
(2009) 10 AHC CK 0242
In the Allahabad High Court
Case No : Criminal Revision No. 2457 of 2004

Vijai Pandey and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216, 309, 323, 397
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2009) 3 ACR 3331

Hon'ble Judges : Vijay Kumar Verma, J

Bench : Single Bench

Advocate : P.N. Tripathi and M. Sarwar Khan, for the Appellant; Bijendra Kumar Mishra and A.G.A., for the Respondent

Judgement

Vijay Kumar Verma, J.—By means of this revision u/s 397 of the Code of Criminal Procedure (in short "the Cr. P.C."), dated 19.5.2004, passed by Special Judge (E. C. Act), Jaunpur, in State v. Vijay Pandey and Ors. S.T. No. 462 of 1999 under Sections 147, 148, 149, 323, 325, 304, 504 and 506, I.P.C. has been challenged.

2. By the impugned order, the learned court below has allowed the application 45B moved on behalf of complainant to frame alternate charge under Sections 302 and 307, I.P.C.

3. The facts leading to the filing of this revision, in brief are that an F.I.R. was lodged on 2.6.1998 by Rajesh Kumar (O.P. No. 2 herein) at P. S. Pawara, district Jaunpur, where a case at Crime No. 82 of 1998, under Sections 147, 148, 149, 323, 504, 506 and 304, I.P.C. was registered against Vijay Pandey, Akhilesh alias Lala, Vimlesh, Subhash, Chintamani, Sankatha, Shatrughan and Lakshmi Kant. The allegations made in the F.I.R., in brief, are that the accused persons having lathi, danda and hockey came on the door of the house of the complainant on 2.6.1998, at about 5.00 p.m. and caused marpeet, thereby causing injuries to the father of the complainant, due to which he died in the hospital. Injuries are said to have been caused to the complainant, his brother Rakesh and mother

Smt. Ladawati also. After investigation, charge-sheet was submitted under aforesaid sections. On the case being committed to the court of session for trial, S.T. No. 462 of 1999 was registered, in which charges under Sections 147, 148, 323/149, 325/149, 304/149, 504 and 506, I.P.C. were framed against the accused persons on 7.11.2000. Prior to leading any evidence, an application was moved on behalf of complainant that alternate charge under Sections 302 and 307, I.P.C. be framed against the accused persons. The court below vide impugned order has allowed that application and order to frame additional charge under Sections 302/149 and 307/149, I.P.C. in the alternative has been passed. Hence, this revision.

4. I have heard arguments of Sri M. S. Khan, advocate, appearing for the revisionists, Sri B. K. Mishra, counsel for the O.P. No. 2 and A.G.A. for the State.

5. The main submission made by learned Counsel for the revisionists was that without taking any evidence the court below could not frame additional charge u/s 302/307 read with Section 149, I.P.C. and hence the impugned order being illegal, deserves to be quashed. For this submission, reliance has been placed on *Ishwarchand Amichand Govadia v. State of Maharashtra* and Anr. 2007 (1) All JIC 37: 2006 (3) ACR 3192 (SC) and *Munna Lal Agrawal v. State of U.P. and Ors.* 2002 CBC 354: 2002 (2) ACR 1210.

6. In response, it was submitted by learned Counsel for the complainant and A.G.A. that charge can be altered or added at any stage before pronouncing the judgment and hence interference by this Court in the impugned order would not be justified, as the said order does not suffer from any illegality or jurisdictional error.

7. I have given my thoughtful consideration to the submissions made by learned Counsel for the parties and perused the entire material on record. As stated hereinabove, on the basis of the material available in the case diary, the court below had framed charge under Sections 147, 148, 323/149, 325/149, 304/149, 504 and 506, I.P.C., vide order dated 7.11.2000, passed in *State v. Vijay Pandey and Ors.* S.T. No. 462 of 1999. The record shows that without leading any evidence by the prosecution in support of the charges framed against the accused persons, an application was moved on 14.10.2003 on behalf of the prosecution to frame alternate charges under Sections 302 and 307, I.P.C. On the basis of that application, the impugned order has been passed to frame additional charges under Sections 302/149 and 307/149 in the alternative without any additional evidence or material. Therefore, in view of the observations made by this Court in the case of *Munna Lal Agrawal v. State of U.P.* (supra) the impugned order cannot be said to be justified. The following observations made in para 5 are worth mentioning:

Regarding Sections 216 and 323 together it appears that Magistrate is empowered to alter or add any charge at any stage of the case or may commit the case to the court of sessions before the judgment is pronounced. However, it

does not mean that the charge can be altered or added or the case can be committed without any additional evidence or without any additional circumstance. Once the charge is framed, in my opinion there must be some additional evidence of additional circumstance to alter or add the charge or to order that the case may be committed to the court of sessions. The additional circumstance, for example may be that there may be clerical mistake, accidental omission or mistake apparent on the face of the record in framing of the charge. If it is so the charge can be altered or added u/s 216, Cr. P.C. and the case may also be committed u/s 323, Cr. P.C.

8. In the case of *Ishwarchand Amichand Govadia v. State of Maharashtra* (supra), charge u/s 304B, I.P.C. was added without examination of doctor. The charge was held to be unjustified by the Hon''ble Apex Court. Therefore, in my opinion, in present case also, after framing charges against the accused persons, the court below was not justified to frame additional charges under Sections 302/149 and 307/149, without taking any evidence.

9. Consequently, the revision is allowed and impugned order dated 19.5.2004 is set aside. However, the court below is at liberty to alter or add charge after taking evidence of doctors. 10. The trial court concerned is directed to conclude the trial of the accused persons within a period of six months applying the provisions of Section 309, Cr. P.C. and avoiding unnecessary adjournments. In case the accused persons do not co-operate and cause delay in trial, then their bail may be cancelled and after sending them to jail, sincere efforts will be made to conclude the trial within aforesaid period.

11. S.S.P., Jaunpur also is directed to depute special messenger to procure the attendance of witnesses after obtaining their summons from the Court concerned and it must be ensured that all the witnesses are produced for evidence in S.T. No. 462 of 1999, without causing any delay.

12. The office is directed to send a copy of this order within a week to the trial court concerned and S.S.P., Jaunpur for necessary action.