
(2009) 03 AHC CK 0011

In the Allahabad High Court

Case No : Criminal M. Application No. 4738 of 2009

Brij Bhushan alias Birju and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228, 319
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 2 ACR 1364

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : H.C. Mishra, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—This application has been filed by the applicants-Brij Bhushan alias Birju, Bobby alias Sudhir and Sanjeev with a prayer to quash the charge dated 31.10.2008 u/s 302, I.P.C. framed by the learned Additional Sessions Judge, Court No. 4, Meerut in S. T. No. 489 of 2007.

2. Heard, Sri H. C. Misra, learned Counsel for the applicant and the learned A.G.A. for the State of U. P.

3. The facts in brief of this case are that the F.I.R. of this case has been lodged by O. P. No. 2 in Case Crime No. 97 of 2006 u/s 302, I.P.C. at P. S. Saroorpur district Meerut on 1.4.2006 at 10 p.m. in respect of the incident which had allegedly occurred on 1.4.2006 at about 7 p.m. in which the applicants were named as accused. On 7.7.2006, the O. P. No. 2 gave an application to the officer-in-charge of the P.S. Saroorpur stating therein that the deceased was murdered by Pawan Gupta, the names of the applicants were mentioned in the F.I.R. due to mistake. The Investigating Officer recorded the statement of the first informant on 8.9.2006, thereafter Investigating Officer recorded the statement of some other witnesses also who came to the conclusion that the

offence was committed by Satyendra alias Billu and not by the applicants therefore the charge-sheet was submitted only against Satyendra alias Billu. Thereafter, the learned Magistrate has taken cognizance and the case was committed to the court of Session, the charge was framed only against Satyendra alias Billu. The statements of P.W. 1 Ramesh and P.W. 2 and P.W. 3 have been recorded by the trial court, thereafter from the side of the prosecution an application u/s 319, Cr. P.C. has been filed, the same has been allowed on 21.7.2008 by which the applicants have been summoned to face the trial. Thereafter, the learned trial court has framed the charge against the applicant on 31.10.2008 being aggrieved from the order dated 31.10.2008, the present application has been filed.

4. It is contended by the counsel for the applicant that in the present case the conviction on the basis of the statement of P.W. 1, P.W. 2 and P.W. 3 is not possible because the first informant himself has given the statement during investigation stating therein that the applicants were falsely implicated and without giving proper reason the learned trial court has allowed the application u/s 319, Cr. P.C. on 21.7.2008. The order dated 21.7.2008 is illegal. Subsequently the charge framed u/s 302, I.P.C. by the trial court on 31.10.2008 is also illegal, the same may be set aside.

5. In reply to the above contention, it is submitted by the learned A.G.A. that in exercise of the power conferred u/s 319, Cr. P.C. the trial court has summoned the applicants after considering the statements of P. Ws. 1, 2 and 3 according to their statements specific allegations of committing the murder by using firearm has been made against the applicants. The learned trial court has not committed any error in summoning the applicants on 21.7.2008 and the learned trial court has not committed any error in framing the charges on 31.10.2008. It is further submitted that on the basis of the statements of P. Ws. 1, 2 and 3, if relied, conviction may be done. The present application is devoid of merits and may be dismissed.

6. Considering the submission made by the learned Counsel for the applicant, the learned A.G.A. and from the perusal of the impugned order dated 31.10.2008, it appears that the learned trial court has framed the charge u/s 302, I.P.C. after considering the statement of the witnesses of P. Ws. 1, 2 and 3 on which the learned trial court has summoned the applicant in exercise of the power conferred u/s 319, Cr. P.C., the above witnesses have made specific allegation of committing the murder against the applicants. There is no illegality in framing of the charge, therefore, the prayer for quashing the order dated 31.10.2008 is refused.

Accordingly this application is dismissed.