

Kanhaiya Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-12-2012

Judge : Manoj Misra

Appeal No. : Criminal Revision No. 2941 of 2012

Appellant : Kanhaiya

Respondent : State of U.P.

Judgement :

1. Heard Sri Brijesh Sahai, learned counsel for the revisionists and learned A.G.A. for the State. By this revision, the revisionists have challenged the order dated 23.07.2012 passed by the Additional Sessions Judge (Ex Cadre), Mahoba in S.T. No.60 of 2010, whereby, in exercise of power under Section 319 Cr.P.C., the revisionists Kanhaiya, Kailash and Rakesh have been summoned to face trial along with the accused Akhilesh and Hasmat, who are already facing trial under Sections 302, 504 and 506 I.P.C.

2. The facts, as they emerge from the record, are that a First Information Report was lodged on 13.05.2010 by the opposite party no.2 against Hasmat (charge sheeted), Kanhaiya (the revisionist no.1), Kailash (the revisionist no.2), Akhilesh (charge sheeted) and Rakesh (the revisionist no.3) with respect to the murder of one Rajesh. As per the allegations in the First Information Report, the accused persons, armed with fire arms, had surrounded the deceased (Rajesh) whereas

Akhilesh, from his fire arm, shot at the deceased thereby causing his death. Pursuant to the aforesaid First Information Report, investigation was carried out and the police laid charge sheet against Hasmat and Akhilesh only. During the course of trial, upon recording of the statement of P.W.2, P.W.3, P.W.7 and P.W.8, an application was moved by the prosecution for summoning the revisionists, in exercise of power under Section 319 Cr.P.C. THE Additional District Judge (Ex Cadre), Mahoba by his order dated 17.05.2012 rejected the said application. Challenging the order of rejection, Smt. Sonia (the wife of the deceased), who was also examined as P.W.3, filed Criminal Revision No.1795 of 2012 before this Court. This Court by its order dated 31.05.2012 set aside the order dated 17.05.2012 and remanded the matter back to the court below to reconsider the same, strictly in accordance with law. After reconsidering the matter, the court below has summoned the revisionists by its order dated 23.07.2012.

The validity of the order dated 23.07.2012 has been assailed by the learned counsel for the revisionists on the following grounds:-

(a) that while exercising the power under Section 319 Cr.P.C., the court below did not record any satisfaction that the evidence led before it was reasonably sufficient, if left un rebutted, to lead to the conviction of the persons sought to be added as accused, reliance was placed on the judgments of the Apex Court rendered in Sarabjit Singh Vs. State of Punjab reported in (2009) 16 SCC 46; Ram Singh Vs. Ram Nivas (2009) 14 SCC 25; and Brindaban Das and others Vs. State of West Bengal (2009) 3 SCC 329;

(b) that since the court below had earlier rejected the application, under Section 319 Cr.P.C., and this Court while setting aside the order of rejection had not touched the reasons of the trial court in support of its rejection order, fresh exercise of power by the court below, amounted to review of its earlier order, which was not permissible under Section 362 Cr.P.C.; and

(c) that the testimony of the witnesses, which was relied by the court below while exercising its power under Section 319 Cr.P.C., had not been to that effect in their statements made under Section 161 Cr.P.C. Dealing with first submission of the learned counsel for the revisionist, I am of the view that where the complicity of the

persons sought to be added as accused is disclosed from initial stage itself, but the police, upon investigation, does not lay charge sheet against them, then, when their complicity is again disclosed, during the course of trial, by the testimony of the witnesses examined before the court, the satisfaction that the evidence led before the court would reasonably lead to the conviction of such persons, in a suitable case, can be inferred and in such a situation it would not be proper for the revisional court to interfere with the discretion of the trial court, even if those specific words are not used in the order passed in exercise of its power under Section 319 Cr.P.C. The Apex Court in the case of *Suman v. State of Rajasthan* and another reported in (2010) 1 SCC 250, in paragraph 27 of its judgment, observed as under:-

"27. In view of the settled legal position as above, we hold that a person who is named in the first information report or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 Cr.P.C. if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the Court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. As a corollary, we hold that the process issued against the appellant under Section 319 Cr.P.C. cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her."

Accordingly, I am of the view that since the court below has taken note of the testimony of the witnesses examined during the course of trial, which disclosed the involvement of the revisionists in the commission of the crime, the satisfaction of the court below with regards to their complicity in the crime cannot be doubted.

3. As regards the second submission of the learned counsel for the revisionists, I am of the view that when the order dated 17.05.2012 was set aside, the fresh exercise of power by the court below for summoning the revisionist would not amount to review of its order. Accordingly, this contention also has no force. The third contention of the learned counsel for the revisionist that since the statements

of the witnesses were not consistent with their statements recorded during the course of investigation, therefore, should not have been relied upon, cannot be accepted, at this stage. It is settled law that the exercise of power under Section 319 Cr.P.C. is to be on the basis of the evidence led during the course of trial. AS the court below has drawn its satisfaction on the basis of the evidence led during the course of trial, the order passed by the court below cannot be faulted on that ground.

For the reasons aforesaid, I do not find any legal infirmity, illegality, impropriety or jurisdictional error in the order passed by the court below. At this stage, learned counsel for the revisionists submitted that since the role of shooting has been assigned only to Akhilesh, therefore, some protection may be provided to the revisionists, who have been summoned by the order impugned. Considering the facts and circumstances of the case, without expressing any opinion on merits, it is hereby provided that if the revisionists appear before the court concerned and apply for bail, within three weeks from today, their bail application shall be considered and disposed of, expeditiously, in accordance with law. Subject to the aforesaid direction, the revision is dismissed.

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