
(2009) 02 AHC CK 0010
In the Allahabad High Court
Case No : Criminal R. No. 432 of 2009

Bhasker Singh and Another	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 162, 311
Evidence Act, 1872 — Section 78
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2009) 1 ACR 1168

Hon'ble Judges : Arvind K. Tripathi, J

Bench : Single Bench

Advocate : Satish Trivedi and Sheshadri Trivedi, for the Appellant; A.G.A., for the Respondent

Judgement

Arvind K. Tripathi, J.—Heard Mr. Satish Trivedi senior learned Counsel assisted by Mr. Sheshadri Trivedi for the revisionists, learned A.G.A. and perused the record.

2. The present criminal revision has been preferred against the impugned judgment and order dated 21.1.2009, passed by the learned Additional Sessions Judge, Court No. 2, Mau in S.T. No. 20/2006, State v. Bhasker Singh and another, in Case Crime No. 476/2005 under Sections 302/307, I.P.C., 3(2)(v) of S.C./S.T. Act and 27 of Arms Act, Police Station Kotwali, Ghosi, district Mau.

3. Counsel for the revisionists submitted that on 17.12.2008 the evidence was closed and 24.12.2008 was the date fixed for hearing in S.T. No. 20/2006 in which the revisionists are facing the trial. He contended that after the evidence was closed at a belated stage, an application No. 317-kha dated 24.12.2008 was filed from side of the prosecution for filing the certified photocopy of the order passed by the District Election Officer/District Magistrate regarding the schedule of the election programme and further the order passed by the District Magistrate u/s 145, Cr. P.C. declaring curfew in a particular area. He further contended that the objection was raised before the learned trial court that

adequate opportunity was given to prosecution. There was no question of placing the record at a belated stage from side of the prosecution, hence the application was liable to be rejected.

4. He further contended that whether the aforesaid documents for which the request was made from side of the prosecution essential for just and proper decision of the case or not was required to be considered. However, without considering the aforesaid aspects, the learned Sessions Judge permitted to file those documents and admitted the same by impugned order dated 21.1.2009 merely on the ground that in the interest of justice, those documents were liable to be accepted. He also contended that those documents were public document or not, whether it was required to be proved, the correctness of the documents in view of Section 162, Cr. P.C. of the evidence, this aspect has also not been considered. Without proving those documents, the same has been admitted by the learned Sessions Judge and further no opportunity was given to the accused/revisionists to raise objection regarding admissibility of those arguments in evidence.

5. The learned A.G.A. has opposed the aforesaid contention and submitted that those documents were public document and were essential just and proper decision of the case, hence the trial court has not committed any error and no interference is required under the revisional jurisdiction by this Court.

6. From perusal of the record including the application moved on behalf of the prosecution and order dated 21.1.2009, it is clear that according to prosecution, since the certified copies of the order issued by the District Magistrate u/s 145, Cr. P.C. declaring the curfew in a particular area as well as the order issued by the District Election Officer/District Magistrate on 26.9.2005 regarding the schedule of election programme were not available, hence the same could not be filed earlier, thereafter since those copies were received by the prosecution hence it was necessary to accept the same for just and proper disposal of the case. It is also clear from the order that it was verified from the prosecution that there was communal tension in between Hindu and Muslim communities, hence the curfew was imposed by order dated 14.10.2005, passed by the District Magistrate. The aforesaid fact would clarify the situation prevailing on the relevant dates. Further, the order dated 26.9.2005 issuing the notification regarding the schedule of election programme would also clarify regarding the election held in a particular area. No objection was raised from side of the accused before the trial court regarding admissibility of those documents or those documents were not public documents. On the other side, this was mentioned in the application moved by the prosecution, as well as in the impugned order that those public documents were required to be placed before the Court for proper decision of the case. The request was made from side of the prosecution to admit the certified photocopies of the aforesaid orders. Considering the provision of Section 78 of the Evidence Act, filing of certified copies issued by the Head of the Department, is the procedure to prove the public documents. The application can be moved from the

parties for summoning or recalling the evidence and witnesses, at any stage, and that power can be exercised by the Court concerned, if those evidence were relevant and essential for just and proper decision of the case. In the present case, since those orders passed by the District Election Officer/District Magistrate regarding the notification of the schedule of election programme and the order passed by the District Magistrate for declaring the curfew in the area on a relevant date were found necessary and essential for just and proper decision of the case by the trial court. It was mentioned by the trial court that for deciding the case on merit, the aforesaid documents would be helpful and in the interest of justice, the prayer was acceptable. Accordingly, both the public documents were accepted on application of the prosecution, hence in view of the aforesaid facts, it cannot be said that since the trial court has not mentioned the exact word mentioned in Section 311, Cr. P.C. hence his satisfaction was incorrect. In view of the aforesaid facts and circumstances, I am not inclined to interfere in the impugned order dated 21.1.2009.

7. Accordingly, the present criminal revision is hereby rejected.