
(2005) 02 MP CK 0005

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 124 of 2005

Babulal and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319, 397, 401
Penal Code, 1860 (IPC) — Section 134, 302, 307

Citation : (2005) 1 MPLJ 530

Hon'ble Judges : Ashok Kumar Tiwari, J

Bench : Single Bench

Advocate : R.S. Parmar, for the Appellant; G.S. Chouhan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Tiwari, J.

This revision, u/s 397/401 of the Code of Criminal Procedure, has been filed by the applicants against the order dated 31-1-2005, framing of charge u/s 302 of the Indian Penal Code, passed by the learned Additional Sessions Judge, Narsingharh, in S.T. No. 161/04.

A charge sheet was filed against Jagdish, Mohanlal, Kiran Tara and Kalabai under sections 307, 302 and 134 of the Indian Penal Code and the trial proceeded against them before the Court of Additional Sessions Judge, Narsingharh, District Rajgarh (Biaora). During recording of evidence in the case some witnesses named applicants also amongst the persons, who assaulted deceased Rodilal, therefore, the trial Court took cognizance u/s 319 of the Code of Criminal Procedure and framed charge u/s 302 of the Indian Penal Code against the applicants also. Hence, the applicants have preferred this revision praying thereby for quashing the charge framed against them.

The contention of the learned counsel for the applicants is that there is no

evidence against the applicants and the police also did not file challan against them. Learned counsel also contended that the names of the applicants do not appear in the first information report and in the statements of the witnesses recorded during investigation by the police u/s 161, Criminal Procedure Code, therefore, the charge could not be framed against them.

Shivcharan s/o Bhanwarlal (PW3) has stated in his statement that he saw that 8 persons were assaulting Rodilal. The names of those persons have also been disclosed by him. According to him, Kailash, Mohan, Jagdish, Kala Bai, Kiran Tara, Kunjilal, Bapulal and Madan were the persons who were assaulting Rodilal.

Kanhaiyalal s/o Gokul Prasad (PW4) has stated that Mohan struck knife on the head of Rodilal; Kailash struck him with Lathi. He has also stated that Babulal uttered words that kill him (Rodilal) if he remains alive he will be dangerous to our life.

Section 319, Criminal Procedure Code provides that during the course of any enquiry into or trial of an offence, if it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. After going through the statements of the witnesses recorded during the trial there is evidence which prima facie suggests that the applicants were also amongst the assailants. Thus, the learned trial Court has not committed any jurisdictional error in proceeding against the applicants.

The learned counsel for the applicants has submitted that the witnesses are not the eye witnesses of the incident and they are pretending to be the eye witnesses. In fact, whether they witnessed the incident or not would be held after appreciation of the evidence. Similarly, their statements cannot be entirely ignored on the basis that the names of the applicants were not disclosed in the FIR or in their police statements. However, this fact can be and should be taken note at the time of appreciation of their statements and evaluating the evidence on merits. Learned counsel for the applicants, placing reliance on a case reported in 2002(2) MPU 69, Uma Shankar Singh Panwar and another vs. State of M.P., has urged that on the basis of the statements of the witnesses trial Court could not have proceeded u/s 319 of the Criminal Procedure Code. In the case of Uma Shankar (supra) the stray allegations were levelled by the witnesses against the accused. In the facts and circumstances of that case the Court held that mere reference of the names of the applicants the statement does not make out a case for proceeding u/s 319, Criminal Procedure Code. Such is not the situation here. In the present case the witnesses have made specific allegation regarding the participation of the applicants in the incident.

In view of above, the learned trial Court has not committed any illegality or jurisdictional error in invoking the provisions u/s 319, Criminal Procedure Code. Hence, this revision is devoid of any merit and is hereby dismissed.

Consequently, the application (LA. No. 793/05), for stay also dismissed.