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Court : Allahabad

Decided On : Oct-22-2010

Judge : S.C. Agarwal, J.

Appeal No. : Criminal Revision No. 4032 of 2010

Appellant : Rajveer Singh

Respondent : State of U.P. and Another

Judgement :

1. Heard Sri Hemendra Pratap Singh, learned counsel for the revisionist, learned AGA for the State and perused the material on record.
2. This revision under Section 397/401 of the Code of Criminal Procedure is directed against the order dated 19.8.2010 passed by the Addl. Sessions Judge, Court No. 6, Bulandshahar, in S.T. No. 488 of 2003, State v. Rajveer Singh & others, whereby charge framed under Section 304 IPC was altered to charge under Section 302 IPC read with Section 149 IPC.
3. Earlier charge under Sections 147, 148, 304, 149 IPC and 7 Criminal Law Amendment Act was framed against the accused persons including the revisionist. The trial was over. At the stage of judgment, the trial court passed an order on 30th July, 2010 that accused Rakesh was alleged to have fired from a country made pistol on a crowd at chaupai, causing injury to Roop Ram resulting in his death, therefore, illustration (d) to Section 300 IPC was attracted and charge

required to be altered. Consequently, an opportunity of hearing on the point of alteration of charge was provided to the defence and by order dated 19.8.2010, charge was altered and instead of charge u/s 304/149 IPC a new charge under Section 302/ 149 IPC was framed against Rajveer, Anil, Rakesh and Yogendra.

4. Learned counsel for the revisionist submitted that the impugned order is perverse, illegal and arbitrary and was passed against the evidence on record. The trial court has failed to consider the facts and circumstances of the case. It was a case of sudden quarrel and shot fired by co-accused Rakesh was not intentional and was fired to save the life of others and therefore case would not travel beyond Section 304 IPC. The trial court also failed to consider the fact that the death of Roop Ram took place next day.

5. Learned AGA submitted that the incident took place on 18.3.2003 at 4 p.m. whereas FIR was lodged on the same day at 5 p.m. by Tejpal Singh against Rajvir Singh, Anil Kumar, Lala @ Jitendra, Rakesh Kumar and Yogendra Kumar alleging therein that on 18.3.2003 in village Bairam Nagar, on holi, chaupai was in progress. Roop Ram (deceased)-nephew of the complainant and the accused persons had also joined the chaupai. At about 4 p.m., Roop Ram had an altercation with Jitendra and others. Rajvir Singh, Anil Kumar, Lala @ Jitendra and Yogendra assaulted Roop Ram with lathis and dandas. The witnesses tried to catch the assailants, whereupon Rakesh fired shot from a country made pistol, which hit Roop Ram in the left axilla. The injured was taken to Aligarh for treatment where he died next day. The FIR was lodged under Section 147, 148, 149, 308 IPC and charge-sheet was submitted under Sections 147, 148, 149, 304, 308 IPC.

6. Learned AGA submitted that the accused persons formed an unlawful assembly and members of such assembly, in prosecution of common object of such assembly, assaulted Roop Ram and when the witnesses tried to catch the assailants, Rakesh fired a shot from country made pistol causing such injuries to the Roop Ram, which resulted in his death and therefore, prima facie offence under Section 302 IPC appears to have been committed and the trial court was justified in altering the charge under Section 304 read with Section 149 IPC to charge under Section 302 read with Section 149 IPC.

7. Section 216 (1) of the Code of Criminal Procedure provides that any court may alter or add to any charge at any stage before the judgment is pronounced.
8. Learned trial court at the time of dictating judgment, formed an opinion that on the basis of facts alleged by the prosecution charge under Section 302 read with Section 149 IPC should be framed against the accused persons instead of charge under Section 304 IPC and consequently, amended the charge accordingly. Initially, by order dated 12.1.2004, charge under Section 147, 148, 149, 304 read with Section 149 IPC and 7 Criminal Law Amendment Act was framed by the trial court. By the impugned order, charge under Section 304/149 IPC has been altered to charge under Section 302/149 IPC.
9. There was an unequivocal assertion in the FIR that out of five accused, four persons assaulted the deceased by lathis and dandas whereas Rakesh fired at him from a country made pistol. From the statement of Tejpal (P.w.-1), it is also apparent that Rakesh fired from the distance of about 5-6 paces hitting the deceased on the left side chest. At this stage, a critical analysis of the evidence on record is not to be resorted to but only a prima facie case is to be seen. Whether the offence of rioting was committed or not, whether the accused persons were members of unlawful assembly or not and whether all the accused had common intention or common object of causing the death of the deceased or not are the questions to be decided at the time of final judgment. At the stage of amendment or alteration of the charge, no definite opinion is required to be expressed on these points. On the basis of allegations made in the FIR and the statements of witnesses examined at the trial, there are sufficient grounds to alter the charge under Section 302 read with section 149 IPC. Whether the statements of witnesses are wholly reliable or not is not to be commented upon at this stage. There is no need saying that after alteration of the charge, the prosecution and the defence will have an opportunity to recall or re-summon, re-examine and recross-examine, with reference to such alteration in the charge, any witness or witnesses, who may have been examined during the trial. The plea that the incident took place out of a sudden quarrel without any premeditation cannot be discussed at this stage. If such a case is ultimately found by the trial court, the conviction may be recorded for a lesser offence under Section 304 read with Section 149 IPC if

the case is ultimately proved.

10. I do not find any illegality in the impugned order passed by the Addl. Sessions Judge altering the charge. No interference by this Court is required.

11. The revision is devoid of merit and is accordingly dismissed.

12. However, the prosecution as well as the defence will be provided an opportunity to recall the witnesses examined during the trial for further examination and cross examination in respect of such amendment of the charge in accordance with Section 217 Code of Criminal Procedure.

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