
(2006) 12 AHC CK 0038
In the Allahabad High Court
Case No : Criminal M.A. No. 16657 of 2006

Jittu Singh alias Jitendra Bahadur Singh and Others	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 14-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 201, 306

Citation : (2007) 1 ACR 986

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Advocate : H.K. Sharma, for the Appellant; A.G.A., for the Respondent

Judgement

R.K. Rastogi, J.—This is an application u/s 482, Cr. P.C. for quashing the order dated 4.12.2006, passed by the learned Additional Sessions Judge, Varanasi court No. 11 in S.T. No. 245 of 2006, State v. Jittu alias Jitendra and others.

2. The facts relevant for disposal of this application are that on 9.12.2005, Smt. Deepa Singh (opposite party No. 2) lodged an F.I.R. at police station Mirzamurad, Varanasi against the accused persons with these allegations that she was resident of village Ashan, Police Station Mirzamurad and her marriage had taken place with Vinai alias Suddu son of Narendra Singh. The accused Jittu, Ram Chandar, Shibbu Singh and Raj Bahadur, who are pattidars of her husband, had enmity with her husband regarding landed property and on 31.8.2005 at about 8 p.m. the above accused persons came to her house and beat her husband and tortured him and on account of these atrocities her husband fell down in the well and died. Thereafter the accused persons performed his funeral. This funeral was witnessed by her, but since she was mentally shocked on seeing his death, she fell ill. She was treated and when she recovered she went to the police station on 8.12.2005 to lodge the report. This report purports to have been written by Rajesh son of Raj Nath Tiwari resident of village, Ram Chandrapur Kachhawa Mirzapur. The police after investigation submitted charge-sheet against the above

accused persons u/s 306/201, I.P.C. Charges were also framed against the accused persons under the aforesaid sections.

3. The informant Deepa Singh was examined as P.W. 1 and in her examination-in-chief she stated that the accused had tied hands and feet of her husband and had beat him with lathis, and when her husband stopped crying, they tied his mouth from a gamachha and dragged him outside the house. On her intervention, the accused persons confined her in a room where she lost her senses; she was admitted in a hospital in that condition and then she narrated the entire incident before her parents. Her husband had already sent an application to the Superintendent of Police (Rural) which is Exhibit-Ka 1 and then S. P. (Rural) passed order directing the C.O. concerned to investigate the matter and when she went to the police station Mirzapur the S.O. obtained her signatures on blank papers and prepared a fictitious report under Sections 306 and 201, I.P.C. On the basis of above statement of Smt. Deepa Singh, the prosecution moved an application for addition of charge u/s 302, I.P.C. That application was allowed by the learned Additional Sessions Judge. Aggrieved with that order the accused filed this application u/s 482, Cr. P.C.

4. I have heard the learned Counsel for the applicants as well as the learned A.G.A. for the State.

5. It was submitted by the learned Counsel for the applicants that the Court has got a right to amend the charge at any stage of the trial but there should be sufficient evidence for that purpose. He submitted that in this case the F.I.R. was lodged after three months of the incident and in that F.I.R. the allegation was that her husband had fell down in a well due to atrocities of the accused persons and had died and this F.I.R. was written on her dictation by Rajesh son of Raj Nath Tiwari r/o Ram Chandrapur P.S. Kachhawa, Mirzapur. He submitted that under these circumstances when the informant Deepa Singh on being examined as P.W. 1 had added the above new allegations in her examination-in-chief, the proper procedure for the Additional Sessions Judge was to permit the accused first to cross-examine her and then suitable orders should have been passed after proper appraisal of evidence. I agree with this contention.

6. In view of above discussions, the impugned order dated 4.12.2006 passed by the learned Additional Sessions Judge, Varanasi, Court No. 11 in S.T. No. 245 of 2006, State v. Jittu alias Jitendra and others Court No. 11 in S.T. No. 245 of 2006, is set aside and it is ordered that the accused shall first cross-examine the P.W. 1 and after completion of her cross-examination the prayer for amendment of charge can be considered. It shall also be open to the trial court at that time to take evidence of other witnesses also, if it deems fit, and then decide the application for amendment of charge.

7. The application u/s 482, Cr. P.C. stands allowed to the aforesaid extent.