

Sipu @ Sandeep Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : May-30-2012

Appellant : Sipu @ Sandeep

Respondent : State and ors

Judgement :

SB Criminal Revision Petition No.20/2011 Sipu @ Sandeep. Vs. State of Rajasthan & Ors. (1) IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. ::: JUDGMENT ::: S.B. Criminal Revision Petition No.20/2011 Sipu @ Sandeep. vs. State of Rajasthan & Ors. Date of Judgment ::

30. May, 2012. HON'BLE MR. JUSTICE SANDEEP MEHTA Mr.SS Dhillon, for the petitioner. Mrs.Chandralekha, PP, for the respondent State. None present for the respondents no.2 and 3. ... BY THE COURT : Heard learned counsel for the parties. The instant revision petition has been preferred by the petitioner (complainant) challenging the order dated 16.12.2010 passed by the learned Additional Sessions Judge, Sri Karanpur in Sessions Case No.14/2009 (State vs. Rajpal & Ors.) whereby the application filed by the prosecution under Section 319 Cr.P.C. for summoning the respondents no.2 and 3 to face trial with the charge-sheeted accused in the above mentioned case for the SB Criminal Revision Petition No.20/2011 Sipu @ Sandeep. Vs. State of Rajasthan & Ors. (2) offences under Sections 302, 323, 341 and 120B IPC, has been rejected. Succinctly stated the facts necessary for the disposal of the instant revision petition are that on 4.4.2009 at about 10:15 PM, the petitioner submitted a written report at the P.S.,

Sri Karanpur with the allegation that he along with his brother Mithu @ Mandeep and Jagtar Singh had gone to Tarsem Singh's shop for fetching sugar. At that time, Ravi @ Bhindi Arora, Kaliya @ Dudi, Bobby Chug, Vicky Arora, Bharat Regar and 2-3 other persons came on the spot. It was alleged that Kaliya and Bobby were armed with pistols whereas Vicky was having a Gandasi and other accused persons were armed with Kapa and Sela. It is further stated that Kaliya fired a shot from his pistol which hit at the chest of the petitioner's brother Mithu. The second fire made by Bobby struck on the forehead of the petitioner's brother and thereafter, Vicky and others started beating the petitioner with gandasis and kapas. When the first informant/petitioner raised a hue and cry, his father Bharat Raj along with Rinku and Raghu Raj came on the spot and on seeing them, the accused persons ran away from the spot. The injured Mithu was referred to the Sri Ganganagar Hospital but on the way to the hospital, he expired. On the basis of the aforesaid report, FIR No.37/2009 SB Criminal Revision Petition No.20/2011 Sipu @ Sandeep. Vs. State of Rajasthan & Ors. (3) was registered at P.S. Sri Karanpur for the offences under Sections 302, 323, 341 and 120B IPC and investigation commenced. On completion of the investigation, a charge- sheet was filed against Ravi Arora, Rajpal Dudi and Vicky Arora for the offences under Sections 302, 323, 341 and 120B IPC but the respondents no.2 and 3 namely, Bobby Chugh & Bharat Regar were left out from the array of accused. At the trial of the charge-sheeted accused and upon recording of the statements of six witnesses, the prosecution moved an application under Section 319 Cr.P.C. for summoning the two respondents as additional accused to stand trial with the charge-sheeted accused. The learned trial judge by the order dated 16.12.2010 rejected the said application and hence, the instant revision petition has been preferred by the petitioner/first informant seeking a direction that the respondents no.2 and 3 Bobby & Bharat should also be directed to face trial with the charge-sheeted accused in the case. Notices had been issued to the respondents no.2 and 3 but the summons sent by this Court have been returned back with the noting that both of them refused to accept the same. Assailing the impugned order, learned counsel for the SB Criminal Revision Petition No.20/2011 Sipu @ Sandeep. Vs. State of Rajasthan & Ors. (4) petitioner submitted that in this case, the consistent story of the prosecution right from the inception was that the

respondents no.2 and 3 Bobby and Bharat Regar actively participated in the assault launched upon the complainant party and as such, the view taken by the learned trial court on the basis of some minor contradictions in the testimony of the prosecution witnesses that there were no grounds for summoning the respondents no.2 and 3 as additional accused in this case, was absolutely unjustified. It is also submitted that the testimony of the witness PW1 Jagtar Singh, on whose statement the learned trial judge has relied upon, cannot be the sole reason for the refusal to exercise the powers under Section 319 Cr.P.C. It is also submitted that the first informant/petitioner PW4 has specifically and consistently made an allegation against the respondent no.2 Bobby regarding having caused a gun shot injury to the deceased in the FIR, in his statement recorded under Section 161 Cr.P.C. and in the statement on oath rendered before the trial court. Thus, it is submitted that the order impugned refusing to summon the respondents no.2 and 3 as additional accused is per se illegal and also amounts to an abuse of process of Court. Learned public prosecutor has supported the arguments advanced by the learned counsel for the SB Criminal Revision Petition No.20/2011 Sipu @ Sandeep. Vs. State of Rajasthan & Ors. (5) petitioner. After having considered the arguments advanced at bar and upon going through the material available on the record including the statement of the first informant as well as the other witnesses recorded at the trial and after perusing the impugned order, it is evident that the first informant has made a specific allegation against the respondent no.2 Bobby Chug regarding having fired and having caused a firearm injury to the deceased. The allegation is corroborated by the presence of number of injuries on the facial region of the deceased. Therefore, in the firm opinion of this Court, there is sufficient evidence on the record of the case for directing the respondent no.2 to be tried jointly with the charge-sheeted accused. However, so far as the respondent no.3 Bharat Regar is concerned, even the first informant in his FIR and in the statement recorded on oath, has not made any specific allegation against him regarding having participated in the incident. Therefore, the prayer for summoning him to stand trial is not justified. The upshot of the above discussion is that the revision petition succeeds partly and whilst setting aside the order dated 16.12.2010 passed by the learned Additional Sessions Judge, Sri Karanpur in Sessions Case No.14/2009 (State vs. SB Criminal Revision Petition No.20/2011

Sipu @ Sandeep. Vs. State of Rajasthan & Ors. (6) Rajpal & Ors.) to the extent of the respondent no.2 Bobby Chug, the same is upheld for the respondent no.3 Bharat Regar. The learned trial judge is directed to summon the respondent no.2 Bobby Chug to face the trial as additional accused by issuing warrant of arrest for securing his presence. Stay petition also stands disposed of. (SANDEEP MEHTA), J.

S.Phophaliya

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