
(2011) 08 AHC CK 0309
In the Allahabad High Court
Case No : Criminal Revision No. 3116 of 2011

Shafi Ahmad and others	Vs	APPELLANT
State of U.P. and another		RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 161, 319, 397, 401
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 506

Citation : (2011) 3 ACR 3349

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Advocate : Rajeev Lochan Shukla and Rahul Mishra for the Revisionists, for the Appellant; Vishesh Kumar and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

S.C. Agarwal, J.—This revision u/s 397/401 of the Code of Criminal Procedure is directed against order dated 23.7.2011, passed by Additional Sessions Judge, Court No. 8, Fatehpur in Sessions Trials Nos. 148. 149 and 584 of 2008, State v. Phool Singh and others, arising out of Crime No. 194 of 2007, P.S. Hussainganj, district Fatehpur whereby the application 63B u/s 319, Cr. P.C. preferred by the complainant through prosecution was allowed and the revisionists Shaft Ahmad, Raft Ahmad and Fareed Ahmad were summoned to face trial under Sections 147, 148. 149, 302/149, 506. I.P.C. and 7, Criminal Law Amendment Act.

2. Heard Sri Rajiv Lochan Shukla, learned counsel for the revisionists and Sri Vishesh Kumar, learned counsel for the complainant as well as learned A.G.A. for the State.

3. Learned counsel for the revisionists submitted that the trial court has considered the examination-in-chief of Virendra Pratap Singh (P.W. 1) and Abhishek Pratap Singh (P.W. 2), but their cross-examination has not been considered.

4. The next submission of learned counsel for the revisionists is that the trial court has also considered the statements of P.W. 1 and P.W. 2 recorded by the Investigating Officer in the case diary u/s 161, Cr. P.C. and such statements are not covered by the word "evidence" and, therefore, the impugned order is bad in law, as the trial court has considered the extraneous material in passing the order u/s 319, Cr. P.C.

5. Reliance has been place on a decision of the Apex Court in Y. Saraba Reddy v. Puthur Rami Reddy and others, 2007 (58) ACC 573 : 2007 (3) ACR 2438 (SC), wherein, in paragraph 11, the Apex Court observed as under :

11. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial alongwith other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge-sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. Of course, as evident from the decision in Sohan Lal and others Vs. State of Rajasthan, , the position of an accused who has been discharged stands on a different footing.

6. Learned counsel for the complainant as well as learned A.G.A. submitted that the revisionists were named in the F.I.R. They actively participated in the crime, but the police did not file charge-sheet against them despite sufficient material available in the case diary. In the statements before the Court, P.W. 1 and P.W. 2 specifically stated that on 25.11.2007 at about 5:00 p.m., P.W. 1 Virendra Pratap Singh, P.W. 2 Abhishek Pratap Singh, and the deceased Jitendra Pratap Singh were sitting by the side of the temple in front of theka near Asni Mandi. Shafi Ahmad, Rafi Ahmad, Fareed Ahmad, Phool Singh and Mahendra Pratap. armed with firearms, came there on motorcycles. On exhortation of Shafi Ahmad, all the accused persons fired at Jitendra Pratap Singh, who suffered gunshot wounds and died on spot. It was further submitted that the F.I.R. was promptly lodged at 6:30 p.m. at P. S. Hussainganj wherein the revisionists were named as accused persons. The revisionists were armed with firearms and firearm injuries were found on the person of the deceased. It was further submitted that the summoning order u/s 319, Cr. P.C. has been passed by the trial court on the basis of statements of P.W. 1 and P.W. 2 as well as the F.I.R., though a reference has been made to the statements of P.W. 1 and P.W. 2 recorded by the Investigating Officer simply to show that the involvement of the revisionists has been alleged right from the very beginning. The contention is that even if the reference to the material available on the case diary is disregarded, there is

sufficient evidence on record to summon the revisionists for trial.

7. As far as the contention that cross-examination of the witnesses has not been considered, I do not find any force in the submission, as at the stage of summoning an accused person u/s 319, Cr. P.C., a very minute discussion of the evidence is not required, only this much is to be seen as to whether there is sufficient evidence on record which, if unrebutted, is likely to result in conviction. No doubt, the powers u/s 319, Cr. P.C. are to be exercised very sparingly and mere existence of suspicion or prima facie case is not sufficient, but if there is reasonable probability of a person being convicted, the powers u/s 319, Cr. P.C. may be exercised. It is not necessary that detailed consideration of the cross-examination must be made by the trial court.

8. The second submission that the impugned order is vitiated, as the extraneous material was considered by the trial court, is also not wholly correct. Learned Addl. Sessions Judge considered the statements of P.W. 1 and P.W. 2 in detail and only a reference was made that in their statements u/s 161, Cr. P.C. also they had disclosed the involvement of the revisionists, this observation does not invalidate the impugned order. Even if the reference to case diary or reference to statements of P.W. 1 and P.W. 2 recorded in the case diary by the Investigating Officer is disregarded, there is sufficient evidence on record in the form of statements of P.W. 1 and P.W. 2 as well as the F.I.R. and the post-mortem report, to prima facie show the involvement of the revisionists in the crime.

9. Learned Addl. Session Judge has recorded his satisfaction that the evidence of P.W. 1 and P.W. 2. who were the eye-witnesses, is of such a nature, which may result in the conviction of the revisionist.

10. In view of the above, this Court is of the opinion that even if the reference to the material available in the case diary is disregarded, there was sufficient evidence on record to summon the revisionists u/s 319, Cr. P.C.

11. The revision is devoid of merit and is accordingly dismissed,

12. Interim order stands vacated.