

Baboo, and Others. Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-03-2010

Judge : Shri Kant Tripathi, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 319, 164; Indian Penal Code (IPC) - Sections 363, 366

Appeal No. : APPLICATION U/S 482 No. - 10348 of 2005

Appellant : Baboo, and Others.

Respondent : State of U.P.

Advocate for Def. : S.S. Malik; S.S. Mishra,. Govt Advs.

Advocate for Pet/Ap. : Onkar Singh; Onkar Nath, Advs.

Judgement :

1. Heard the learned for the applicants and the learned AGA for the respondent no.1 and also the learned counsel for the respondent no.2 and perused the record.
2. This is a petition under section 482 Cr PC against the order dated 22.7.2005 passed by the Additional Sessions Judge, Court No.1, Fatehpur in ST No. 11 of 2003 (State v. Balram) whereby the learned Additional Sessions Judge has summoned the applicants as additional accused to face trial in regard to the charges under section 363 and 366 IPC.

3. The learned counsel for the parties informed that co-accused i.e. Balram has already been convicted and sentenced.
4. It appears that the impugned order was passed on the basis of the statement of PW-1 Sohan Singh and PW-2 Sudha (victim). These two witnesses had been thoroughly cross examined prior to passing of the impugned order. The learned Additional Sessions Judge has considered the statements of both the witnesses in detail and arrived at the conclusion that there was sufficient material to summon the applicants. The learned Additional Sessions Judge has also referred to certain decisions of this court as well as the apex court.
5. The learned counsel for the applicants submitted that according to the medical report the girl was major but this aspect was not given any consideration by the trial court. It was further submitted that the learned Additional Sessions Judge was himself of the view that the girl (victim) had not supported the prosecution story in her statement under section 164 Cr.P.C. She gave a contradictory statement during the trial by supporting the prosecution story, therefore, a heavy duty was cost upon the learned trial court to ensure as to whether the statement of the victim during the trial was sufficient to record a valid conviction against the applicants, despite that she had given a contrary version under section 164 Cr.P.C. which was in favour of the applicants.
6. In the case of *Rajol v. State of U.P.* 2010 (5) A.D.J. 628, this court, after referring to various decisions of the Apex Court, has held:

" Summoning order should be passed only when the evidence, if uncontroverted, is of such a nature as to reasonably lead to conviction of the person sought to be summoned. The standard of evidence required for summoning an additional accused should be higher than the evidence required for framing charges because the jurisdiction under section 319 Cr PC is to be exercised sparingly in an extraordinary situation. Whether or not any evidence is of such a quality as to record conviction if it remains uncontroverted, is a variable question depending upon the facts and circumstances of each case and no hard and fast rule can be laid down in this regard. However, the court considering the evidence for the purpose of section 319 Cr PC is not legally required to evaluate the evidence as it is ordinarily

done while rendering the final judgment but the court has to see whether or not, the evidence on record appeals to the reason for the purposes of section 319 Cr PC and the story narrated by the witnesses against the person sought to be summoned is not improbable and absurd and a conviction is possible on such statements, if uncontroverted. A non observance of this legal requirement would render the summoning order illegal."

7. In view of the aforesaid reasons the summoning order cannot be sustained. Petition is, therefore, allowed. The impugned order dated 22.7.2005 is quashed and the learned lower court is directed to reconsider the matter and pass an appropriate order afresh in accordance with law.

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