
(2005) 09 AHC CK 0269

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 12211 of 2005

Jaipal and Rishipal, Kali Charan and Hari Singh

APPELLANT

Vs

State of U.P. and Rahees Pal

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 190(1), 231
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2005) 09 AHC CK 0269

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : Devendra Dahma, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Poonam Srivastava, J.—Heard Sri Devendra Dahma, learned counsel for the applicants and learned A.G.A. for the State.

2. This application has been filed for quashing the order dated 11.8.2005 passed by the Additional. Sessions Judge Fast Track Court No. 4. Aligarh in Sessions Trial No. 577 of 2005, State v. Jaipal and Ors. The said order under challenge is an order whereby the learned Additional Sessions Judge/ Fast Track Court No. 4, Aligarh rejected the application moved on behalf of the accused. The prosecution examined the witness Rachees Palon 3.8.2005 which was challenged by the applicants on the ground that the witness was not examined during investigation. The applicant" has been deprived of an opportunity to confront the witness from an earlier statement recorded by the Investigating Officer u/s 161 CrP.C. The police had submitted a final report No. 27 on 24 8.1993, the complainant Smt. Sumitra Devi filed protest petition on 6.1.1994 and the Magistrate vide order dated 11.1.1994 rejected the final report and summoned the accused exercising powers u/s 190(I)(b) Cr. P.C. The three eye witnesses including complainant namely Smt. Sumitra Devi, Munni Devi and Rajendra Singh died during the continuation of the proceedings. The case was committed to the Sessions Court

on 18.5.2005. After the case was committed, the court framed charge u/s 307/34 I.P.C fixing 13.7.2005 for examining the prosecution witnesses. Since three eye witnesses were dead, only two witnesses, who remained to be examined, are the two injured witnesses Bhima and Rahees Pal. Witness Rahees Pal was produced as PW-1. The main objection is that since the name of Rahees Pal did not figure in the list of witnesses nor any application was noted by the prosecution to examine him as a prosecution witness, the court could not examine him legally and his evidence should not be taken into consideration

3. Learned Sessions Judge has passed a detailed order whereby he has come to a conclusion that since final report was submitted, there was no occasion to submit a list of witnesses and also that all the other witnesses are now dead. It is only two eye witnesses who remained to be examined. It is also true that the injuries of Rahees Pal was examined after a Majrubi Chitthi was issued by the police and injury report clearly mentions this fact.

4. Learned counsel for the applicants has cited a decision of this Court in the case of Ram Achal Vs. State of U.P., The submission is that the Investigating Officer u/s 161 Cr.P.C is to interrogate any and every person supposed to interrogate and every person acquainted with the facts and the statement is to be reduced in writing. But u/s 231 Cr.P.C. the Court in the course of trial is to take all such evidence as may be produced in support of the prosecution. The emphasis is on the word "all such evidence" which clearly signify that the right of the prosecution extends to the production of such person as a witness during the trial whose name do not figure in charge sheet or whose statements have not been recorded u/s 161 Cr.P.C. and such witnesses can only be examined after the prior permission of the court is obtained

5. In another case of the Apex Court, Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others, , was held that in a criminal case the fate of criminal proceedings can not always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community in general, therefore, the concept of fair trial entails familiar triangulation and interest. This becomes more necessary where the court has reason to believe that the fair trial will stand frustrated where the witnesses are dead on account of delay in the trial. In such circumstances, the Presiding Judge must not be a silent spectator but should be a participant in the trial evincing intelligence. live interest and elicit all relevant materials necessary for reaching a correct conclusion, to find out the truth, and administer justice.

6. In the circumstances, I am satisfied that the learned Sessions Judge committed no procedural error in permitting Rahees Pal to be examined as PW-1. Section 231 Cr.P.C. gives complete power to the Presiding Officer to take all such evidence as may be produced in support of the prosecution The counsel for the applicants has not been able to show any complete bar in support of the contention that Rahees Pal could not have been examined since his statement was not recorded u/s 161 Cr.P.C. Admittedly he had received injuries and the

injuries were got examined by the police therefore, in the light of special circumstances that all other eye witnesses are no more alive but for the two injured one of whom is witness Rahees Pal. I find that the learned Sessions Judge did not commit any illegality whatsoever. The argument of the counsel for the applicants that an application seeking permission from the court was necessary, it can be said that the objection is only technical which alone can not render the impugned order illegal.

7. For the reasons discussed above, I do not find any merit in this application and the application is accordingly rejected.