

Reserved on: 09.08.2023

Delivered on: 12.12.2023

In Chamber

Case :- CRIMINAL REVISION No. - 3138 of 2022

Revisionist :- Kailash

Opposite Party :- State Of U.P. And 5 Others

Counsel for Revisionist :- Mohit Singh, Dileep Kumar Shukla

Counsel for Opposite Party :- G.A., Sunil Vashisth

Hon'ble Ram Manohar Narayan Mishra, J.

1. By means of instant criminal revision, revisionist has assailed the impugned order dated 20.6.2022 passed by learned Additional Sessions Judge (Rape Cases and POCSO Act) Sambhal at Chandausi in Session Trial No. 493 of 2019 (State vs. Rajesh and others) arising out of Case Crime no. 373 of 2018, under Sections 498-A, 304-B, 506 IPC and ¾ D.P. Act, P.S. Rajpura, District Sambhal whereby learned Additional Sessions Judge has dismissed the application under section 319 Cr.P.C. filed by the revisionist-defacto complainant wherein prayer was made to summon the respondent nos. 2 to 6 named in the F.I.R.

2. Heard learned counsel for the revisionist, learned AGA for the State and learned counsel for respondent nos. 2 to 6.

3. Factual matrix of the case, in brief, are that the informant Rajesh Kumar (presently accused) produced a written report at police station concerned which was entered in GD report no. 35 at 17:10 am dated 1.10.2018, his daughter -in law Reena wife of Rahul hanged herself due to which she died. She often remained ill. On this death information, police came into action. The inquest was conducted by the Tehsildar on 1.10.2018 at the instance of police and dead body of the deceased was sent for post mortem examination. Post mortem examination was conducted on next day 2.10.2018 at 10:50 am. In the post mortem examination, doctor opined that the deceased died one day before the post mortem. Immediate cause of death was ante mortem throttling. Name of deceased was Reena, wife of Rahul, resident of Malikpur, P.S. Rajpura, District Sambhal, therefore, on the basis of post mortem, this was established that death of deceased was homicidal. After post mortem examination, case was registered vide Crime no. 373 of 2018, under sections 304-B IPC on 14.10.2018 at 18:21 hours on GD report

dated 01.10.2018. Investigating Officer recorded statement of father of deceased namely Kailash, who stated that he got her daughter Reena married on 19.6.2018 with Rahul in which he spent around 15 lakhs, nevertheless her husband and in-laws were not satisfied with the gift and dowry given in the marriage. They started demanding a Scorpio vehicle as additional dowry and on non fulfilment of their demand, they began in marpeet alongwith her daughter. They used to abuse and harass her physically and mentally, she was well educated. On 30.9.2018 she telephoned him at 7:30 pm and stated that these people have engaged in marpeet with her due to non receiving of Scorpio vehicle and also asked him to come and take her otherwise they would kill her. The witness had gone to place of her Mausi (aunt) at that time; he visited the place of accused persons namely Rahul (husband), Munni Devi (mother-in-law), Devesh (brother-in-law), Khushbu (sister-in-law), Rishipal (uncle-in-law), Rajesh Kumar (father-in-law) and aunt-in-law of the deceased alongwith relatives. They were present at that time. He had spoken to his daughter who narrated the incident and again asked him to take her with him. As at that time night occurred, they stayed there in the night, they tried to take her with them but the accused persons assured him that she would be treated properly and they would give chance of complaint any more. They also apologised for their behaviour. The witness came back to his place alongwith his nephew Robin and relative Nitin. However, just after one hour of their arrival at their place, Rajesh telephonically informed him at 10:00 am that Reena hanged herself. He again went to the place of his daughter alongwith relatives. He found that accused Rajesh Kumar, Munni Devi, Devesh, Khushbu and Rishipal and wife of Rishipal were there. They told that as he failed to give Scorpio vehicle, Reena has died. When they shouted at this, accused got his signature forcefully on some blank papers and asked him to visit the police station and say that his daughter committed suicide otherwise he would be finished. Section 498-A, 506 IPC and 3/4 D.P. Act was added in penal sections after statement of Kailash. I.O. has recorded statement of other witnesses like Pappi Devi wife of Kailash, Rohit @ Robin Kumar nephew of Kailash, Om Prakash, his brother and some other relatives of the deceased. I.O. filed charge-sheet only against Rahul, husband of the deceased and Rajesh Kumar, father-in-law of the deceased. He exonerated other five named accused persons on the basis of statements of witnesses recorded under section 161 Cr.P.C. on the ground that their naming in the offence are found false. Their complicity in the offence was not established during investigation. Munni Devi, mother-in-law of the deceased was under treatment on the date of incident and was lying with her son Pratap at Bulandshahar. She was under treatment in Bulandshar for mentally illness. Devesh and his wife Khushbu were also not present at that time and they were residing separately alongwith their children. Uncle and aunt-in-law of

the deceased were residing in Aligarh separately. No evidence was found against them regarding commission of matrimonial cruelty to the deceased.

4. On commencement of trial, accused persons Rahul and Rajesh chargesheeted under sections 498-A, 304-B, 506 IPC and 3/4 D.P. Act by the trial court after evidence of PW-1 Kailash, defacto complainant, PW-2 – Robin. The revisionist moved an application under section 319 Cr.P.C. before the trial court on 15.6.2022, wherein, he stated that complicity of accused persons Devesh (dever), Rishipal, Shivrani (aunt-in-law), Munni Devi, Khushbu (Devrani) is established. All these persons also harassed and gave beating and subjected her to physical and mental cruelty. These people had killed his daughter and given it a shape of hanging her after the death and informed him that she has hanged herself. Trial of these five accused persons has been left, which is necessary in the interest of justice together with accused Rajesh and Rahul who are already facing trial.

5. Prior to this, a similar application under section 319 Cr.P.C. was also filed before the trial court by the DGC, criminal (public prosecutor) on 1.6.2022 on similar ground on the basis of evidence of PW-1 and PW-2. Learned trial court after considering the application, reply of accused Rajesh and Rahul, who are already facing trial and evidence on record, rejected the application by the impugned order dated 20.6.2022. Feeling aggrieved by the impugned order present revision is filed by the defacto complainant Kailash, father of the deceased.

6. Learned trial court has rejected the application of the complainant with observation that Hon'ble High Court has directed for conclusion of trial within 18 months by its order dated 29.7.2021. PW-1 and PW-2 are already examined. They stated in the evidence that prior to death of Reena, they visited the place of accused persons where Rahul, Rajesh, Rishipal, Devesh, Shivrani met them and they spoke to the complainant and his relatives and assured him that no wrong thing would be done by them in future, when he reached their place after getting information of death of his daughter alongwith his family members, they have stated that as he failed to give them Scorpio vehicle, Reena died. These accused persons were present on the spot. Learned trial court placed reliance on judgement of Hon'ble Apex Court in **Sunil Kumar Gupta and another vs. State of U.P. and others, (2019) 2 SCC (Crl) 320** as well as **Kahkasa Kausar @ Sonam and others vs. State of Bihar and others, 2022 LawinLaw (SC) 141** and **Kisanappa vs. State of Karnataka, AIR 2004 SC 4298**. Learned trial court concluded that as there is no cogent and strong evidence against the accused persons which would be sufficient for their conviction and only general allegation against them are made that they were present on the spot. There is no sufficient ground to summon the accused persons in exercise of power under section 319 Cr.P.C.

7. Learned counsel for the revisionist submitted that deceased died within three and half months of her marriage in unnatural circumstances. Doctor who conducted the post mortem examination of the deceased has opined that immediate cause of death was throttling. Throttling is always homicidal. Accused persons tried to mislead the witnesses by representing that deceased committed suicide. They hanged her after killing. I.O. without any sufficient reason exonerated the respondent nos. 2 to 6 who were named as accused in statement of revisionist during investigation and also in evidence of other witnesses of fact. The interest of justice requires that these persons who are also responsible for demanding dowry, subjecting to the deceased with matrimonial cruelty and causing her homicidal death must be summoned as accused to face trial alongwith accused persons, husband and father-in-law of the deceased, who are already facing trial in the case. He further submitted that witnesses of fact were not cross examined on the point of separate living of these persons from deceased and her husband nor any suggestion was given to witnesses of fact in this regard during cross examination. Learned trial court has wrongly applied the law to facts of the case.

8. Per contra, learned counsel for respondent nos. 2 and 6 submitted that no specific allegations are made against the respondent nos. 2 to 6 in statement of witnesses recorded under section 161 Cr.P.C. nor in the evidence of PW-1 and PW-2 during trial, which has been made basis of prayer to summon them as accused persons to face trial together with accused persons, who are already facing trial in the case. The evidence of prosecution has already been concluded; even statement of accused persons Rajesh and Rahul under section 313 Cr.P.C. has been recorded and case is fixed for final argument. There is no illegality or perversity in the impugned order passed by the court below. The conclusion of doctor regarding cause of death of the victim is not duly supported by his own observations on internal examination of the victim.

9. I have gone through the statement of PW-1 Kailash (defacto complainant), PW-2 Robin (cousin) of the deceased filed alongwith affidavit and investigating officer PW-10 stated that Munni Devi was mentally ill and residing with her son Pratap, as per the statement of the witnesses. PW-6, Dr. Asad Hafiz Ansari, PW-8, Dr. Manoj Kumar, who conducted the post mortem of the deceased and PW-10, I.O. Krishna Kant Saroj, the then CO Chandausi as well as other PW-11 Gamleshwar Viltoria, first I.O., which is filed alongwith counter affidavit of respondent nos. 2 to 6.

10. From perusal of statement of PW-1 and PW-2, witnesses of fact, which has been taken as basis for application under section 313 Cr.P.C., the omnibus allegations are made against all the accused persons for subjecting the victim to matrimonial cruelty committing marpeet (beating) with her,

demanding Scorpio vehicle as additional dowry and killing her and hanging her to give it a shape of suicide after the death. They have also stated in their sworn testimony before the court that deceased telephonically informed PW-1 that she was being given beating by all accused persons due to non fulfilment of demand of additional dowry of Scorpio vehicle, they visited her place on this information and stayed there in the night. On next day 1.10.2018 they came back without taking the deceased with them on assurance of accused persons that she will be treated properly henceforth. But just after arrival at home they received a telephonically information from father-in-law of the deceased that she has hanged herself when they visited her place, they found her dead and all accused persons were present there. Reena was educated lady, she died within three and half month of the marriage at her matrimonial place. Police had handed over the ornaments of the deceased to him. He came to know prior to marriage of Reena that Rahul was in some job at Noida. This is wrong to say that Reena was mentally sick prior to marriage and she was given treatment at the instance of her father-in-law.

11. PW-2- Robin has stated that when he reached alongwith his uncle and others after receiving information of death of Reena, he found her dead body on bed, there were mark of injuries on her person. Her in-laws were not present there at that time. Therefore, in statement of PW-1 and PW-2 there is no consistency that all accused persons were present on the spot when they visited the place of accused persons after getting information of death of Reena. PW-6, doctor who conducted the post mortem of the deceased stated that on internal examination hyoid bone and thyroid cartilage of the deceased were found intact. However, eight external injuries were found on person of deceased on different parts of the body. Out of them, four are on neck, one abrasion on finger and right foot each and contusion was found on right side of chest.

12. In **Sunil Kumar Gupta (supra)**, the Hon'ble Apex Court set aside the order of High Court whereby summoning order under section 319 Cr.P.C. passed by the trial court was set aside. Hon'ble Court held in paragraph 9 and 10 as under:-

9. Section 319 (1) Cr.P.C. empowers the Court to proceed against any person not shown as an accused if it appears from the evidence that such person has committed any offence for which such person could be tried together along with the accused. It is fairly well settled that before the court exercises its jurisdiction in terms of Section 319 Cr.P.C., it must arrive at satisfaction that the evidence adduced by the prosecution, if unrebutted, would lead to conviction of the persons sought to be added as the accused in the case. In Hardeep Singh, the Constitution Bench held as under:-

“105. Power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be

exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity.

The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.”

10. Observing that for exercising jurisdiction and its discretion in terms of Section 319 Cr.P.C., the courts are required to apply stringent tests, in [Sarabjit Singh and Another vs. State of Punjab and Another](#) (2009) 16 SCC 46, it was held as under:-

“21. An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other persons(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

22. Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if un rebutted would lead to a judgment of conviction.

23. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied.”

13. In **Vikas Rathi vs. State of U.P.** decided on 1.3.2023, Hon’ble Apex Court placed reliance on the judgement of Constitution Bench in **Hardeep Singh vs. State of Punjab, Sagar vs. State of U.P. (2022) 6 SCC 389** and set aside the order of High Court whereby impugned order passed by the

trial court dismissing application under section 319 Cr.P.C. was set aside and matter was remanded back to trial court for fresh examination.

14. In **Sagar vs. State of U.P. (supra)**, Hon'ble Apex court held as under:

“Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that 1 (2014) 3 SCC 92 such power should be exercised and not in a casual and cavalier manner.”

15. In the light of foregoing discussion and above cited authorities of Hon'ble Apex Court, no illegality, irregularity or perversity is found in the impugned order passed by the trial court whereby application filed by the defacto complainant / revisionist in exercise of power under section 319 Cr.P.C. to summon the respondent nos. 2 to 6, who are mother-in-law, brother-in-law, sister-in-law, uncle-in-law and aunt-in-law of the deceased to face trial together with accused Rajesh and Rahul, father-in-law and husband of the deceased, who are already facing trial, has been dismissed by the impugned order. No specific role has been assigned in the offence. They are not direct beneficiary of alleged demand of dowry. There is no specific averment that all these proposed accused were residing together with deceased and her husband in joint family house. The trial is at the stage of final argument as stated by learned counsel for respondents, it must reach its logical conclusion on the basis of evidence adduced during trial. The revision is liable to be dismissed.

16. In the result, the revision is **dismissed**.

Order Date :- 12.12.2023

Dhirendra/