanation of the meaning which for the purposes of the Act in question must invariably be attached to the word or expression. The Supreme Court further observed that it is evident that the word 'includes' can be used in interpretation clauses either generally in order to enlarge the meaning of any word or phrase occurring in the body of a statute, or in the normal standard sense, to mean 'comprises or consists of' or 'means and includes' depending on the context.

7. These decisions make it abundantly clear that a definition which solely uses the word 'means' is a hard and fast definition. A definition which uses the word 'includes' alone is not an exhaustive one but an extensive and expansive one. A definition which employs the expression 'means and includes' is an exhaustive definition and, a definition which has the expression 'means ... and includes' and which is in the form 'means A and includes B' usually refers to the ordinary and natural meaning

but with an extension of the includes portion. In the present case, Section 2(wa) would refer to a crime victim in the natural and ordinary sense as the person who directly and most proximately suffered the loss or injury but it would also include -- (a) his or her heirs in case he or she was dead; or (b) his or her guardian if he or she was a minor or of unsound mind or under some other disability.

8. The word victim as defined in section 2(wa) of the Code is not only to be found in the proviso to section 372. It also finds mention in (i) the proviso to section 24(8); (ii) the second proviso to section 157(1); (iii) section 164-A; (iv) section 265-B(4)(a); (v) section 265-C; (vi) section 265- E; (vii) section 357-A; (viii) proviso to section 372; (ix) reference to section 228-A in the First Schedule to the Code. The word victim in all these provisions would have to be given the meaning ascribed to it in section 2(wa), unless, of course the context otherwise requires. In the second proviso to section 157(1), for example, the reference to victim is only to the rape victim herself (and not to her guardian etc) as the said provision relates to the recording of her statement at her place of residence. Here, the context requires that the includes part of the definition be discarded. In section 357-A (1), which relates to the victim compensation scheme, the expression used is the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. This provision also indicates that the word victim primarily refers to the person who suffers direct loss or injury because his dependants have been separately mentioned, though they may also have suffered loss or injury or be in need of rehabilitation. Another thing which comes to notice is the use of the word or in the expression victim or his dependents, which suggests that compensation is either for the victim or for his/her dependents, in case the victim is no longer alive. This also illustrates the point that victim refers to the crime victim in the natural and direct sense and not to the dependents etc. Of course, the expression dependent is different from legal heir which appears in the includes part of the definition in section 2(wa), but we need not go into this discussion for the present.

9. In the case at hand, the appellant - Mr Chattar Singh, is the father of Satish who was murdered and who was the victim of the crime in the natural and ordinary sense. Satish also left behind his widow and children. They, however, have not

come forward for filing any appeal as victims. The question which now arises is whether the appellant can be regarded as a victim within the meaning of section 2(wa) of the Code. In the view we have taken, he can only be regarded as a victim if he is covered by the includes part of the definition by falling within the expression legal heir.

10. The word heirs as used in a will was considered by the Supreme Court in *Angurbala Mullick v. Debabrata Mullick*: 1951 SCR 1125. The Supreme Court was of the view that the word heirs cannot normally be limited to issue only and that it must mean all persons who are entitled to the property of another under the law of inheritance. Again in a similar context, the Supreme Court in *N. Krishnammal v. R. Ekambaram*: (1979) 3 SCC 273, held that it was well settled that legal terms such as heirs, used in a Will must be construed in the legal sense, unless a contrary intention is clearly expressed by the testator and, consequently, as pointed out in *Angurbala Mullick v. Debabrata Mullick* (supra) it must mean all persons who are entitled to the property of another under the law of inheritance. The same view was also taken in *Bay Berry Apartments (P) Ltd. v. Shobha*: (2006) 13 SCC 737. These decisions relate to the expression heirs as appearing in a Will. The Supreme Court has interpreted the word heirs in the legal sense unless a contrary intention of the testator is discernible. In the case of section 2(wa), since the word heir is preceded by the word legal, it must be construed in the legal sense as that is the clear intention of the legislature. The expression legal heir in relation to a victim, therefore, clearly refers to a person who is entitled to the property of the victim under the applicable law of inheritance.

11. Undoubtedly, the law of inheritance applicable to the victim Satish is the Hindu Succession Act, 1956 (hereinafter referred to as the HSA'). Section 8 of the HSA sets out the general rules of succession in the case of a male Hindu dying intestate. It stipulates that the property would devolve, firstly, upon the heirs specified in Class I of the Schedule; secondly, if there is no heir of Class I, then upon the heirs specified in Class II of the Schedule; thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and lastly, if there is no agnate, then upon the cognates of the deceased. Section 9 of the HSA provides the order of succession among heirs in the Schedule. Those in Class I

take simultaneously and to the exclusion of all other heirs; those in the first entry in Class II are preferred to those in the second entry and so on, in succession. Section 12 prescribes the order of succession among agnates and cognates but that does not concern us in the facts of the present case inasmuch as it is an admitted position that the victim (Satish) left behind his widow and children (Class I heirs) and his father (Chattar Singh the appellant) who is a Class II heir.

12. In view of the provisions of sections 8 and 9 of the HSA, the appellant being a Class II heir would not inherit anything from his deceased son Satish in the presence of Satish's Widow and children who, being Class I heirs, inherit to the exclusion of Class II heirs and agnates and cognates. Thus, strictly speaking, the appellant is not entitled to the property of the victim under the applicable law of inheritance i.e., the HSA. Consequently, again strictly speaking, the appellant would not fall within the expression legal heir in relation to his deceased son - Satish.

13. At this juncture, Mr Kirpal contended that the expression legal heir has reference to all heirs specified in the HSA be they Class I heirs or Class II heirs or agnates or cognates. He submitted that the appellant being the father of the deceased victim and a Class II heir could surely file an appeal in respect of the murder of his said son. This, very emotive argument, appears to be reasonable and also appeals to our sensibilities but, our job as judges is to interpret the statute and, in doing so, to find out the intention of the legislature. The use of the expression legal heir as distinct from heir is deliberate. And, therefore, the expression legal heir would have to be given its meaning in law of referring to a person who is entitled to the property of the victim under the applicable law of inheritance. We have seen that the appellant is not such a person. As such, he cannot be regarded as a legal heir of the victim and, consequently, he does not come even within the includes part of the definition of victim in section 2(wa) of the Code.

14. The result of this discussion is that the present appeal is not maintainable inasmuch as it not an appeal by a victim as contemplated in section 372 of the Code because the appellant does not qualify as a victim as defined in section

2(wa) of the Code. The appeal is dismissed as such. All pending applications also stand disposed of.

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