

ORDER SHEET

IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT.

Cr. Rev. Appl. No.111 of 2018

Date	Order with signature of Judge
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Applicant: Shahid Ali @ Guddo through Rao Faisal Ali Advocate.

Respondent: The State through Mr. Nazar Muhammad Memon
Addl. P.G.

Dates of hearing: 12.04.2019, 26.04.2019 and 03.05.2019.

Date of order: 10.05.2019.

ORDER

MUHAMMAD IQBAL KALHORO J: By means of this Cr. Revision Application, applicant, who is facing trial in S.C. No.115/2010 before learned Additional Sessions Judge, Mirpurkhas in FIR No.125/2010 registered at P.S. Town Mirpurkhas U/s 302, 324, 403, 504, 34 PPC has impugned an order dated 12.01.2018 dismissing his application filed u/s 227 Cr.P.C for altering/amending the charge framed against him in the trial.

2. As per brief facts, complainant namely Muhammad Sohail lodged aforesaid FIR on 15.04.2010 against applicant and two other accused namely Younus and Baqar for having committed murder of his brother Kashif and injuring his servant Manzoor Ahmed and his another brother Shoaib. After due formalities, the applicant and accused Muhammad Younus who were arrested in investigation were sent for trial and against them a formal charge was framed. But subsequently on finding that applicant was juvenile at the time of offence; the trial court separated his case and framed a fresh charge against him on 11.01.2016 which followed recording of evidence of all the witnesses and examination of applicant u/s 342 Cr.P.C. Thereafter the trial was posted for final arguments on 18.09.2017 and continued to be so thereafter on account of adjournment applications moved on behalf of the applicant. On 09.01.2018, learned defense counsel instead of rendering final arguments filed application u/s 227 Cr.P.C seeking for alteration/amendment in the charge mainly on the ground that the same is not precise and relevant in regard to particular details of prosecution case against him and hence has caused him a serious prejudice to understand accusation and set up his defense accordingly.

However, the said application has been dismissed by the trial court vide impugned order.

3. Rao Faisal Ali, learned counsel for the applicant has argued that the impugned order is not sustainable under the law and is liable to be set-aside; that learned trial court has not considered relevant provisions and guidelines regulating alteration of charge u/s 227 Cr.P.C; that the charge shall contain all material facts of the incident including time, place and the manner in which the incident is alleged to have happened to enable the accused to know with sufficient clearance and certainty accusations which he has to face in the trial; that in this case, as per FIR and other material including evidence of the witnesses, the applicant is alleged to have caused Chhuri blows to deceased Kashif but in the charge he has not only been stated to have injured him but to P.W. Manzoor Ahmed as well which is misleading and has caused serious prejudice to applicant to defend himself; that as per case of the prosecution P.W. Manzoor Ahmed is said to have been injured by co-accused younus, whereas P.W. Shoaib is alleged to have been injured by absconder accused Baqar but these allegations are not properly reflected in the charge; that such error in the charge is not curable either u/s 225 or 537 Cr.P.C. Learned counsel in support of his arguments has relied upon case law reported in **2007 YLR 2795, PLD 2012 Sindh 307, 2011 SCMR 1145, 2010 MLD 180, 2005 PCr.LJ 489, 1980 SCMR 402, 2015 PCr.LJ 1651(Islamabad).**

4. On the other hand, M. Nazar Muhammad Memon, learned Addl. Prosecutor General Sindh has opposed this application and has contended that entire trial has been completed and the error highlighted by learned defense counsel is not material and is curable u/s 537 Cr.P.C.

5. The case file shows that Mr. Javed Choudhry advocate has filed power on behalf of the complainant but he chose to remain absent on hearings of this case.

6. I have considered submissions of the parties and perused the material available on record including the case law cited by defense counsel. It is now well settled that object of the charge is to enable an accused to know of precise accusations against him which he is required to defend in the trial and to afford him sufficient time to prepare himself for this purpose. It is essentially to put an accused on notice to get ready for defending himself or otherwise against what he is expected to meet in the trial. Framing of charge is not a formality but a

requirement recognized by law and therefore every charge shall state the offense, or at least its definition if law does give it any specific name, with which the accused is charged, and shall contain all material particulars as to time place and person against whom or the thing in respect of which the offense is alleged to have been committed. However, when nature of the case is such that particulars as above do not give the accused sufficient notice of the matter with which he is charged, the charge shall contain such particulars of the manner in which the alleged offense was committed as will be sufficient for that purpose. Despite such clear guidance provided by Criminal Procedure Code in sections from 221 to 224, there is always a likelihood of error or omission in either stating the offense or describing the particulars required to be stated in the charge, but the law in terms of section 225 Cr.P.C. does not recognize any such error or omission material, unless the accused was misled by it or it has occasioned a failure of justice.

7. As for present case is concerned, allegations in FIR are that complainant along with his two brothers Kashif and Shoib was present at his fruit-cart near Market Choak Mirpurkhas at 1145 hours on 15.04.2010 where their servant Manzoor Ahmed had also come with another fruit-cart and was narrating his skirmish with applicant party, when applicant, co-accused Younus and Baqar duly armed with Churries (knives) arrived. Allegedly, after abusing complainant party, the applicant caused churri blows to Kashif, accused Younus to Manzoor Ahmed and accused Baqar to Shoaib. Initially FIR was registered, among others, u/s 324 PPC but on death of Kashif was converted u/s 302 PPC. This prosecution story has been reiterated in all relevant papers including 161 Cr.P.C statements of the witnesses. Now a look on the impugned charge framed against applicant would be relevant for appreciating his case which for a ready reference is reproduced as under:-

**IN THE COURT OF FIRST ADDITINOAL SESSIONS JUDGE,
MIRPURKHAS**

S.C. NO.115-A OF 2010

THE STATE

Versus

- 1. Shahid @ Gudoo son of Zikriya Shaikh,**
- 2. Muhammad Younus son of Zikriya Shaikh.
Both R/o Gharibabad, Chowk Mirpurkhas.**
- 3. Baqar R/o Mirpurkhas.**

CHARGE

“I, Javed Iqbal, First Additional Sessions Judge, Mirpurkhas do hereby charge you:-

Shahid son of Zikria.

as follows:-

That on 15.04.2010 at 1415 hours at the fruit cart of complainant Sohail at Market Chowk, Mirpurkhas, you alongwith co-accused Younus and proclaimed offender accused namely Bakar duly armed with Churi (Knives) in furtherance of your common intention came there, abused the complainant party and had attacked upon the complainant party with intention to kill them and you caused Churri Blows to Kashif and Manzoor Ahmed, the brother and servant of the complainant, while the proclaimed offender accused Bakar caused churri blows to Shoaib the other brother of the complainant, as a result Kashif expired, while Manzoor Ahmed and Shoaib sustained injuries on different parts of the bodies, as such you had intentionally committed murder of Kashif by caused churri injuries to him and also injured Manzoor Ahmed and Shoaib, and thereby you committed the offences punishable under sections 302, 324, 504, 34 PPC within the cognizance of this court.

And I hereby directed that you be tried by this court on the aforesaid charges.

Sd/-11.01.2016

(Javed Iqbal)

First Additional Sessions judge, Mirpurkhas

8. Before forming any opinion as to whether or not the charge has misled applicant to understand accusation against him and prepare his defense accordingly, or it has occasioned a failure of justice, I would like to state at the cost of repetition that purpose of charge is to tell an accused as precisely as possible the nature of offense for which he is charged (Re. PLD 2012 Sindh 307), or to ensure that he has sufficient notice of the nature of accusations which he has to face in the trial, and secondly to make the Court conscious about the real points in issue so that evidence could be confined to such points (Re. 2005 SCMR 364). If one keeps such proposition in mind and reads above charge, it is not hard to see that it has put the applicant on sufficient notice of nature of accusation against him, which he was required to defend in the trial, and has also made the court conscious enough of the real points for evidence to be confined to. It has stated as precisely as possible the nature of offense, and other particulars as to time, date, place and the persons against whom the offense was committed, the manner in which it was committed, the weapons used for committing it, etc. It has specifically pointed out to presence of three accused (including applicant) at the spot at the relevant time and date armed with churries and injuring with common intention three victims, and

one of whom namely Kashif, who was injured by applicant, getting murdered, which is exactly in line with the case set up by prosecution against applicant and other co accused. Learned defense counsel tried to stress in arguments that after separation of trial of applicant, he ought to have been confronted only with his role in the charge, which per prosecution story is of having injured only deceased Kashif, and not describing generally all accused injuring all victims. But I do not feel persuaded by such contention, for obvious reasons that the charge has to contain all necessary particulars such as name and nature of offense; its description or definition if there is no particular name given by law to it; time, place and person against whom or the thing in respect of which it was committed so as to give a reasonable notice to the accused of the matter with which he is charged. Minus such particulars and only highlighting the individual role of applicant in the charge on the contrary would have misled him in understating the nature of accusation against him and preparing his defense accordingly. And it would have definitely occasioned a failure of justice for not sufficiently telling the applicant material particulars qua nature and description of offense and the manner in which it was allegedly committed by him along with co-accused causing a serious prejudice to him to explain it later in the trial. The offense from its reported description seems to have been committed by all the accused in furtherance of their common intention in a preplanned manner. The court while framing the charge was required to look at the incident as a whole to convey its nature and description to the accused in proper and precise sense making him/them aware of what he/they were going to meet in the trial. Describing individual role of applicant in isolation of the incident in the charge would change the entire context of the incident making it difficult to understand the actual account of the incident. More so, the serial order with which name of each accused followed respectively by name of each victim has been mentioned in first portion of the charge has in clear terms conveyed which accused is charged for injuring which victim. Whereas in the last portion of the charge word 'you" refers to all accused in same chronological order i.e. applicant, Younus and Baqar as has been mentioned in the first part of the charge. A reading of which here would be helpful, **as such you (applicant, Yonus and Baqar) had intentionally committed murder of Kashif (attributed to applicant) by caused churri injuries to him and also injured Manzoor Ahmed (attributed to Younus) and Shoaib (attributed to Baqar), and thereby you committed the offences punishable under sections 302, 324, 504, 34 PPC within the cognizance of this court.** This

is the whole description of the incident as reported but learned defense counsel tried to persuade me that word 'you' refers to applicant only and he has been saddled with injuring all the victims, which with respect to him is not the case here. There is absolutely no ambiguity in regard to role of applicant in the charge which may be considered to have misled him.

9. Additionally, it is to be noted that in terms of section 225 Cr.P.C effect of an error or omission in describing either the offense or other particulars required to be stated in the charge would not be material or fatal, if it has neither misled the accused nor caused a failure of justice. Meaning thereby there could be some errors or omissions which do not have any effect on the case and the same would be covered under *ibid* provision of law. But if an accused claims that an error or omission has deep effect on the case and has misled him in knowing material against him and preparing his defense accordingly in the trial, he would be required to establish it not by words alone but on the basis of material available on record in order to seek alteration in the charge and consequent fresh trial, if need be, in terms of section 229 Cr.P.C. Mere raising a claim in this regard by the accused or referring to story in FIR as learned counsel did in this case would not suffice to justify alteration in the charge in the trial and a consequent *de novo* trial because it is well settled that an amendment in a charge cannot be made on the basis of FIR alone. The consideration for resorting to such mechanism must include the facts disclosed in the evidence as well. With such scheme of law in mind, I have perused evidence of PWs particularly cross-examination conducted on behalf of the applicant to appreciate whether he has been misled in understating nature of the matter against him and preparing his defense accordingly. As the trial is pending, I would not comment upon merit of evidence lest it may cause prejudice to any of the parties but it is too obvious to ignore that in the cross-examination relevant questions pertaining to role of the applicant and other particulars related to the incident have been specifically asked in detail from the witnesses and which goes to prove that claim of the applicant of being misled by the charge is baseless. Since the material on record reflects so, I would dare to further add that applicant's filing of application u/s 227 Cr.P.C seeking alteration in the charge on the ground of being misled by it itself shows that applicant is aware of nature of accusations and which since he has already defended in the trial would indicate his preparation in this regard.

10. For what has been discussed above, in my humble view, no case for interference in the impugned order is made out and the application in hand therefore is dismissed.

JUDGE

A.K.