

Prasoon Gupta and ors Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-28-2010

Judge : Ravindra Singh, J.

Appeal No. : Criminal Misc. Application No. 26435 of 2010

Appellant : Prasoon Gupta and ors

Respondent : State of U.P.

Advocate for Pet/Ap. : Sri. Jitendra Kumar Singh

Judgement :

1. This application under section 482 Cr.P.C.has been moved by the applicants Prasoon Gupta, Pramod Gupta and Smt.Vimla Gupta with a prayer to quash the order dated 26.7.2010 passed by learned Additional Sessions Judge, Court No. 1 Jhansi in S.T.No. 96 of 2009 whereby the charge under section 306 I.P.C. and alternative charge under section 302/34 I.P.C.has been framed.

2. The facts, in brief, of this case are that the FIR of this case has been lodged by Santosh Kumar Gupta against the applicants on 3.1.2009 at 2.00 P.M.in respect of the incident which had occurred on 2.1.2009 at about 10.00 A.M. at the police station Chir Gaon in Case Crime No. 1 of 2009 under sections 328 & 304 I.P.C. alleging therein that the marriage of the deceased Smt. Archana Gupta, the sister of the first informant, was solemnized with the applicant Prasoon Gupta about 20 years prior to the alleged incident. The deceased was living in her in-laws house,

she was issue less, she was always subjected to the cruelty by her in-laws, she was physically and mentally tortured by extending threat that after committing her murder, the second marriage would be performed so that generation may continue. The deceased has remained with her mother for about three years, but after holding the Panchayat, the first informant tried to persuade the in-laws of the deceased to behave in a proper manner but no change was made in the behaviour of the in-laws of the deceased. On 2.1.2009 at about 10.00 A.M. a telephonic message was given by the applicant Prasoon Gupta to the first informant for calling her sister from the applicant's house, then the first informant along with his two brothers came to the village of the applicant, they met with the deceased, they were apprised by the deceased that she was beaten by the applicants and some poisonous substance was administered to her. She asked for saving her life then she was becoming unconscious, by arranging a motor vehicle she was taken to the Medical College, Jhansi where she was admitted but during the course of the treatment she died at about 1.00 A.M., the in-laws of the deceased seeing the serious conditions of the deceased ran away from their village after lodging the F.I.R, the investigation was done by the I.O. and the charge sheet was submitted under section 306 I.P.C., on which the learned Magistrate concerned has taken the cognizance and the case has been committed to the court of session.

3. Heard Sri Brijesh Sahai and Sri Jitendra Kumar Singh, counsel for the applicants, learned A.G.A. for the State of U.P.

4. It is contended by learned counsel for the applicants that in the present case, the F.I.R. has been lodged under section 328 & 304 I.P.C. In the present case, the viscera was preserved but according to the report of the Public Analyst, the poison Aluminium Phosphide was found in viscera, during investigation the I.O. collected the evidence showing that the deceased had committed suicide, therefore, charge sheet under section 306 I.P.C. has been submitted, on which the learned Magistrate concerned has taken the cognizance, but on the same material collected by the I.O. the trial court has framed the charge under section 306 I.P.C. and its alternative charge under section 302/34 I.P.C. vide order dated 26.7.2010. The order dated 26.7.2010 is illegal because there is no material to show that offence under section 302 read with 34 I.P.C. is made out. Apart from it, the main

charge under section 306 I.P.C. and its alternative charge under section 302 / 34 I.P.C. are self contradictory because the charge under section 306 is framed only in case of suicide but the charge under section 302/34 is framed only in case of homicide because both the charges are distinct and in different categories, therefore, the trial court has committed a manifest error by framing the charge under section 306 I.P.C and its alternative charge under section 302/34 I.P.C.

5. In reply of the above contention it is submitted by learned A.G.A. that according to the F.I.R. the deceased was beaten by her in-laws, thereafter, the poisonous substance was administered to her, in viscera report, the poison aluminium phosphide was found, it discloses the commission of the offence punishable under section 302/34 I.P.C. Learned Trial court has not committed any error in framing the alternative charge under section 302/34 I.P.C. by framing the charge under section 306 I.P.C., the impugned order dated 26.7.2010 is not suffering from any illegality or irregularity. The present application is devoid of merits, the same may be dismissed.

6. Considering the facts, circumstances of the case, submissions made by learned counsel for the applicants and learned A.G.A. it appears that in the present case, the FIR has been lodged against the applicants under section 328/304 I.P.C., according to the post -mortem examination report dated 3.1.2009 no ante-mortem injury was found, the cause of death could not be ascertained hence viscera was preserved, according to the Public Analyst report dated 20.7.2009, the poison Aluminium Phosphide was found in viscera, during investigation, the statements of the witnesses have been recorded , thereafter charge sheet dated 31.1.2009 has been submitted against the applicant Prasoon Gupta as charge sheet No. 15 of 2009, thereafter charge sheet dated 13.2.2009 has been submitted against the applicant Pramod Gupta and Smt. Bimla Gupta as charge sheet No. 15-A of 2009 under section 306 I.P.C., on which the learned Magistrate concerned has taken the cognizance and summoned the applicants to face the trial. The charge sheet has been submitted in an offence triable by the Court of Session, therefore, the case was committed to the Court of Session. The learned Additional Sessions Judge, Court No.1 Jhansi framed the charge against the applicants for the offence punishable under section 306 I.P.C.on 26.6.2010 mentioning therein that Smt.

Archana Gupta, the sister of the first informant, was abetted by the applicants to commit suicide then she took the poisonous substance on 2.1.2009 due to which she died in the night of 2/3.1.2009 at about 1.00 A.M. during the course of treatment but on the same day the learned Additional Sessions Judge, Court No.1 Jhansi framed an alternative charge against the applicants for the offences punishable under section 302/34 I.P.C. on 26.7.2010 in S.T.No.96 of 2009 mentioning therein that the marriage of Smt.Archana Gupta, the sister of the first informant, was solemnized with the applicant Prasoon Gupta about 20 years prior to the date of 3.1.2009 but on 2.1.2009 the applicants with common intention committed the murder of Smt. Archana Gupta, the sister of the first informant, by administering the poisonous substance due to which she died in the night of 2/3-1.2009 at about 1.00 A.M. during the course of treatment. The learned Additional Sessions Judge, Court No.1 has framed the charge under section 306 I.P.C. for which the main ingredients is suicide, he has framed the alternative charge under section 302/34 I.P.C. for which the main ingredients is homicide. The trial court has not made up his mind whether it is a case of suicide or homicide. The framing of the charge in alternative is permissible within the parameters of section 221 of Code of Criminal Procedure, which reads as under :

"221. Where it is doubtful what offence has been committed- (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

7. A bare reading of the provisions of the aforesaid section 221 Cr.P.C. show that the doubt has to be as to the nature of the offence and not about the facts. It is doubtful in the present case on facts which can be proved by the prosecution, it is doubtful which of the offence the said facts will constitute the framing of the charge in alternative is permissible. Section 221 Cr.P.C. is not intended to be applied to a case where facts are in doubt. Ordinarily, an alternative charge cannot be framed in respect of distinct offences. The offence under section 302/34 I.P.C. and the offence under section 306 I.P.C. are distinct. The ingredients of the two provisions are altogether different. The prosecution has to take a stand whether it is a case of murder or suicide. The prosecution cannot say that the accused has murdered the deceased and if the deceased has committed suicide, the accused has abetted the commission of suicide. The framing of such charge under section 306 I.P.C. alternative charge under section 302 I.P.C. is not permissible under section 221 of the Code of Criminal Procedure, as there is a doubt about the facts which can be proved and in that eventuality Section 221 Cr.P.C. has no application. The question of framing of charge in alternative can arise when there is no doubt about facts which can be proved but doubt is as to what offence will be constituted on those facts. It is not permissible, in law, to frame a charge for accused having abetted the suicide and a charge in alternative of murder, as it shows doubt as to facts. The offence under sections 306 and 302/34 I.P.C. are diametrically opposed to each other. The ingredients of two sections are different, the framing of the charge in alternative charge under section 302/34 I.P.C. as directed in the impugned order is likely to prejudice the accused applicants, it is not permissible to sustain the impugned order in so far as it directs framing of the alternative charge under section 302/34 I.P.C., such view has been taken by the Hon'ble Apex Court in case of Bimla Devi vs. state of Jammu and Kashmir - 2009- TLPRE-0-656, and in case of Jatinder Kumar and others vs. State (Delhi Admn.)Delhi 1992 cri.L.J. 1482 .

8. Therefore, the impugned order dated 26.7.2010 framing the alternative charge under section 302/34 I.P.C. is set aside. However, the order directing framing of the charge under section 306 I.P.C. against the applicants is maintained. However, it shall be open to the trial court to alter or add any charge if such evidence is adduced at the stage of trial.

9. Accordingly, this application is finally disposed of.

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