

Molar

Vs

State of Haryana

Criminal Appeal No. 38 of 1970

(I.D. Dua, K.K. Mathew JJ)

26.04.1973

JUDGMENT

MATHEW, J. -

1. Dharma, Puran and Bhagwani, children of Mana, Dhupa and his wife Phulpati, Molar Lambardar and Prita of Village Biholi and Badlu Lambardar of Village Gagsina were challaned by P.S. City Panipat under Sections 419, 420 and 468, I.P.C. in the Court of Judicial Magistrate, Ist Class, Panipat. He framed charges under Sections 467 and 419 against Phulpati and under Sections 467 and 419, read with Section 109, I.P.C. against all other accused, and committed all of them to the Court of Sessions.

2. The case against them was as follows. Mana, the father of Dharma Puran, Bhagwani and Chaukas, died leaving landed property. The sons and daughters became entitled to it in equal shares. Chaukas and Bhagwani were married to persons in villages Malo Marja and Gageina respectively, but prior to the marriage of Chaukas, the sons and daughters of Mana had mortgaged some of their joint property with one Kidara. Dharma and Puran had contracted a loan from the Credit Co-operative Society of their village and in order to raise money for repayment of this amount, Dharma and Puran along with Bhagwani decided to mortgage the same land which had been already mortgaged along with the other land to Dhupa who belonged to their village. Dhupa approached Chaukas in this connection to ascertain her willingness to mortgage her share. She expressed her willingness to do so. On February 15, 1966, Dharma, Puran, Prita and Bhagwani, along with Dhupa and his wife Phulpati, accompanied by the appellant who is the Lambardar of the village, went to the Tehsil premises at Panipat. They contacted Udho Das, the Document Writer and he drafted mortgage deed purporting to be executed by Dharma, Puran, Bhagwani and Chaukas; the appellant, as Lambardar, identified the four mortgagors including Phulpati who personated Chaukas. Thereafter, the mortgage deed was executed and the thumb-impresions of the four executants and the appellant as Lambardar and identifier were duly impressed thereon. Next day, on February 16, 1966, Dharma, Puran and Bhagwani along with Phulpati came before the Sub-Registrar, Panipat. The appellant as Lambardar of village Biholi identified the four mortgagors, Dhupa and also Badlu as Lambardar of village Gagsina and the document was registered.

3. Chaukas came to know of the transaction soon after the registration of the document. She, along with her husband, complained to the Sub-Registrar about it. She also filed a complaint before the Sub-Divisional Magistrate, Panipat. The Sub-Divisional Magistrate, after recording her statement, registered a case against the appellant and the others and committed the accused for trial.

4. At the trial, the case of the appellant was that he had not identified Phulpati as Chaukas. But the

Court found, on the basis of the evidence of the Document Writer (P.W. 13) and the Sub-Registrar (P.W. 5) that the appellant had identified Phulpati, the wife of Dhupa, as Chaukas and that he had committed the offences under Sections 467 and 417, read with Section 109 of the Indian Penal Code and sentenced him to 3 1/2 years rigorous imprisonment and a fine of Rs. 100/- or in default to undergo further rigorous imprisonment for 3 months. All the other accused except Prita and Badlu were also found guilty of the offences charged against them.

5. In the appeal filed by the appellant against the conviction and sentence before the High Court, he contended that he knew Dharma and Puran, the brothers of Chaukas and therefore, he naturally thought that when they came with their sister Bhagwani to execute the document, the other lady, namely Phulpati, was Chaukas. He, therefore, bona fide believed that Phulpati was Chaukas and it was on account of this that he identified Phulpati as Chaukas.

6. This new case set up before the High Court was rightly rejected by it as there was no evidence to support it. The High Court, therefore, confirmed the conviction but reduced the sentence to rigorous imprisonment for a period of 2 years.

7. The contention of counsel for the appellant before us was that Dharma and Puran and their sister Bhagwani were known to him and when they came to execute the mortgage, he naturally thought that the other lady, namely, Phulpati who wore a veil to cover her face, was their sister Chaukas, and it was in the bona fide belief that he identified Phulpati as Chaukas.

8. Section 34(1) of the Indian Registration Act provides that subject to the exceptions therein mentioned, no document shall be registered under the Act, unless the persons executing such document, or their representatives, assigns or agents authorized appear before the registering officer. Sub-section (3) of Section 34 provides :

" (3) The registering officer shall thereupon -

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document."

Section 35(1) states :

"35(1)(a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, -

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the registering officer shall register the document as directed in Sections 58 to 61, inclusive."

9. But for the identifications by the appellant that Phulpati was Chaukas, the Sub-Registrar would not have registered the document. The conduct of the appellant in denying the factum of identification by him of Phulpati as Chaukas in the trial Court and his plea in the High Court and

here that he identified Phulpati as Chaukas because he thought Chaukas alone could have come along with Dharma, Puran and Bhagwani to execute the mortgage and that he had no reason to think that the lady whom he identified as Chaukas was Phulpati are telling circumstances. The appellant was the Lambardar of the village and he was expected to know Chaukas when he identified her.

10. There is no evidence to support the alternative plea of the appellant that Dharma or Puran made a representative to him that Phulpati whose face was covered by a veil was his sister Chaukas and that the appellant innocently believed the statement and made the identification.

11. There are no grounds to interfere with the concurrent findings.

12. We, therefore, dismiss the appeal.

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