
(2010) 04 AHC CK 0171

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 5864 of 2010

Vijay Pandey and others

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2010) 04 AHC CK 0171

Hon'ble Judges : Yogendra Kumar Sangal, J

Final Decision : Dismissed

Judgement

Yogendra Kumar Sangal, J

1. This is an application under section 482 Cr.P.C. to quash the order dated 8.2.2010 passed by the Additional Sessions Judge/ Special Judge (B.C. Act), Jaunpur State v. Vijay Pandey and others under sections 147, 323. 325, 304, 504 & 506 IPC, P.S. Panwara, district Jaunpur in S.T. No. 462 of 1999.

2. By the impugned order, learned Session Judge has accepted the application of the prosecution of framing additional/in alternative charges under sections 302/149 and 307/149 IPC against the accused persons.

Heard learned Counsel for the applicants, learned AGA for the State and perused the record.

3. As per prosecution case, on 2.6.1998 at about 5 O'clock, accused persons under the common object having Lathi, Danda and Hokey in their hands came at the door of the informant and badly abused him and his father. When his father asked them not to abuse, on this accused persons have given blow of Hockey on the head of his father, who fell down on the spot. Rest accused persons started to beat him with Lathi & Danda. He himself, his Brother Rakesh and Mother Jadawati came there for his father's rescue, they were also beaten by all the accused persons. Witnesses Ambika Prasad and Indradev etc. saved them. They brought their father hospital but the Doctor declared him dead. Their injuries

were examined by the Doctor. On this report in Case No. 82 of 1998, a case under sections 147, 148, 149, 323, 325, 504 and 304 IPC was registered. After investigation, chargesheet was submitted against the accused persons and case was committed to the Court of Session against the accused persons. The accused persons denied the case of the prosecution and claimed their trial. The trial was started. Statements of the two witnesses were recorded. At this stage, an application was moved on behalf of the prosecution under sections 216 Cr.P.C. for framing additional charges against the accused persons, the same was allowed by the Trial Court. Against this order of the Trial Court. Revision No. 2457 of 2004 was filed on behalf of the accused persons before this Court in which this Court vide order dated 6th December, 2009 set aside the order of the Trial Court and a direction was issued that the Court below is at liberty to alter or add charge after taking evidence of the Doctors. After taking the evidence of the two Doctors the Trial Court again on the application of the prosecution passed the impugned order. Aggrieved by this order, the instant Petition has been filed.

4. Learned Counsel for the applicant argued that still there is no sufficient evidence on record to frame additional/in alternative charges against the accused persons for their trial under sections 302/149 and 307/149 IPC.

On the other hand learned AGA argued that after considering the on oath statement of P.W. 1 and P.W. 2 who are the eye witnesses of the occurrence and also taking into consideration statements of the Doctors who have examined the injuries of the injured, and conducted the postmortem of the deceased, had given a finding that in the facts and circumstances of the case, it is necessary to frame charges against the accused persons in alternative for the offence under sections 302/149 and 307/149 IPC.

5. Copy of the statements of both the Doctors are available on the record. I have also gone through statements of the three Doctors recorded during the trial. P.W. 4 Doctor D.P. Yadav had examined the injuries of the three injured i.e. Rakesh, Rajesh and Smt. Jadawati excluding the deceased. In the details of the injuries of Rakesh, he has stated that he found nine injuries on different parts of his body caused by blunt object. Injury No. 1, 4 & 8 were kept by him under observation. His condition was found serious and he was admitted in the hospital. Another Doctor, Shri R.S. Verma, P.W. 3 stated that he got Xrayed the injuries of Rakesh and found fracture in Tibia and Fibula and Right Finger bone of the injured. He had also stated that due to fracture in Tibia and fibula Bone, it was not possible for Rakesh to have a walk. In the injuries of Smt. Jarawati, the Doctor found lacerated wound on her head on the parital bone and another injury on the other part of body below the left eye. Four other injuries were found by the Doctor on her body. Regarding the injuries of the 3rd injured, Rajesh the Doctor has opined that there was an abrasion on his Chest and other injury was on his head which was lacerated wound 2 c.m. x 0.5 c.m. scalp deep.

Another Doctor Shri R.S. Saroj, P.W. 6 had conducted the postmortem of the body of deceased Girija Shankar and found ten injuries on different parts of his

body, out of them one lacerated wound on the head and temporal parietal bone was found fractured. Other injuries Nos. 2, 9 & 10 were contusions on another vital part of the body. In the opinion of the Doctor, antemortem injuries were sufficient to cause death in normal circumstances.

6. From the above details of the injuries given by the Doctor on the body of the injured and the deceased, if the Trial Court was of the opinion that trial of the accused persons should be taken place for the offence under sections 302/149 and 307/149 in addition/alternative, I do not find any illegality, invalidity and impropriety in the impugned order passed by the Trial Court. The accused persons are charged under section 304/149 and 325/149 IPC with other allied sections and if at the final stage of the judgment, Court finds that it is a case under sections 302/149 and 307/149 IPC, it will be difficult for the Court to convict them for these offences. But if the two charges under sections 302/149 and 307/149 IPC are there and Court finds at the final stage that both the charges are not made out and it is a case of 304/149 and 325/149, I.P.C., accused persons easily can be convicted for these offences. In both the cases, trial is to be conducted by the same Court of Session Judge.

7. Case is pending since the year, 1998. About 9 to 10 years have elapsed. It is not reaching at the final stage. In the facts and circumstances of the case, possibility cannot be ruled out that only to delay the disposal of the case, this application under section 482 Cr.P.C. has been moved. It is established law that in inherent jurisdiction of the High Court under section 482 powers has to be exercised sparingly, carefully and with caution and only when it is justified by the test specifically laid down in the statute itself. Authority of the Court exist for the advancement of justice. If any abuse of process leading to justice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking the inherent jurisdiction/power in absence of specific provisions in the statute.

8. From the above all discussions and also considering the arguments of parties Counsel and taking into consideration all the facts and circumstances of the case, I do not find any ground of interference of this Court in the impugned order passed by the Trial Court.

Accordingly, the Application is hereby dismissed.

9. From perusal of the record, it reveals that it is a very old matter of the year, 1998 and still not reached at the stage of conclusion of the Trial Court."It is expected