

Court No. - 86

Case :- CRIMINAL REVISION No. - 2218 of 2024

Revisionist :- Mahendra And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Hari Bans Singh, Jash Ram, Nand Shyam

Counsel for Opposite Party :- G.A., Raju Kanaujia

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant Criminal Revision has been preferred against the judgment and order dated 28.02.2024 passed by Additional Session Judge/Additional Special Judge (POCSO) Court No.3, Prayagraj in Session Trial No.584 of 2018, arising out of Case Crime No.170 of 2018, under Sections 323, 504, 506, 325 and 304 IPC, Police Station Tharwai, District Prayagraj.
2. Heard learned counsel for the revisionists, learned counsel for the respondent No.2 and learned A.G.A. for the State-respondent and perused the material available on record.
3. The prosecution case in brief is that the informant Shankar son of Narayan lodged an FIR on 01.07.2018 at P.S. concerned naming accused persons with averments that on 30.06.2018 at around 09:00 pm the accused Shyam Babu, Bachchu Lal came at the door of informant and started abusing him, on account of the dispute occurred earlier in the day due to passing of goat. When Daya Shankar, the brother of the informant objected to this, Shyam Babu and Bachchu Lal had called Mahendra, Gore, Ashish, Ram Kishun and Masuriyadeen. The accused persons became violent and started giving beating to Daya Shankar. Daya Shankar entered into the house to save himself, but the accused persons committed trespass in the house and dragged Daya Shankar out of the house and gave beating to him, due to which he received serious head injury. On hearing the shrieks of Daya Shankar, his father Narayan and mother Sirtaji and other women of the family rushed to the spot to save him, but Shyam Babu, Gore alias Pawan assaulted the father of the informant by a rod on his head, due to which his

head got lacerated. Injured Narayan the father the informant succumbed to his injuries on way to hospital. Mahendra tried to molest Vidya Devi, wife of Daya Shankar inside the house and had torn her clothes. Shyam Babu tried to molest daughter of the informant, same persons have been named in the FIR. The police investigated the case and submitted chargesheet against four persons, but complicity of the present informant was not found in the offence and their name was dropped in the chargesheet. On commencement of trial of co-accused persons, they were charged by court under Sections 323, 504, 504, 304, 325 IPC. The informant filed an application under Section 319 Cr.P.C. with prayer to summon other named accused persons in the present FIR who are not chargesheeted, on the basis of PW1 Shankar Lal, PW2 Daya Shanakar and PW3 Vidya Devi.

4. Learned trial court placing reliance on evidence of PW1 to 3 recorded during trial, summon the revisionist to face trial together with the accused who are already facing trial for charge under Section 323, 504, 506, 304, 325 IPC.

5. Feeling aggrieved by the above statd summoning order the newly added accused persons had assailed the impugned order before this Court in present Criminal Revision.

6. Learned counsel for the revisionist submitted that the learned trial court has failed to record satisfaction as required in judgment of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others 2014 (3) SCC 92**, wherein it is stated that at the time of taking cognizance the court has to see whether a prima facie case is made out to proceed against the accused under Section 319 Cr.P.C, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter.

7. Learned counsel for the revisionist next submitted that PW1 to PW3 on whose evidence reliance has been placed by learned trial court while passing the impugned order had not stated in their statement under Section

161 Cr.P.C. regarding any role played by the revisionists in the offence, even they have not mentioned their names in their respective statements under Section 161 Cr.P.C. He next submitted that no specific role has been attributed to the revisionist in the offence. In fact the accused persons were not present on the spot and they have been implicated by the witnesses during trial only with malafide intent.

8. Learned counsel for the revisionist has placed reliance on paragraph No.13 of the judgment of Hon'ble Supreme Court in **Brijendra Singh and others Vs. State of Rajasthan (2017) 7 SCC 706**.

“.....13. In order to answer the question, some of the principles enunciated in Hardeep Singh's case may be recapitulated:

Power under [Section 319](#) Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under [Section 319](#) Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under [Section 319](#) Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

9. Learned counsel for the revisionist has placed reliance of paragraph Nos. 7 and 10 of the judgment of Hon'ble Supreme Court in

Ramesh Chandra Srivastava vs The State Of Uttar Pradesh reported in 2021(6) Supreme 417 which are reproduced as under:-

.....7. While this Court has approved of relying upon deposition which has not suffered cross examination for the purpose of invoking [Section 319 Cr.P.C.](#), it is relevant to note the standards which have been fixed by this Court for invoking the power under [Section 319 Cr.P.C.](#) The statement of law in this regard is contained in paragraphs 105 and 106 [Hardeep Singh](#) (supra):

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. The test as [laid down by](#) the Constitution Bench of this Court for invoking power under [Section 319 Cr.P.C.](#) inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under [Section 319 Cr.P.C.](#) should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as [laid down by](#) this Court, is one which is more than prima facie case which is applied at the time of framing of charges.”

10. Learned counsel for the revisionist has also placed reliance on a judgment of this Court in **Criminal Revision No.2590 of 2011 (Ansarullah Vs. State of U.P. and another)**, wherein summoning order under Section 319 Cr.P.C. was challenged by the newly added accused. Learned counsel emphasized following observations of this Court appearing on page No.11 of the judgment which reads as under:-

.....Only evidence which has come in the examination-in-chief of the P.W.-1 is that the revisionist had started motorcycle and was standing with the same. He does not says that the revisionist came along with other accused persons and participated/committed any offence and then fled away with them. Therefore, on the aforesaid evidence, which has not been supported by other prosecution witnesses, the revisionist could not have been summoned u/s. 319 Cr.P.C.

On the one hand, the informant (P.W.-2) says that he was present at the time of occurrence and other prosecution witnesses reached the spot on alarm being raised and had also saw a motorcyclist, but, they had not identified him. Therefore, on such a shaky, untrustworthy and unconvincing evidence, there is no likelihood that the revisionist can be convicted and moreover, in view of the judgment of the Hon'ble Supreme Court rendered in the case of Zahoor and others (supra), the revisionist cannot be summoned.

The trial court has not stated that it was satisfied from the material available on record that there is cogent and convincing evidence against the revisionist and there was overt act of crime committed by him, therefore, there was no occasion to summon the revisionist.”

11. Per contra, learned counsel for the respondent No.2 submitted that the evidence envisaged under Section 319 Cr.P.C. for exercising powers under Section 319 Cr.P.C. by trial court does not include statement recorded under Section 161 Cr.P.C. and Hon'ble Supreme Court in **Hardeep Singh's** case emphatically clarified that “evidence the word used under Section 319 Cr.P.C. means evidence led before the court i.e. examination in chief and court does not need to wait till the said evidence is tested on the anvil cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.” The word “evidence” therefore has

to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under [Section 319](#) Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it.

12. Learned counsel for the Respondent No.2 contented that the word “evidence” used under Section 319 (1) Cr.P.C. does not include “evidence” recorded during investigation. Learned counsel for the Respondent No.2 lastly submitted that there is no illegality, irregularity or perversity in the impugned order passed by learned trial court.

13. Learned A.G.A. also subscribed the contention raised by learned counsel for the respondent No.2.

14. In the present case, the informant Shankar Lal lodged an FIR against accused Shyam Babu, Bachchu Lal, Mahendra, Gore alias Pawan, Ashish, Ramkishun and Masuriyadeen. According to FIR version the dispute occurred between the informant and accused on account of passing of goats on 30.06.2018. On that day at around 09:00 pm accused Shyam Babu and Bachchu Lal came at the door of the informant Shankar Lal and started abusing him and when his brother Daya Shankar objected to this they became furious and called accused Mahendra, Gore alias Pawan, Ashish, Ramkishun and Masuriyadeen, they chased his brother Daya Shankar who assaulted him, whereupon he ran inside the house to save himself, but they trespass into the house and dragged him out, while giving him beating Daya Shankar received head injury which was inflicted by accused persons. When he shouted on being assaulted his father Narayan, mother Sirtaji and other family members rushed to save him, but Shyam Babu and Gore assaulted his father Narayan on his head by a rod and he suffered head injury and later succumbed to the injuries. Mahendra entered into the house and tried to molest Vidya Devi the family member of the

informant and daughter of the informant namely Kamal. Narayan the father of the informant died on way to hospital, due to serious head injury. The Investigating Officer submitted chargesheet against the four named accused persons out of seven namely Shyam Babu, Bachchu Lal, Mahendra, Gore alias Pawan, Ashish, Ramkishun and Masuriyadeen for charge under Sections 323, 504, 506, 325, 304 IPC had exonerated accused Mahendra son of Ashish, Gore alias Pawan son of Kishun and Ashish son of Ram Kishun on the ground that their complicity in the offence was not found. On the basis of evidence collected during investigation, the informant moved an application under Section 319 Cr.P.C. to summon the revisionist who were exonerated by Investigating Officer to face trial together with chargesheeted accused as there is ample evidence in the witness namely PW1 Shankar Lal informant, PW2 Daya Shankar injured, PW3 Vidya Devi wife of Daya Shankar.

15. Learned trial court allowed the application under Section 319 Cr.P.C. filed by the informant on the ground that sufficient grounds are available to summon these persons under Section 319 Cr.P.C. on the basis of evidence recorded during trial for charge under Sections 323, 504, 506, 325, 304 IPC. However, learned trial court has observed in the impugned order on the basis of evidence available on record that the allegation against the accused persons that they assaulted the women in the family of the informant with intention to outrage their modesty is not found prima facie believable.

16. In FIR specific charge has been leveled against the accused Shyam Babu, Mahendra with regard to section 354 IPC. This finding with regard to charge under section 354 IPC recorded by trial court in the impugned order has not been assailed by either side.

17. The Investigating Officer placed reliance on statements of the witnesses under Section 161 Cr.P.C. namely Smt. Sirtaji Devi wife of

deceased Narayan, Smt. Vidyawati wife of Daya Shankar, independent witnesses Akhilesh Kumar, Shobnath, on the basis of his finding that the complicity of accused Mahendra, Gore alias Pawan and Ashish, son of Ramkishun was not found in the incident.

18. The revisionists are named in the FIR, the informant Shyam Lal in his evidence before the court has reiterated his FIR version and deposed about the complicity of seven accused persons in the offence including the present revisionists. He has stated that Shyam Babu, Gore alias Pawan had called other accused persons when altercation took place between him and Daya Shankar. At the time of incident has also stated that Shyam Babu, Gore alias Pawan engaged in marpeet with his father, mother, his daughter and wife of Daya Shankar namely (Vidya Devi), his father Narayan and brother Daya Shankar received head injuries in the offence, who died on the way to hospital, due to which injuries suffered in the incident.

19. In cross-examination, the witness has admitted that there is full enmity between his family and accused persons due to land of lease in abadi. All the accused persons are his co-sharers, his suffered injuries on his tample and abdomen. He took his father straight to the police station from where he was sent to hospital for treatment, but he died on the spot. PW-2 Daya Shankar, is injured witness also stated that the altercation took place at the time of incident as accused Shyam Babu and Bachcho Lal came to his door and started abusing him and insisted that they would take their goats from his door. When the witnesses objected, they called other accused persons who engaged in marpeet, the witness his father and other family members. Shyam Babu and Mahendra also entered inside his house and molested his wife and daughter. Bachchu Lal assaulted his wife by a *rod*, Shyam Babu assaulted him by a *rambha*. The accused persons assaulted his father Narayan by their respective weapons on his head, chest and abdomen.

20. PW-3 Vidya Devi also supported version of PW-1 and PW-2 in her evidence. Learned trial court has allowed the application under Section 319 Cr.P.C.. By the impugned order on the basis of evidence of PW-1, PW-2 and PW-3 recorded during trial in the light of constitution Bench Judgment in **Hardeep Singh Vs. State of Punjab (supra)** and a subsequent judgment in **Naveen Singh Vs. State of Haryana SLP (Crl) No.3746 of 2022** dictated on 01.11.2022.

21. Learned trial court has observed that a *prima-facie* case is made out to summon the Mahendra, Gore alias Pawan and Ashish to face trial for charge under Section 323, 504, 506, 325, 304 IPC, under Section 319 Cr.P.C.

22. After considering the facts and circumstances of the case and giving a thoughtful consideration of the impugned order and evidence appearing on record, I find that there was a strong *prima facie* case before the court below to summon the accused Mahendra and Gore alias Pawan under Section 319 Cr.P.C. to face trial for said charges together with the accused persons who are facing trial, and impugned order in respect of accused Mahendra and Gore alias Pawan is affirmed, as specific role has been assigned to them in the offence, right from the stage of FIR the evidence recorded during trial.

23. However, no specific role has been assigned to accused Ashish in the offence. In the FIR as well as in statement under Section 161 Cr.P.C. as well as in statements of PW1, PW2 and PW3 recorded during trial. Therefore his complicity in the offence, appears to be doubtful in the light of evidence collected during investigation and due to fact that no specific role has been assigned to him in evidence recorded during trial.

23. Consequently, the revision is partly allowed. Summoning order in respect of accused Ashish son of Ramkishun is set-aside.

Summoning order in respect of revisionists Mahendra, Gore alias Pawan is affirmed.

24. The revision stands **partly allowed** accordingly.

Order Date :- 14.11.2024

Ashish/-