
(2016) 02 PAT CK 0069

In the Patna High Court

Case No : Criminal Miscellaneous No. 35787 of 2015

Arjun Choudhary and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), Section 216, Section 217, Section 313, Section 482
Penal Code, 1860 (IPC) — Section 201, Section 300, Section 302, Section 304(B), Section 304-B, Section 34

Citation : (2016) 02 PAT CK 0069

Hon'ble Judges : Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Ramakant Sharma, Sr. Advocate and Rakesh Kumar Sharma, Advocate, for the Appellant; Jharkhandi Upadhyay, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Singh, J.—1. By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the petitioners seek quashing of the order dated 27.05.2015, passed by the learned Sessions Judge, Kaimur at Bhabua, in Sessions Trial No. 477 of 2010, whereby charge under Section 302 of the Indian Penal Code (for short "IPC") has been ordered to be added at the stage of final argument.

2. The brief facts of the case are as under:--

"(a) The sister of the informant, Ashwani Kumar Chauhan was married to the petitioner No. 1 Arjun Choudhary in the year 2009. After marriage, the petitioner No. 1 and his parents (petitioners No. 2 and 3) started demanding motorcycle and golden chain from the sister of the informant and on failure to fulfil the demand, they subjected her to cruelty. On 16.06.2010, the informant came to know that on 15.06.2010, his sister was killed by the petitioners and in order to conceal the evidence they threw her body in an abandoned condition at a

secluded place.

(b) On the basis of the aforesaid allegation made by the informant, the SHO, Kuchila Police Station, registered Kuchila P.S. Case No. 13 of 2010 dated 16.06.2010 against the petitioners under Sections 304-B/34 and 201 of the IPC and took up investigation of the case.

(c) On completion of the investigation, the allegations were found true. Hence, a report under Section 173(2) CrPC was filed in the Court forwarding the petitioners for trial for the offences punishable under Sections 304-B/34 and 201 of the IPC.

(d) On receipt of police report, Jurisdictional Magistrate took cognizance of the offences and as the offences were triable by the Court of Sessions, the case was committed to the court of sessions.

(e) Upon commitment of the case, the learned Sessions Judge, Kaimur at Bhabua framed charges against the petitioners under Sections 304-B/34 and 201 IPC to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

(f) During trial, the prosecution examined altogether eight witnesses whereafter the prosecution case was closed. Though the defence did not examine any witness, the statements of accused-petitioners were recorded under Section 313 CrPC in which they pleaded their innocence and false implication in the case.

(g) Thereafter, at the stage of argument, considering the materials available on record, the learned Sessions Judge found it prudent to add charge frame charge under Section 302 of the IPC also against the accused persons. Hence, vide impugned order dated 27.05.2015, he directed for addition of the charge under Section 302 IPC against the accused persons."

3. The aforesaid order dated 27.05.2015 is under challenge before this Court.

4. Mr. Ramakant Sharma, learned Senior Counsel for the petitioners has contended that the impugned order dated 27.05.2015 is bad in the eyes of law as the petitioners have not been given any opportunity to cross-examine the witnesses after addition of charge. He has contended that while passing the impugned order the learned Sessions Judge has not assigned any reason for adding the additional charge under Section 302 IPC. He has further contended that even otherwise, there is no material on record on the basis of which the Court could have come to a conclusion that Section 302 IPC was needed to be added to the existing charges under Sections 304-B/34 and 201 IPC.

5. On the other hand, Mr. Jharkhandi Upadhyay, learned counsel for the State has submitted that Section 216 CrPC gives power to the Court to add or alter charge at any stage of trial and hence, there is no illegality in the order passed by the learned Sessions Judge, Kaimur at Bhabhua. He has further contended that from the perusal of the impugned order itself, it would appear that after

addition of the charge under Section 302 IPC, the defence has been given a further chance to adduce evidence, if any, in support of its case. He has also contended that law does not mandate to assign any reason for adding or altering to any charge.

6. In reply to the query made by the Court, Mr. Sharma, learned Senior Counsel for the petitioners has contended that the trial of the case is pending at the stage of argument.

7. I have heard respective counsel for the parties and perused the record.

8. Section 216 CrPC deals with alteration or addition of any charge at any time before the judgment is pronounced. It reads as under:--

"216. Court may alter charge. -

(1) Any Court may alter or add to any charge at any time before judgment is pronounced

(2) Every such alteration or addition shall be read and explained to the accused

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

9. From a bare reading of the provisions prescribed under Section 216 CrPC, it would be evident that the trial Court has power to alter or add any charge provided such addition or alteration is made before the judgment is pronounced. By now, it is well settled that an erroneous or improper charge may be corrected by reframing it properly or by adding to it or altering it, if that omission is discovered subsequently. However, after an alteration or addition of any charge, the interest of the prosecution and the accused has to be safeguarded by permitting them an opportunity to call other witnesses. Sub-Sections (2) to (5) of Section 216 CrPC deal with the procedure to add any charge. These sub-Sections ensure that addition or alteration should not prejudice the accused. Though, the discretion in this regard lies with the Court, it must be exercised judiciously. The addition or alteration of a charge would not open up the trial

afresh and the Court may immediately proceed with the trial if it is of the opinion that there will be no prejudice to the accused.

10. Section 217 CrPC deals with recall of witnesses when the charge is altered or added by the Court after commencement of the trial. The Court may refuse to re-summon or re-examine a witness if it considers that the application therefore is made for the purpose of vexation or delay or for defeating the ends of justice. The provisions prescribed under Section 217 CrPC reads as under:--

"217. Recall of witnesses when charge altered. - Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice; (b) also to call any further witness whom the Court may think to be material."

11. Having seen the provisions prescribed under Sections 216 and 217 CrPC, there is no doubt with the proposition that charge can be altered at any stage. However, there must be sufficient materials justifying alteration of charge. The order passed by the Court must reflect the reason for addition or alteration of any charge. It is to be noted here that Section 302 IPC is not a substitute for a charge under Section 304-B IPC. The offence punishable under Section 304-B IPC deals with dowry death of woman caused otherwise than under normal circumstance within seven years of marriage whereas Section 302 IPC prescribes the punishment of the offence of murder defined under Section 300 IPC. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the allegations made in the FIR, materials collected during investigation, and evidence led in the Court. If there is evidence whether direct or substantial to prima facie support charge under Section 302 IPC, there is nothing wrong in framing a charge of murder punishable under Section 302 IPC at the fag end of the trial before the judgment is pronounced. However, the trial Court is not expected to act mechanically to frame charge under Section 302 IPC without discussing the evidence adduced in the case or assigning any reason for the same. In the present case, the impugned order dated 27.05.2015 passed by the learned Sessions Judge, Kaimur at Bhabhua reads as under:--

"27.05.2015. The sole accused Arjun Choudhary is in attendance. Leaned P P files attendance.

Petition filed today by the learned PP is moved by him for amalgamation of S.Tr. No. 477 of 2010 and S. Tr. No. 14 of 2011 as both cases arise out of the same police case i.e. Kuchila P.S. Case No. 13 of 2010.

Heard learned PP as well as learned counsel for the defence.

As both the sessions trials arise out of the same police case as mentioned above and both are at the same stage of hearing argument so S. Tr. No. 14 of 2011 is amalgamated with S. Tr. No. 477 of 2010.

Today, the case is fixed for hearing on the point of alteration or addition of charge in this case U/s. 302 of the IPC. Already the charge was framed in the cases U/ss. 304(B)/34, 201 of the IPC.

Heard the learned P P as well as learned counsel for the defence.

In this case the prosecution has already adduced the evidence and the accused persons also been examined U/s. 313 of the Cr.P.C. The case is at the argument stage but considering the material on record I find that Sec. 302 of the IPC is required to be added in this case so put up in post lunch session for adding and framing of charge under aforesaid Section. The accused persons are directed to be physically present.

The case is called out. All the three accused persons, namely, Arjun Choudhary, Ram Narayan Choudhary and Kumari Devi are present. The charge U/s. 302 of the IPC is explained in Hindi to which all the three accused persons pleaded not guilty. The learned PP submits that the prosecution does not want to adduce any further evidence.

The defence is given a further chance to adduce evidence, if any, in support of its case.

Put up on 08.06.2015 for defence evidence."

12. A bare perusal of the impugned order would make it evident that the trial Court has not discussed the evidence adduced during trial or assigned any reason for addition of the charge under Section 302 IPC. It has not even recorded that the addition was deemed necessary due to error or omission whether inadvertent or otherwise in the matter of framing charges against the accused persons.

13. In that view of the matter, the order passed by the trial Court is untenable. Hence, it is set aside. The matter is remitted back to the trial Court for a fresh order keeping in view the observations made above. It is made clear that setting aside of the aforesaid order would not come in the way of the trial Court from re-examining the question of framing of charge under Section 302 IPC against the petitioners and passing an appropriate order.

14. With aforesaid observations and directions, the application is allowed.