

Sunil Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-14-2013

Appellant : Sunil

Respondent : The State of Madhya Pradesh

Judgement :

Criminal Revision No.1252/2012 14.03.2013 Shri Narayan Dubey, Advocate for the applicant.

Shri Ajay Tamrakar, Panel Lawyer for the Respondent-State.

With the consent of the learned counsel for the parties, the matter is finally heard.

By this criminal revision the applicant has challenged the order dated 22.5.2012 passed by the learned 19th Additional Sessions Judge, Jabalpur in ST No.516/2011 whereby the application filed by the prosecution under Section 216 of Cr.P.C.was accepted and charge of offence under Section 302 of IPC was added in the memo of charges.

The brief facts of the case relating to the present revision are that on 9.5.2011 at about 9:30 PM the deceased Rani Koshta had committed suicide.

She set herself on fire.

No dying declaration could be recorded by any Executive Magistrate, doctor or police officer.

The witnesses relating to the deceased had stated before the police under Section 161 of Cr.P.C.that the deceased informed that she committed suicide, because of ill-treatment given by the applicant, and therefore the charge sheet was filed against the applicant for the offence under Section 306 of IPC.

When the witnesses Basant Kumar (PW-1).Laxman (PW-2).Sheela (PW-3) and other witnesses were examined before the trial Court and they have stated that the deceased informed them that the applicant set her on fire, thereafter an application under Section 216 of Cr.P.C.was moved, which was accepted by the learned trial Court and charge of offence punishable under Section 302 of IPC is appended against the applicant.

After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the learned Additional Sessions Judge has modified the charges of offence under Section 302 of IPC on the basis of statements of various witnesses.

In a sessions trial, the trial Court can frame the charge according to the provisions of Sections 226, 227 and 228 of Cr.P.C.and charges are required to be framed on the basis of the documents produced by the police under Section 173 of Cr.P.C, and thereafter charges may be altered on the basis of the provisions of Section 216 of Cr.P.C.The Sessions Court has a discretionary power to alter or add any charge at any time before pronouncement of the judgment, thereafter a procedure is given in that provision, which is required to be observed by the trial Court after addition of the charges.

But it is nowhere specifically mentioned that on which basis the charges shall be altered, hence the Court has to frame additional charges on the basis of the provisions mentioned under Section 228 of Cr.P.C.If some witnesses had stated before the police that dying declaration of the deceased was that she committed suicide and thereafter in the trial Court they have stated about the dying declaration of the deceased that she was killed by the accused, then at present

there is no basis for the Court to assess as to whether those witnesses were telling a truth before the police or they are telling a truth before the Court.

If they have changed their version, then that version can be accepted, if there is no circumstantial evidence to corroborate that version, otherwise prima facie it would be presumed that the witnesses are telling a falsehood according to an afterthought story, otherwise they would have informed real facts to the police.

The witnesses have never explained as to why they have not said the present story to the police at the time of their statements under Section 161 of Cr.P.C. No enmity of the Investigation Officer is shown to the witnesses so that it can be said that they told about the actual dying declaration of the deceased and the Investigation Officer did not record it.

Under such circumstances, prima facie the witnesses are telling a falsehood before the Court, and therefore by such statements, which are contradictory to their previous statements, no charge of offence under Section 302 of IPC could be framed.

The learned Additional Sessions Judge has committed an error of law in passing the impugned order dated 22.5.2012 and considering the application under Section 216 of Cr.P.C. If no extra evidence is adduced before the Court, then a criminal Court cannot review its own order.

Under such circumstances, where the previous statements of these witnesses were on record, therefore their statements before the Court cannot be said to be an additional evidence given by the prosecution, and therefore the right under provisions of Section 216 of Cr.P.C. could not be exercised.

Under these circumstances, the learned Additional Sessions Judge, Jabalpur has committed an error of law in passing the impugned order dated 22.5.2012, and therefore it is a fit case in which an interference is required from the side of this Court by way of a revision.

Consequently, the instant revision filed by the applicant is hereby allowed.

The impugned order dated 22.5.2012 passed by the learned 19th Additional Sessions Judge, Jabalpur in ST No.516/2011 is hereby set aside.

The trial Court is directed to proceed with the case without the charge of Section 302 of IPC.

A copy of this order be sent to the trial Court for information and compliance.

C.c.as per rules.

(N.K.Gupta) Judge Ansari

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