

(2016) 09 AHC CK 0237
In the Allahabad High Court
Case No : Criminal Revision No. 2211 of 2016.

**Om Prakash Yadava and Another - Revisionists @HASH State of U.P. and
Another - Opposite Parties**

Date of Decision : 12-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216
Penal Code, 1860 (IPC) — Section 302, Section 304

Citation : (2016) 10 ADJ 6 : (2016) 6 AILLJ 381

Hon'ble Judges : Mrs. Vijay Lakshmi, J.

Bench : Single Bench

Advocate : Ravindra Nath Rai and Ashok Kumar Rai, Advocates, for the Revisionist; G. A, for the Opposite Parties

Final Decision : Dismissed

Judgement

Mrs. Vijay Lakshmi, J. - Supplementary affidavit filed today by the learned counsel for the revisionists is taken on record.

2. This revision has been preferred against the order dated 25.5.2016, passed by learned Additional Sessions Judge Court No.3, Mirzapur in Sessions Trial No. 284 of 2013, arising out of Case Crime No. 326 of 2013, State v. Om Prakash and others, whereby the learned Additional Sessions Judge has altered the charge from Section 304/34 I.P.C. to Section 302/34 I.P.C.

3. Heard learned counsel for the revisionists, learned A.G.A and perused the records.

4. Some background facts in brief are that an F.I.R. was lodged by the owner of a petrol pump to the effect that on 02.7.2013, at about 9:30 p.m. one Jai Prakash Yadav came to the petrol pump, recklessly driving a truck. The truck dashed in the sign board of HP Petrol Pump indicating "HP" causing damage to it. When the Manager of the petrol pump Suresh Kumar Singh (deceased) blamed the truck driver Jai Prakash Yadav, for his recklessness, he started to throw filthy abuses and thereafter went away threatening the Manager of dire consequences and to

see him in future. After sometime, the truck driver returned to the petrol pump along with the applicants namely Om Prakash Yadava and Uma Kant Yadava. They assaulted the Manager on his head by a "Lathi" having an iron ring attached to its upper end, causing grievous injuries on the head of the Manager. He felt unconscious and was taken to the Hospital at Mirzapur from where he was referred to Varanasi. When the Manager was under treatment, the F.I.R. was lodged by the owner of the petrol pump. During the course of investigation, the injured succumbed to his injuries and charge sheet was submitted under Sections 304, 504, 508, 427 and 279, I.P.C. Later on the trial proceeded and the statement of P.W.1 (first informant) was recorded in the trial court who fully supported the prosecution case in his testimony. Thereafter, an application was moved from the prosecution side before the trial Court that charge under Section 302/34 I.P.C. be also framed against the applicants. The accused persons filed an objection against the said application and the court below, after hearing both the parties and on considering the statement of eye witness, PW-2, who fully supported the prosecution case, framed charges under Section 302/34 I.P.C. against the revisionists.

5. The legality and correctness of the aforesaid order passed by the court below has been challenged by the learned counsel for the revisionists mainly on two grounds:-

Firstly, that the application for alteration of charge was moved by the first informant i.e. owner of the petrol pump, who had no locus standi to move such application. While drawing the attention of this Court to the provisions of section 301 Cr.P.C., learned counsel for the revisionists has contended that section 301 (2) Cr.P.C. provides that only Public Prosecutor or Assistant Public Prosecutor, in charge of the case shall conduct prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, as the case may be. Learned counsel for the revisionists has contended that the application on which the learned trial court has framed charges under Section 302/34 I.P.C., against the revisionists has been moved by the first informant Kaushlendra Singh and not by the Public Prosecutor. In support of his contention, learned counsel for the revisionists has filed? certified copy of the aforesaid application, with a supplementary affidavit.

6. The second ground taken by the learned counsel for the revisionists is that the court below has not properly considered the provisions of Section 216 Cr.P.C and the order impugned is not in consonance with the aforesaid section.

7. Learned A.G.A. has opposed the revision by submitting that the impugned order has been passed in accordance with law. He has drawn the attention of this Court to the copy of the application filed by the revisionists, to show that the application for alteration of charge has been duly forwarded by Public Prosecutor.

8. Having heard learned counsel for the parties and having perused the records, there appears no force in the submissions of learned counsel for the revisionists.

9. So far as the first objection relating to Section 301 (2) Cr.P.C. is concerned, the certified copy of the application moved by Kaushlendra Singh, shows that it has been duly forwarded by the Public Prosecutor which is evident from the endorsement of Public Prosecutor, "Sir submitted" made on the margin of the application. Moreover, there is no such bar under Section 301 Cr.P.C. which prohibits the victim of a case to move any application before the court concerned.

10. The same problem arose before the Hon''ble Apex Court in the case of Sister Mina Lalita Barua v. State of Orissa and Ors, AIR 2014 SC 782. In the aforesaid case before the Hon''ble Supreme Court, the Public Prosecutor having not bothered to take any steps, the application was moved by the victim/appellant herself before the learned trial Judge. However, the learned trial Judge, observing that such an application at the instance of the victim and not having been filed by the Special Public Prosecutor being not maintainable, rejected the application solely on the ground of maintainability. Aggrieved by the said order, the victim/appellant moved the High Court, but the High Court too, making reference to Section 301 Cr.P.C. took the view that the appellant as an informant had a very limited role to play and it was beyond the authority granted to an informant or a private person under Section 301 Cr.P.C. The matter went to Hon''ble Supreme Court and the Hon''ble Supreme Court set-aside both the aforesaid orders passed by the trial court and also by the High Court. Some relevant extracts from the judgment of the Apex Court are quoted below:

"The High Court committed a serious illegality in merely stating that Under Section 301 Code of Criminal Procedure there is no scope for a victim as a private party to take any effective step to rectify a serious fallacy....."

"We are convinced that the grievances as projected by the Appellant, who was a victim of an offence of such a grotesque nature, in our considered view, the trial Court as well as the High Court instead of rejecting the application of the Appellant by simple making a reference to Section 301 Code of Criminal Procedure in a blind folded manner should have made an attempt to reconcile Sections 301 and 311 Code of Criminal Procedure in such peculiar situations and should have ensured that the trial proceeded in the right direction....."

"In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, the duty and responsibility of the Court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect every bit of a vital information placed before it. It can also be said that in the process the Court should be conscious of its responsibility and at times when the prosecution either deliberately or inadvertently omit to bring forth a notable piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice the? case of any party, should not hesitate to interject and prompt? the prosecution side to clarify the position or act on its own and get the record of proceedings straight.

Neither the prosecution nor the Court should remain a silent spectator in such situations....."

11. Likewise, in *J.K. International v. State (Govt of NCT of Delhi) and Ors*, (2001) 3 SCC 462, the Hon'ble Supreme Court considered the extent to which a complainant can seek for the redressal of his grievances in the on going criminal proceedings as under:

"The scheme envisaged in the Code of Criminal Procedure (for short "the Code") indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge-sheet was laid by them. Even the fact that the court had taken cognisance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance....."

"An aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognisance of the offences based on the report submitted by the police...."

12. The same view has been expressed by the Hon'ble Apex Court in *Zahira Habibullah H.Sheikh and Anr v. State of Gujarat and Ors*, (2004) 4 SCC 158 : AIR 2004 SC 3114.

" the courts have to take a participatory role in a trial. They are not expected to be tape recorders. They have to monitor the proceedings in aid of justice. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or (sic)derelection of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness."

13. In wake of the law laid down by Hon'ble Supreme Court cited above, there does not appear any force in the first objection relating to Section 301 Cr.P.C., raised by learned counsel for the revisionists.

14. The second objection raised by the revisionists, is also baseless. The impugned order clearly shows that the learned court below, after giving opportunity of hearing to both the parties and after considering the objections filed by the accused persons, has framed the charge under Section 302/34 I.P.C., by a well reasoned order, discussing in detail the grounds for alteration of charges.

15. At the stage of framing a charge, only a reasonable doubt or strong suspicion in the mind of the court concerned is sufficient and the courts are not required to see whether the evidence available on record is sufficient to prove the case of prosecution to the hilt. Only the prima facie evidence which is available on

record, at the initial stage of framing charges, is to be considered by the court concerned.

16. In *Sanghi Brothers (Indore) Pvt. Ltd. v. Sanjay Choudhary and others*, 2009 (1) SCC (Cri) 87, it has been held by the Hon''ble Apex Court that even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the Court to frame a charge.

17. In *Soma Chakravarty v. State (through CBI)*, 2007 (2) SCC (Cri) 514, it has been held by the Hon''ble Apex Court that at the time of framing of charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. If on the basis of material on record the Court could form an opinion that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. Whether, in fact, the accused committed the offence, can only be decided in the trial.

18. In *State of Orissa v. Debendra Nath Padhi*, 2005 SCC (Cri) 415, the Hon''ble Apex Court has held that at the time of framing charge, what the Trial Court is required to see and consider, are only the Police Papers referred to under Section 173, Cr.P.C. and documents sent with it. The accused cannot be permitted to produce documents to put forth his defence case for purpose of seeking discharge.

19. In *Omwati v. State*, AIR 2001 SC 1507, it has been held by the Hon''ble Apex Court that the High Court should not interfere at initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons, which in law amount to interdicting the trial against the accused persons.

20. In the instant case, the charge has been altered after the statement of witness PW-1 was recorded during trial, who fully supported the F.I.R. version of prosecution case as narrated above.

21. In view of the aforesaid facts and circumstances, there does not appear any illegality or irregularity in the order impugned, altering the charge from Section 304 I.P.C. to Section 302 I.P.C. It is also to be kept in mind that mere framing of charge under Section 302 or more altering it from Section 304 to Section 302, does not mean that the accused is going to be punished under the Section 302 I.P.C. An accused may be punished for a smaller offence even though charge has been framed under graver offence but he cannot be punished for such offence which is graver than the offence he is charged with. At this stage of framing charge nothing can be said about the ultimate result of trial. The trial may result in punishment of accused for some lesser offence or even in his acquittal. No prejudice is going to be caused to the applicants by alteration of charge.

22. Considering all the facts and circumstances and the legal position, this revision appears to have no force and it is liable to be dismissed at the admission

stage itself.

23. The revision is accordingly dismissed.