
(2005) 12 MP CK 0026
In the Madhya Pradesh High Court
Case No : Criminal Revision No. 429 of 2002

Kallu and Others	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319, 397, 401

Citation : (2006) CriLJ 1194 : (2006) ILR (MP) 296 : (2006) 1 MPHT 440 : (2006) 2 MPJR 405

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : Madhukar Kulshrestha, for the Appellant; K.B. Chaturvedi, Public Prosecutor for the Respondent No. 1, for the Respondent

Judgement

A.K. Gohil, J.

In this revision petition filed under Sections 397/401 of Cr.PC, the petitioners have challenged the impugned ordated 11-9-2002 passed by Sessions Judge, Bhind whereby the Court below allowed the application of the prosecution u/s 319, Cr.PC and on the basis of statements of Ravindra (P. W. 3), Ranvir Singh (P.W. 4) and Devendra (P.W. 7), directed that the petitioners be added as accused persons in the trial.

Ravindra (P.W. 3) is the nephew of deceased. Ranvir Singh (P.W. 4) is the son of the deceased and Devendra (P.W. 7) is the grand son of the deceased. As per prosecution story, incident took place on 3-6-00 at about 3 AM in the night. Mehlal Singh was sleeping in the open courtyard. Ravindra (P.W. 3) and Devendra (P.W. 7) were also sleeping near him. At about 3 AM, Ramiakhan, Kallu s/o Ramlakhan, Munna Singh s/o Ramlakhan, Balram s/o Ramiakhan and Saligram s/o Ramlakhan came on spot. Balram was carrying "Bailam", Ramlakhan was carrying "Farsa" and remaining accused persons were carrying "lathi" in their hands. They assaulted Mehtab Singh. Ram Lakhan gave Farsa blows to Mehtab Singh. As a result of assault, he died on spot and thereafter all

the accused persons ran away, but the police filed chargesheet only against Ramlakhan as the FIR was lodged only against him and none of the present petitioners were named either in the FIR or in the statement recorded u/s 161 of the Cr.PC by the prosecution. After the evidence of all the aforesaid witnesses was recorded before the Court below, the Court below directed that it appears that the petitioners have also participated in the commission of crime and therefore, the Court took cognizance against them and directed that the petitioners be also summoned through warrant of arrest as co-accused in the case against which this revision petition has been filed by the petitioners.

Shri Madhukar Kulshrestha, learned Counsel for the petitioner submitted that in the charge-sheet there is no material against the petitioners. Their names do not appear in the FIR as well as in the statements recorded u/s 161 of the Cr.PC. He further submitted that the only allegation against the petitioners in the Court statements is that the petitioners were also present carrying "Lathi" in their hands at the place of occurrence and at the time of commission of crime. His further submission is that there is no allegation that they have caused any injury by "Lathi" to the deceased and as per medical evidence also, the deceased has not received any "Lathi" injury.

Shri K.B. Chaturvedi, learned Public Prosecutor supported the impugned order and placed reliance on a decision in the case of Geeta Ram v. VediRam, (2002) 10 SCC 499 .

After hearing learned Counsel for the parties, I have perused the evidence on record.

Ravindra (P.W. 3) has stated in his examination-in-chief that when they were sleeping in the night, at about 3 A.M., Ramlakhan alongwith his son Kallu, Munna, Balram and saligram came on spot. Ramlakhan gave "Farsa" blow to the deceased and all other accused persons were carrying "Lathi" in their hands. In the cross-examination, he has admitted that he had stated all the names to the police but why the police has not mentioned the names of other accused persons in his case-diary statement (Ex. D-2), he can not give any reason. He has stated that Ranvir Singh (P.W. 4) had lodged a written report and that was written by his nephew Ashok at the police station and the police had torn it and the report of Ex. D-3 was not lodged by him but it might have been written by police itself.

Devendra (P.W. 7) has also stated that Ranvir, Munua and Nar-endra had gone to lodge the FIR and alongwith Ramlakhan, his sons Balram, Munna, Kallu and Saligram were also present on spot and after committing the crime, they had run away from the spot.

From the aforesaid evidence it is clear that witnesses Ravindra (P.W. 3) and Ranvir Singh (P.W. 4) have made allegations against the police that police has not written their report and the report which was written by Ashok and submitted to the police was torn by the police officer and forcibly their signatures were obtained on Ex. D-3. Ranvir Singh (P.W. 4) has also stated in his cross-

examination that his statement (Ex. D-5) recorded by the police on 8-9-00 was not given by him to the police.

In the light of aforesaid evidence, the statements of Section 161, Cr.PC recorded in the case have lost their significance. Even otherwise, statements recorded u/s 161, Cr.PC are not an evidence. Therefore, on the basis of the said evidence, if the Trial Court has allowed the application u/s 319 of Cr.PC, I do not think that the Trial Court has committed any illegality in directing that petitioners be also joined as a party in this case. In the case of Geeta Ram v. Vedi Ram (supra), Hon"ble Supreme Court has held that Section 319, Cr.PC, is intended to meet the situation where in course of trial, if materials come against some other persons, who have not been arrayed as accused, and are not being tried, the Court can summon them as accused. In this case, the legal position is somewhat similar. The witnesses have made allegations against the police that their original FIR was not lodged. Their statements were also manipulated and the FIR was torn by the police. Therefore, if on the basis of the statements given by the witnesses before the Court, the Court has taken a decision to join the petitioners as a party, the said order can not be said to be erroneous and under the peculiar circumstances when the investigation is defective and under cloud, the Court has every power to join other persons as accused in the case when it finds in evidence that some material is available against them. Therefore, I do not find any ground to interfere in the jurisdiction exercised by the Trial Court.

Thus, considering the evidence on record and the statements made by the witnesses, no interference is called for in the impugned order passed by the Court below. Stay granted by this Court is hereby vacated. The Trial Court is directed to proceed with the trial and conclude it as early as possible.

With the aforesaid directions, this revision petition stands disposed of.