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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

THE ETHICS OF INHERITENCE: CAN A MURDERER LEGALLY INHERIT FROM THEIR VICTIM?

AUTHORED BY - SHIBANI ROUT AND
RUTUSHREE SAHU

ABSTRACT

The issue in question is whether the heirs of the offender convicted of murder or he is the abettor of the murder from whom he shall bequeath the property of the person by way of inheritance. If he is convicted of murdering the person who is entitled to receive his property then in that case, he is barred from inheriting such property as according to section 25 of the Hindu Succession Act, 1956 ("Act"). It has to be read with section 27 of the Act which states, the person who stands disqualified shall be regarded as though he has died before the inheritance of the person dying intestate opened. The various court judgments give us a clear view as to how the judiciary perceives cases such as in a landmark judgement by the Supreme Court. The basic contention is the offender should not get the benefits of his own crimes by any way possible and it should deter the people in the society from committing offences to reap the benefit of their wrongdoing. As embodied in the maxim of *Nullus Commodum Capere Protect De Injuria Sua Propria*¹ the principle that no person should be able to take advantage of his own wrong which forms the backbone of section 25 along with section 27 of the Act. This paper shall discuss the various verdicts given by the various High Courts and Supreme regarding the topic of intestate succession whether the person who is inheriting is liable for murder or its abetment then in that case what opinion has the learned judges held as to why he should or should not receive the property of the victim. It also examines the state of the direct relatives of the accused or offender and their liability to receive inheritance. The paper also should include various suggestions which are put in place to ensure that the person who did not commit the offences be needlessly affected by the same.

¹ Eureka Forbes Limited vs. Allahabad Bank and Ors. MANU/SC/0322 (2010)

Keyword- Intestate, Succession, fresh stock of decent , Section 25 of the Hindu Succession Act, 1956, murderer disqualified²

INTRODUCTION

Personal laws govern the personal and individual aspects of a person's life. When it bestows upon the follower some rights it also levies some liability. Personal laws in the country are majorly discussed under two heads which are Hindu law and Muslim law. For our discussion we shall focus on the section 25 of Act which provides that a murderer shall be disqualified from inheriting the property of the person who he has murdered or abetted such murder nor shall he inherit any property in furtherance of such murder. It is to ensure that the murderer or abettor does not reap the benefit of his own wrong. The question arises as to whether the heirs of the murderer shall have the privilege of bequeathing the property of the victim. One might argue that since a murderer is disqualified from inheriting the property of the deceased and according to section 27 of the Act a person disqualified would be considered as possible as if he has been dead before the property of the deceased dying intestate opened up for succession. Hence the property would not go to his heirs since he would be considered dead and along with his line of heirs would be disqualified as well. Here the Indian judiciary has taken a varied view. Since there isn't a consensus as to how the court must dispose of such cases, the sole discretion lies on how the court views it. In some cases the court has considered the heirs of the murderer to be eligible to inherit property as in this article we will dive deep into the reasoning and circumstances for the court to grant the verdict.

ANALYSIS

Section 25 of the Hindu Succession Act, 1956 states that the murderer shall not inherit the property of the murdered individual dying intestate. This bar came into the Hindu Code through section 119, of the Code drafted by Shri. B.R Ambedkar. This section 119 made its way into the Hindu Succession Act, 1956 through section 25. Even before the Act came into existence the Privy Council relied on the principles of justice, equity and good conscience. It is because the Privy Council was of the opinion that the offender should not be able to take the advantage of his own wrongdoing. The Privy Council in the case of Kechana Kom Sanyellappa Hosmani

² The Hindu Succession Act, 1956, Section 25, No. 30, Acts of Parliament, 1956 (India).

v. Girimallappa Channaipa Somasagar³ held that the murderer shall not receive the benefits of the murdered person.

Even before this concept was introduced in India, in one of the cases of the privy council namely *Re Bedford v Bedford* – through the harmonious construction of the then statute and the ideas of justice, equity and good conscience wherein the son who murdered his mother was denied the mother's property which was opposed to the law at that time which suggested that the son shall be entitled to the property of his parents after his death. Hence the decision in the case of *Re Bedford v Bedford* the court struck a balance between the statute and the principles of equity so as the wrongdoer should not get the property of his victim.

But in India the principle is constructed through various decisions by various court's decision and determination. Prior to the decision of the Privy Council in the case of *Kenchava Kom Sanyellappa Hosmani v. Girimallappa Channaipa Somasagar*⁴, it was a belief that the matter is governed by Hindu law and it does not make any such demarcation upon the criminality of the successor and hence according to Hindu law he can inherit the property of his victim.

Their Lordship of the Privy Council were not of the same opinion. They believed that according to the principles of jurisprudence which has warranted the principles of Hindu law would not let a wrongdoer take advantage of his wrongdoing and hence such a determination is indeed flawed.

Along the similar lines the verdict of Madras High Court in the case of *M. Nagarajan v. V. M. Nagammal*⁵, has made an observation in regards to Section 25 of the Act that the offender shall not have a fresh line of descent but it would be deemed as non-existent. When we say that he shall not be considered as a fresh line of descent it means that he shall be considered to be dead in the line of descent which once was active but now is not. Or he can be considered as if he does not exist in the first place. It is to speak in a manner as if he has died with his victim himself. Dead not in the literal terms but as if he never existed in the lineage. As he does not serve as an active line of successor his whole lineage after him lose the ability to acquire the property of the perpetrator's victim who died intestate.

³ *Kenchava Sanyellappa Hosmani vs Girimallappa Channaipa Somasagar*, AIR Privy Council 209 (1924)

⁴ *Ibid*

⁵ *M. Nagarajan v. V. M. Nagammal* (2011) SCC ONLINE MAD 2547

When we talk about section 25, we cannot do so without the reference of section 27 of the Act which states that the person who is disqualified from inheriting the property of the person dying intestate shall be regarded as though he has been dead before the intestate himself and the intestate's property open post the death of the offender.

In *M. Nagarjuna v. V. M. Nagammal*⁶, the Madras High Court held in regard to the inheritance of the property of a husband who had murdered his wife is not entitled to the property of the deceased and said it is not contrary to the provisions of the statute or principles of justice, equity, and good conscience. The Court focuses on a couple of factors such as the definition of the term 'heir' under Section 3 and the applicability of sections 15 & 16 in the absence of the said crime. The Court opined, 'When an heir is disqualified under section 25, he cannot entitle the property of the deceased.' Again, in a similar issue the Delhi High Court in, *Smt. Janak Rani Chadha v. State (NCT of Delhi)*⁷, observed, that section 25 is based on the principles of justice, equity, and good conscience so as to make it impossible for a murderer to derive advantage from the act committed by him. In regards to section 27, the court held, if a person is disqualified under section 25 it is assumed that the offender is non-existent even before the estate comes into effect. The Punjab and Haryana High Court in *Mohinder Kaur & Ors. V. Wassan Singh & Ors*⁸, with the issue of whether a property which has been willed by the father to the sons, before one of his sons committed the act of killing the father, would be inherited by his son, held that the son should be treated as non-existent when the succession opens on the death of his victim. The Supreme Court, in the case of *Vallikannu v, r Singaperumal and Ors.*⁹ While addressing the question whether the property of the deceased will be inherited to the offender's next of kin, the apex court held that 'the murderer is not to be regarded as the stock of fresh line of descent but should be regarded as non-existent by the virtue of section 25 and 27. Hence, in the present case, through the effect of section 25 and 27 of the Hindu Succession Act, 1946 the respondent cannot inherit any property of the deceased as he was murdered, on the principle of justice, equity and good conscience the next of his kin will be disqualified as well.'

To the eyes of a novice, it might look like an extremely well-rounded section but there is a minute flaw which can be discovered only when we look beyond the lines. Now if we consider

⁶*M. Nagarajan v. V. M. Nagammal*(2011) SCC ONLINE MAD 2547)

⁷ *Smt. Janak Rani Chadha v. State (NCT of Delhi)* AIR 2007 DELHI 107

⁸ *Mohinder Kaur & Ors. V. Wassan Singh & Ors.*, **1968 SCC OnLine P&H 67**

⁹ *Vellikannu v. R. Singaperumal & Anr.*, (2005) 6 SCC 622

the perpetrator to be a dead line of descent or a line of descent which became non-existent the moment the property of the intestate was open for distribution what would be the state of the heirs of the murder. Will they be able to inherit the property of the intestates. It might sound obvious that since their predecessor who turned to be the one of who committed the murder the whole lineage after him becomes ineligible to inherit the property. Hence the section 27 of the Hindu Succession Act, 1956 which states that if a person has been disqualified under this act, then such person would be said to have been dead even before the intestate.

Mostly under this section it is regarded as though the murder would not constitute a fresh stock of descent rather would be considered as if he was dead and has no relation to the property of the deceased whatsoever. Hence, any person claiming through him would not have any claim over the property at all. But in the case of *Gangu v Chandrabhagabai*¹⁰ it was held that the wife can inherit the property of the deceased father-in-law who was murdered by the husband of the wife. It is because of the fact that the claim to the property of the deceased was not through the husband rather it was through the gotraja - sapinda which made the wife an eligible member to claim the property as a separate claimant apart from the husband. This decision of the court was crucial in understanding this whole conundrum wherein the question of whether the direct blood relatives of the murderer can inherit the property and the simple answer is at least not directly. If the relatives need to claim the rights as the eligible heirs to the property, then they have to make sure the path of claiming of the property of the intestate does not arise through their relation with the murderer.

For instance, if the wife of the murderer is keen to inherit the property of the intestate, then she has to prove that the claim to the property is not merely because of her relationship with her husband but she is also an eligible coparcener even without the husband in the picture.

SUGGESTION

Although the court has looked into the cases regarding disqualification of murderers from inheriting the property of the intestate there is a certain flaw which comes with this contention. It can be said that when we are depriving the direct relatives of the murderers stating that the line of descent dies with the offender and no fresh claims over the property arise by these direct relatives or next of kin, it is like we are punishing the people who haven't committed any crime for the crime of their relative. It is opposing the principles of the legal maxim of *Actio*

¹⁰ *Gangu vs. Chandrabhagabai* (1908) 32 Bom. 275

personalis moritur cum persona¹¹ which states that action dies with the person who has committed it. So if we take a similar line of thought when the offender dies then the liability of crime should die with him. In that regard when a person in direct relation should not bear the consequences of the crimes committed by their relative. Similarly, the legal maxim of Ex injuria jus non oritur¹² which says that Law (or right) shall not arise of injustice the kin of the offender shall not suffer injustice wherein they are deprived of the right to inheritance as a principle of law. So, the suggestion is to make the law more comprehensive and inclusive. And make the principal to be more on the welfare front than on the deterrence front so that the people who are not directly involved in the crime suffer needlessly. The innocent should not bear the brunt of the wrongdoings of the selfish acts of the perpetrator and should receive equitable justice.

CONCLUSION

In the traditional Irish Law, Eraic, is a form of tribute in reparation for murder or homicide, that is the fine had to be paid by the offender's family. This particular method of reparation has been present since the sixteenth century and later criticised as it has been used as a form of persecution by authoritarian and totalitarian states. The legal maxim "actio personalis moritur cum persona" rightly described the scenario on the same line. It means, the cause of action dies with the death of the person. In spite of the fact that this maxim is particularly related with the actions for unliquidated damages, or contracts, the meaning of the maxim does not change upon the scenario. Similarly, we can draw the parallel with the current matter of focus. Suggestions, nevertheless, differ from the precedents it concludes upon the unjust result of a flawed interpretation. The courts relied, while deciding whether a family should suffer from the act of a member, which they did not condone, on the colonial, however so abolished, doctrine of survivorship and concluded unjustifiably. Evidently the court still is of the opinion that the next of kin that is of the offender will also be regarded as non-existent upon the disqualification of the offender. However, failed to interpret the just and welfare aspect of the same.

¹¹ MANU/SC/0287/1966

¹² MANU/SC/0772/2013