
(2008) 01 AHC CK 0116
In the Allahabad High Court

Khaliq Ahmad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 302, 307, 504

Citation : (2008) 01 AHC CK 0116

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

Bench : Single Bench

Final Decision : Disposed Of

Judgement

R.K. Rastogi, J.—This is an application u/s 482 Cr.P.C. to quash the order dated 13.12.2007 passed by the learned Addl. Sessions Judge, Fast Track Court No. 6, Bareilly in Sessions Trial No. 257 of 2007, State v. Aqueel Ahmad and Ors.

2. The facts relevant for disposal of this application are that on 2.2.2004 Basheer Ahmad, O.P. No. 2 in the present application, lodged a report against accused-applicants at police station Sheeshgarh district Bareilly u/s 302 I.P.C. with these allegations that on the aforesaid date, he, his brother Chhotey and father Mohd. Husain residents of village Chachehat police station Sheeshgarh district Bareilly were going to the house of Mohd. Munney resident of village Tanda Chhanga who is maternal uncle of Basheer Ahmad and Chhotey and brother-in-law of Mohd. Husain and when they reached in front of the house of Sewa Ram in village Tanda Chhanga about 12 noon, the accused Khaliq Ahmad and his brothers Aqueel Ahmad and Ameer Ahmad residents of village Tanda Chhanga, who had fire arms with them, came from behind and Khaliq fired at Chhotey from behind and then they ran away towards their house. Munney had also reached the spot and had seen the incident. Basheer etc. took Chhotey to the house of Munney for taking him to hospital but he (Chhotey) died. Then he (Basheer Khan) left the dead body of Chhotey at the house of Munney and went to the police station and lodged report at 1.45 P.M.

3. On the basis of the above report the police registered case crime No. 13 of 2004 u/s 302, I.P.C. against the accused-applicants and after investigation submitted charge sheet against them and on the basis of that charge sheet S.T. No. 257 of 2007 is pending in the court of the Addl. Sessions Judge, Fast Track Court No. 6, Bareilly.

4. On 3.2.2004 at 11.15 A.M. Syed Iftikhar Mian, O.P. No. 3 in the present application, lodged a F.I.R. against the above named three accused persons at police station Sheeshgarh under Sections 307/504 I.P.C. with these allegations that on 2.2.2004 at about 12 noon he and his brother Afzal Mian and two other persons, named, Mujahid Khan and Aqueel Khan, all residents of village Daraoo police station Kichcha district Udham Singh Nagar, were going to offer good wishes of Id to Miyan Ji at village Tanda Chhanga and when they reached near the shop of Khaliq Pradhan at village Tanda Chhanga, the accused Khaliq Ahmad, Aqueel Ahmad and Ameer Ahmad sons of Chhotey residents of village Tanda Chhanga started to abuse them and fired at them with intention to kill them. On hearing the sound of fire Sajid Mian resident of Tanda Chhanga also reached there and as a result of fires done by the accused persons Syed Iftikhar Miyan and his companions and Sajid Mian received injuries. Then they proceeded towards Kichcha hospital. It has further been stated that the above named accused persons after commission of the above crime ran away and during that process of running away they fired at Chhotey, who died as a result of that fire arm injury received by him. It was also stated that this incident was witnessed by Asim Khan and Abid Miyan residents of village Daraoo.

5. The police on the basis of this F.I.R. registered case crime No. 13-A of 2004 against the accused and after completion of investigation submitted charge sheet against these accused persons and on the basis thereof S.T. No. 255 of 2007 has been registered against these accused persons and that sessions trial is also pending in the court of the Addl. Sessions Judge, Fast Track Court No. 6, Bareilly.

6. The accused persons moved an application before the Addl. Sessions Judge, Fast Track Court No. 6, Bareilly where the aforesaid both session trials are pending, that both these crimes pertain to same incident and accused are also the same in both the cases and the incident had also taken place on the same day at the same time at the same place so both these cases should be consolidated and tried together and S.T. No. 257 of 2007 should be made the leading case. This application was opposed by the prosecution and the learned Addl. Sessions Judge after hearing both the parties was of the view that inspite of the fact that the accused were common in both the above sessions trials and that the incidents had taken place in the same village on the same date, the time of the occurrence of both these incidents was different and those incidents had not jointly taken place, and the places of both the incidents were also different, and the prosecution witnesses were also different in both the session trials and so they could not be tried together. He, therefore, rejected the application of the accused persons. Aggrieved with that order the accused have filed this

application u/s 482 Cr.P.C.

7. I have heard learned Counsel for the applicants and the learned A.G.A. for the State at the admission stage and with the consent of the parties" learned Counsel, I am deciding it on merits.

8. It is to be seen that no doubt the accused are the same in both the cases but both these incidents had not jointly taken place.

9. According to the F.I.R. of case crime No. 13A/2004 the accused had first fired upon Syed Iftikhar and his companions in front of the shop of Khaliq Pradhan and when they were running away from the spot, fire arm injury was caused to Chhotey resulting into his death. This incident of firing at Chhotey took place in front of the house of Sewa Ram, as per the F.I.R. of case crime No. 13/2004. Thus, the incidents are different and their respective times are also different, because the incident of firing upon Chhotey took place after the incident of attack upon Mohd. Miyan etc. in front of the house of Khaliq at about 12 noon. The time of both the incidents has been described as 12 noon in both the F.I.Rs. but it is apparent from perusal of both these F.I.Rs. that at first the incident of attack upon Syed Iftikhar Miyan and his companions took place in front of the house of Khaliq Pradhan and thereafter when the accused were running away from that place they fired at Chhotey in front of the shop of Sewa Ram and the eye witnesses of these two incidents in both the session trials are also different. Under these circumstances, I am of the view that no fruitful purpose is going to be served by consolidating the trials of these cases nor they can be legally consolidated together. On the other hand, since the eye witnesses to be examined in both the session trials are different, their joint trial may create confusion in appreciation of the evidence. Hence, I am of the view that the learned Addl. Sessions Judge did not commit any illegality by rejecting the application of the accused -applicants for joint trial of both these cases.

10. However, taking this fact into consideration that both the incidents had taken place in the same village by same accused, one after the other, and that both the session trials in respect of these two incidents are pending in the same court, it shall be in the interest of justice that both these session trials, though they are to be tried separately, should be tried by the Addl. Sessions Judge simultaneously one after the other and the judgment in both the session trials should also be delivered simultaneously.

11. The application u/s 482 Cr.P.C. is finally disposed of with the above observations.