
(2015) 11 AHC CK 0009
In the Allahabad High Court
Case No : Criminal Revision No. 4071 of 2015

Sanjay Saxena and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 201, 302, 319, 362, 364
Penal Code, 1860 (IPC) — Section 201, 302, 364-A, 411
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(V)

Citation : (2015) 11 AHC CK 0009

Hon'ble Judges : Pankaj Naqvi, J.

Bench : Single Bench

Advocate : Daya Shankar Mishra, for the Appellant

Judgement

Pankaj Naqvi, J.—Heard Sri D.S. Mishra, learned counsel for the revisionists and Sri Nitin Sharma, the learned A.G.A.

2. This criminal revision is preferred against the order dated 21.10.2015 passed by Special Judge (SC/ST Act), Etawah in S.T. No. 99 of 2009 (State vs. Manoj Kumar and others) summoning the revisionists under Section 319 CrPC for offences under Sections 302 , 201 , 364-A , 411 IPC and 3(2)(V) SC/ST Act.

3. A written report was lodged by O.P. No. 2 on 13.8.2008 at P.S. concerned alleging that on the said date, the revisionist No. 1 and another unknown person took away his son from his house on a motorcycle at around 5 P.M. It alleged that revisionist No. 1 is a contractor at Primary Health Centre, who was coercing his son, i.e. Babloo @ Vikas the deceased to persuade his brother-in-law, i.e. Kailash Babu, Engineer for a renewal of his contract, which was declined by his son, which became the cause of the death of his son. The informant also alleged that as the son did not return till night, they went to the police station concerned, wherein it transpired that an unidentified body has been recovered at the village forest, which upon identification was found to be that of his son,

Babloo @ Vikas, who was put to death by revisionists and their cohorts. The above intimation was registered at G.D. No. 53 at 23:00 P.M. on 13.8.2008 under Section 302 /201 CrPC and 3(2)(V) SC/ST Act as Case Crime No. 300 of 2008. After investigation, a charge sheet was filed against Manoj Kumar, Vijendra, Pawan and Karan Singh and the involvement of the revisionists was found to be false. After cognizance, the case was committed to Sessions and charges framed against Manoj Kumar and Vijendra on 15.6.2009 under Sections 364-A , 302 , 201 IPC and Section 3(2)(V) SC/ST Act and as against the two other co-accused persons namely Pawan @ Jor Singh and Karan Singh under Sections 302 /201 IPC and Section 3(2)(V) SC/ST Act. An additional charge also came to be framed against Manoj under Section 364 CrPC.

4. PW-1 the mother of the victim was examined on 6.7.2010, wherein she alleged that her son was taken away by revisionists No. 1 & 2 and Manoj Painter on 13.8.2008 at about 5:00 P.M. from her residence on a pretext of an important work; her son had accompanied them in his motorcycle, but when he did not return, her husband, i.e. PW-2 and her son-in-law, PW-5 Kailash went out to search him, who upon return inform that his dead body has been traced in the jungles of village Sheetalpur and that a report has been lodged by him. She further stated that revisionist No. 1 used to coerce her son for the renewal of his contract with his brother-in-law Kailash (PW-5) but as the son did not do so, he was put to death at the hands of revisionists and Manoj Painter along with their cohorts. PW-2/Dr. Lakshmi Narain Shankhwar, father of the victim was examined on 22.7.2010, who maintained the same stand as that of his wife, as it was he, who had informed his wife to the events leading to the discovery of the body of the deceased.

5. An application under Section 319 CrPC dated 19.10.2010 was filed by the State for summoning the revisionists on the ground that PW-1 and PW-2, the parents of the victim had deposed the involvement of the revisionists in the commission of the offences. This application came up first to be considered on 17.2.2011, when it was deferred on the ground that the application would be considered at an appropriate stage, i.e. after cross-examination. Subsequently, PW-1 and PW-2 were cross-examined and the trial court on 30.5.2011 came to the conclusion that the application under Section 319 CrPC is now matured for consideration and the next date fixed was 27.6.2011. On 21.7.2011, the trial court was taking a view that as there is contradiction between PW-1 and PW-2, the parents of the victim, who are interested witnesses, therefore till such time other evidence is not on record, the summoning of the revisionists be deferred. Thereafter, the trial court proceeded to examine as many as 10 prosecution witnesses. Finally, under the order impugned, the application under Section 319 CrPC came to be allowed.

6. It is submitted by learned counsel for the revisionists that once the trial court on 21.7.2011 found the testimony of PW-1 and PW-2 inconsistent and insufficient to summon the revisionist under Section 319 CrPC, then on same evidence, it

was not open for the trial court to summon the revisionists in view of the bar of Section 362 CrPC. He further submitted that in the absence of any satisfaction recorded by the court below as to the culpability of the revisionists, the summoning under Section 319 CrPC could not be justified.

7. The learned AGA has vehemently opposed the submission and submits that there was no material contradiction between the testimonies of PW-1 and PW-2. He further submitted that as the trial court was only deferring the consideration of application under Section 319 CrPC on 17.2.2011 and 21.7.2011, then the said orders would not be an impediment for a fresh consideration on merits under the order impugned as by the said date, 10 prosecution witnesses had come to be examined. He finally invited the attention of the Court to that part of the application under Section 319 CrPC, wherein it was specifically alleged that the brother of the revisionist No. 1 i.e. Sri Rajiv Saxena, Advocate was the officiating D.G.C. (CrI) at the time, when the matter was being investigated, who could have influenced the fairness and impartiality of the investigation, which went uncontroverted/unrebutted.

8. The Constitution Bench of the Apex Court in the case of Hardeep Singh Vs. State of Punjab and Others etc. etc., after analyzing the previous judgments of the Apex Court held in paragraphs 105 & 106 as under:-

"105. Power under Section 319 Cr.P.C. is a discretionary and extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other persons may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

9. PW-1 and PW-2 are the parents of the deceased and the latter happens to be a retired veterinary doctor aged 70 years, who assigned a definite role to the involvement of the revisionists in the commission of the crime, when PW-1

alleged that it was the revisionists, who came to the house of O.P. No. 2, took away their son on a pretext of an important task on 13.8.2008 at about 5:00 P.M. and the son went along with them in his motorcycle. They further stated that when the son did not return, efforts were made by PW-2 and PW-5, who subsequently learnt about discovery of an unidentified body in the nearby jungles, which upon identification was found to be that of his son. Both PW-1/PW-2 stated that the son had been put to death as revisionist No. 1 used to coerce the victim to persuade his brother-in-law Kailash Babu/PW-5 to renew his pending contract in the Primary Health Centre, to which the son refused, which became a cause of his death.

10. Against the above backdrop, the application under Section 319 CrPC was filed by the prosecution on 19.8.2010 for summoning the revisionists. The said application under Section 319 CrPC came up for first consideration on 17.2.2011, when it was deferred on the ground that PW-1 has not been subjected to cross-examination. After cross-examination of PW's 1 and 2, the trial court on 21.7.2011 was of the view that as there was contradiction between PW-1 and PW-2, the parents of the victim, the disposal of the application be deferred till further evidence is brought on record. The alleged contradiction is too frivolous and in the opinion of the Court could not be the basis for refusal to summon the revisionists.

11. On the other hand, a perusal of the impugned order reflects that it was a case, where the trial court found that PW-1 and PW-2 had been maintaining a same stand right throughout the investigation, as to the culpability of the revisionists, yet the investigating officers were not filing a charge sheet against the revisionists, which eventually led the court below to castigate the two investigating officers and ordering initiation of appropriate disciplinary proceedings against them. In the application under Section 319 CrPC, it was stated that the brother of revisionist No. 1 i.e. Rajiv Saxena, Advocate was the Officiating District Government Counsel (Crl.) at the time when the case was being investigated and that it was on account of coercion exercised by the said Government Counsel that the two investigating officers deliberately and mischievously excluded the revisionists from the charge sheet. Pertinent to state that the said recital was neither objected before the court below nor in this application, nor even during the course of the arguments. Thus without commenting further, the possibility of the investigation, being influenced by the said two investigating officers may not be ruled out.

12. The bar of Section 362 CrPC would not apply as consideration of application under Section 319 CrPC at various stages was being deferred and at no stage was the application ever rejected. Thus the impugned order would not be hit by Section 362 CrPC.

13. Thus from the aforesaid discussion, this Court is satisfied that in view of the testimonies of PW-1 and PW-2 coupled with the above attending circumstances, there was sufficient evidence as against the revisionists, which was meeting the

test as to the degree of satisfaction laid in Hardeep Singh (supra) to summon the revisionists under Section 319 CrPC, and the impugned order does not suffer from any illegality/impropriety.

14. No other plea is urged.

15. The revision lacks merit and is dismissed.