

Court No. - 86

Case :- CRIMINAL REVISION No. - 4377 of 2024

Revisionist :- Jera @ Chamiya And 4 Others

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

Counsel for Revisionist :- Keshari Nath Tripathi, Manoj Pandey

Counsel for Opposite Party :- G.A., Ram Shyam Shanker Pandey, Subodh Pandey

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant Criminal Revision has been preferred against judgment and order dated 15.07.2024 passed by learned Additional Session Judge, Court No.5, Moradabad in S.T. No.765 of 2023, arising out of Case Crime No.385 of 2022, under Sections 498-A, 120-B, 304-B, 314, 316 and 506 IPC and Section 3/4 of D.P. Act, Police Station Bhojpur, District Moradabad. By the impugned order learned trial court has summoned the revisionists in exercise of powers under Section 319 Cr.P.C. to face trial together with co-accused Rafat Ali for charge under sections 498-A, 120-B, 304-B, 314, 316 and 506 IPC and Section 3/4 of D.P. Act, Police Station Bhojpur, District Moradabad. Revisionist No.5, Hasmat Ali has been summoned for charge under Section 314 and 316 I.P.C.

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 brief facts of the case are that respondent No.2 Mausam Ali son of Shri Amantulla resident of village Kajipura, P.S. Moradabad filed an application under Section 156(3) Cr.P.C. before the CJM, Moradabad with allegation that he solemnized Nikah of his daughter Sakina with accused Rafat Aali as per muslim rites and rituals, he has spend around Rs.7 lakh in cash in the marriage. However, husband and in-laws of his daughter were not satisfied with the dowry given in the marriage, his daughter used to make complaint to her that her husband and parents-in-laws used to tease her for bringing lessor dowry and they would engage in marpeet with her. Her

father convened "Biradari Panchayat" to resolve the matter, wherein in-laws of his daughter were made to understand. She gave birth to two female child in succession. Thereafter she again became pregnant and her husband and parents-in-law hatched a conspiracy by injecting some poisonous substance in bottle of the glucose through quack doctor Hasmat Ali; due to infusion of poisonous substance his daughter became sick and the child in her womb died. She started bleeding profusely, and when her condition became serious, his son-in-law Rafat Ali telephoned him to come soon as condition of his daughter was serious, he rushed to the matrimonial place of his daughter alongwith his brother, at that time she was admitted at the place of doctor Hasmat Ali when he reached there all the persons present there fled away. His daughter told him that she was pregnant for five months and her condition deteriorated, her husband got her admitted in the clinic of doctor Hasmat Ali who is a co-villager of her in-laws. She also stated that some injection has been mixed in glucose bottle due to which her condition become more serious. The informant got her admitted in Cosmos Hospital on 05.09.2022 at 09:00 pm, his daughter was struggling between life and death and doctors had told him that she was hopeless; ultimately she died on 08.09.2022 at around 8-9 a.m. in the hospital. His report was not lodged at police station, as he moved applications before the Superintendent of Police and other high officials. Nevertheless no action was taken, and therefore he had to take recourse of the court. On Application dated 20.09.2022 under Section 156(3) Cr.P.C., the court directed the SHO concerned to register a case, thereafter the FIR was lodged against six named accused persons including the doctor Hasmat Ali under Sections 498-A, 120-B, 304-B, 314, 316 and 506 IPC and Section 3/4 of D.P. Act on 31.11.2022 ar around 13:30 hours.

4. In postmortem report of the deceased Sakina daughter of Mausam Ali and wife of Rafat Ali, the cause of death could not be ascertained, viscera was preserved and same was sent for chemical examination.

However, six ante-mortem injuries in the nature of contusion were found on different part of her person. The police investigated the case, in viscera examination report no chemical poison could be detected. It come in the statements of the doctor who treated the victim at Cosmos hospital that condition of the patient was very serious, she was admitted in the hospital in serious condition, her BP could not be traced, there was serious infection in her body and vaginal bleeding was present, there might be need of ventilation. There was a history of two and half months pregnancy which was miscarried. She is being admitted in ICU.

5. The Investigating Officer after recording statements of the informant Mausam Ali, Usman Ali uncle of the deceased, Khursheed and other witnesses, Dr. Nishi Agarwal, Dr. Apporva Mittal and Dr. Rakesh Kumar who treated the victim in Cosmos hospital, submitted chargesheet against husband of the deceased Rafat Ali and dropped the name of the revisionists in the chargesheet on ground that their complicity in the offence was not found. According to doctor Rakesh Kumar; the patient suffered serious infection due to abortion and she entered into disseminated intravascular coagulation and consequently she suffered Septicemic shock and there emerged problem of severe Metabolic acidosis, the person who brought the patient in the hospital told him that prior to hospitalization of the patient, some local unskilled doctor visited her. The Investigating Officer also recorded statements of the independent witnesses Mohd. Haroon, Alladia, Ahasn Ali, who stated that only husband of the deceased was responsible for her unfortunate and untimely death.

6. The learned Magistrate took cognizance of the offence on the basis of chargesheet submitted against accused Rafat Ali. On commencement of trial the accused Rafat Ali was charged for the above stated offences. During the course of trial the statements of PW1 Mausam Ali informant, PW2 Khursheed son of late Bhasi the co-village of Mausam Ali and PW3

Khursheed son of Saddik a co-villager of PW1 were recorded. After recording of the statements of three witnesses the informant filed an application before Special Judge/Trial Court on 11.01.2024 under Section 319 Cr.P.C., wherein it is stated that on the basis of statements of PW1, PW2 and PW3 the complicity of named accused Dr. Hasmat Ali, Shibte Hasan, Jera @ Chamiya, Intezar Hussain and Husainjahan is also established and these persons who are named in FIR, but not chargesheeted by Investigating Officer, be summoned to face trial for said charges together with the accused Rafat Ali. The application was allowed by the impugned order by learned trial court vide impugned order dated 15.07.2024.

7. Feeling aggrieved by the impugned order, the revisionist newly added accused persons filed instant criminal revision under Section 314 and 316 I.P.C.

8. Learned counsel for the revisionists submitted that revisionist No.1 Jera @ Chamiya and Shibte Hasan are elderly parents-in-law of the deceased and Intezar his brother-in-law (jeth) of the deceased and Husainjahan sister in law Nanad) of the deceased, Hasmat Ali is not a relative of husband of the deceased, he is said to be a co-villager of the husband of the deceased who allegedly treated her prior to her hospitalization at Cosmos Hospital in serious condition. Accused Husainjahan is married sister-in-law (Nanad) of the deceased whose marriage was solemnized long before marriage of the deceased with Rafat Ali. Complicity of these persons was not found during investigation on the basis of statements of independent witnesses.

9. He next submitted that there is no cogent and reliable evidence against the revisionist, on the basis of which their summoning under Section 319 Cr.P.C. may be held as justified. He also submitted that the injuries found on the postmortem report of the deceased were caused due

to accidental fall from motorcycle when the uncle of the deceased had taken her from place of her treatment on a motorcycle to get her visited in some other hospital. The injuries itself show that these were sustained accidentally. The deceased and her husband resided separately from revisionists.

10. He lastly submitted that the learned trial court has not recorded its satisfaction as required to proceed against the persons in exercise of powers under Section 319 Cr.P.C. who have not been previously summoned as accused to face trial, at the stage of summoning the accused under Section 319 Cr.P.C. He lastly submitted that the learned trial court has summoned the revisionists without considering their role attributed in prosecution version, in mechanical manner and also without taking into consideration the statements appearing in cross-examination of PW1 and PW2. In the statements of the independent witnesses recorded by the Investigating Officer no allegations against the revisionists have been found. PW1 has admitted in cross-examination that he had not levelled any allegations against the in-laws of his daughter in Paper No.05/2016. This is admitted fact that prior to present FIR is no complaint ever made against the revisionists with regard to demand of dowry or subjecting the deceased to matrimonial cruelty. In postmortem report cause of death could not be ascertained.

11. PW1 has also admitted that Rafat Ali, the husband of the deceased had borne the expenditure of her treatment in Cosmos Hospital and her husband and in-laws got her buried after her death at their native village. He also admitted that whether his daughter was bearing a male or female child only could have been ascertained after birth of child. He also admitted that during treatment of his daughter he had not moved any application before the hospital, police station or police outpost. His daughter remained hospitalized for three days in Cosmos Hospital, the information regarding serious condition of his daughter was given to him

by her husband telephonically. In viscera examination report of deceased no chemical poison was detected . PW-1 has admitted that last rites of the deceased were performed at her matrimonial place, Akbarpur.

12. With above submissions, learned counsel for the revisionists prayed for setting-aside and quashing the impugned order.

13. Per contra, learned counsel for respondent No.2 and learned A.G.A. for the State-respondent submitted that there is no illegality, irregularity or perversity in the impugned order passed by learned trial court while summoning the revisionists who are named in FIR to face trial together with accused Rafat Ali, the husband of the deceased. It is evident from evidence collected during investigation as well as on perusal of evidence of PW1 and PW2 that accused Asmat Ali and revisionist Nos. 1 to 4 had hatched a conspiracy to abort the child in the womb of deceased with revisionist No.5 who is a quack and unskilled doctor. The condition of the deceased deteriorated by injecting some deleterious substance which resulted death of the child in her womb and her condition became serious due to profuse bleeding and ultimately she died in course of treatment.

14. Respondent No.2 has further submitted that there are as many as six ante-mortem injuries found on the person of the deceased, which are not properly explained by the revisionists. It is difficult to conceive that the deceased suffered these injuries due to accidental fall from motorcycle when she was stated to be carried by her uncle by a motorcycle for treatment. Had it been so, the father or concerned family members of the deceased would also have suffered injuries. This explanation is false and unbelievable.

15. The injuries found on person of the deceased make it evident that the she was also subjected to assault prior to her forced abortion.

16. On perusal of material evidence on record in the light of submissions made by learned counsel for the parties, I find that when the cause of death could not be ascertained in postmortem report and viscera was preserved and sent for chemical examination to Forensic Science Laboratory. In viscera examination of the deceased no chemical poison was detected. However, six ante-mortem injuries in the nature of contusion on non-vital part of body of the deceased are recorded on her person, regarding which an explanation has been offered from the revisionist side.

17. That Usman the brother of the informant and one Abid, were taking deceased for treatment by getting her sit on motorcycle, it got slipped and she suffered six injuries due to fall from motorcycle. However, this explanation does not seem convincing and PW-1 has denied this suggestion made from the side of accused Rafat Ali given in cross-examination. The case of the accused side is that the deceased suffered miscarriage, due to sudden bleeding and she died due to loss of blood and infection in course of treatment.

18. PW-2 Khursheed is co-villager of PW-1. PW-1 has stated in his examination-in-chief that when he was informed by son Rafat Ali that his daughter was seriously ill, whereupon he immediately visited the place of the accused persons alongwith his brother Usman and co-villager PW-2 Khursheed. Co-villager Khursheed son of Ghasi named as PW-2 and Khursheed son of Siddiq. His daughter was admitted in the clinic of revisionist Hasmat Ali, her condition was serious, in-laws of her daughter had admitted her at the clinic of Hasmat Ali. His daughter told him that her in-laws and Rafat Ali had administered some poison in her body by injecting in glucose bottle, she asked her father to save her, as her in-laws are intending to kill her. Thereafter her nanad, parents-in-law and brother-in-law (jeth) appeared there and stated that his daughter was machine of procreating girl child. The parents-in-law of Rafat Ali stated

that they would remarry his son, thereafter he reached at Cosmos Hospital on 05.09.2023 at 09:00 am alongwith his son-in-law, daughter and brother Usman and co-villagers and got her hospitalized there.

19. In this summary report of Sakeena, her age is shown as 25 years. She was two and half months pregnant, her medical treatment of pregnancy was done. Cause of death was sudden cardio-respiratory arrest failure on 08.09.2022 at 09:50 pm as a result of Sepsis/shock/AKI Hepatitis/ severe metabolic Acidosis.

20. Doctor Nishi Agarwal who treated the deceased at Cosmos Hospital has stated that Mrs. Sakeena was brought to hospital by her family members at around 10:00 pm on 04.09.2022, her blood pressure and pulse were not recordable and for that reason she went to the stage sepsis shock due to distressed breathing problem of severe metabolic acidosis occurred. The persons who brought the patient to hospital told him that the patient was shown to some unskilled doctor in the village where her treatment was not properly done and infection spread. She suffered severe infection due to abortion. She was not in a position to give her statement. Similar statement was given by doctor Anoop Mittal and doctor Rakesh Kumar. One doctor Abrar Hussain who is D-pharma and operates medical store stated that Sakeena was brought to his shop by her husband Rafat Ali, parents-in-law. She had developed high fever and she was bleeding, he advised them to take her to some good hospital. The person who brought her could not tell the reason of bleeding. At that time people from her parental side also reached there and they were taking her to hospital by motorcycle. He heard that on way Sakeena fell down from motorcycle and suffered injuries on her hand and leg.

21. The provisions of Section 319 Cr.P.C. may be reproduced as under:-

“Section 319 – Power to proceed against other persons appearing to be guilty of offence

1. Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

2. Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

3. Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

4. Where the Court proceeds against any person under Sub-Section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

22. Learned counsel further submitted that Hon’ble Supreme Court in Constitution Bench Judgment in **Hardeep Singh Vs. State of Punjab and others 2014 (3) SCC 92** considered the ambit, scope and applicability of Section 319 Cr.P.C. at length. The Hon’ble Court observed in paragraph 12, which is reproduced as under:-

“12. Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.

It is the duty of the Court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in [Section 319 Cr.P.C.](#)?

The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of [Cr.P.C.](#) and the judgments that have been relied on for the said purpose. The controversy centers around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.”

Hon’ble Court observed in paragraph No.71 that the word “evidence” in [Section 319](#) Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under [Section 319](#) Cr.P.C. is to be exercised and not on the basis of material collected during investigation.

22.a. Hon’ble Court further observed in paragraph Nos.73, 74, 75, 79 and 80 reads as under:-

73. The unveiling of facts other than the material collected during investigation before the magistrate or court before trial actually commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held, but can the same definition be extended for any other material collected during inquiry by the magistrate or court for the purpose of [Section 319](#) Cr.P.C.?

74. An inquiry can be conducted by the magistrate or court at any stage during the proceedings before the court. This power is preserved with the court and has to be read and understood accordingly. The outcome of any such exercise should not be an impediment in the speedy trial of the case.

75. Though the facts so received by the magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of [Section 319](#) Cr.P.C. it is an information of complicity. Such material therefore, can be used even though not an evidence in stricto sensu, but an information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers as presently involved.

79. 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. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under [Section 319](#) Cr.P.C. The ‘evidence’ is thus, limited to the evidence recorded during trial.

Q.(ii) Does the word ‘evidence’ in [Section 319](#) Cr.P.C. means as arising in Examination-in-Chief or also together with Cross- Examination?

23. Hon’ble Court outlined the parameters of exercise of powers under Section 319 Cr.P.C. by trial court as under:-

“98. 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.

99. 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.

24. In the present case, omnibus allegations are made against all accused persons including the accused Rafat Ali, the husband of the deceased who is already facing trial. However, some specific allegations are made against Rafat Ali during investigation by the witnesses who were examined by Investigating Officer and also in statements of PW1 and PW-2 recorded during trial on the place of which application under Section 319 Cr.P.C. was filed by PW1 Mausam Ali, the father of the deceased.

25. The perusal of impugned order reveals that the learned trial court has not considered the evidence PW1 and PW2 recorded during trial which formed the basis of filing of application under Section 319 Cr.P.C. by the informant, whereas Hon'ble Supreme Court has clarified in no uncertain term that it is evidence recorded during inquiry or trial which can form the basis of exercise of powers under Section 319 Cr.P.C. for summoning a person as accused for joint trial together with the accused who are already facing trial. Out of five revisionists, revisionist Nos. 1 and 2 are parents-in-law of the deceased. PW-3 is brother-in-law (Jeth) of the deceased, PW-4 is married sister-in-law of the deceased, PW-5 Hasmat Ali is a co-villager and is not related to in-laws of the deceased. The allegation against him is that he being unskilled person gave her wrong treatment to the deceased in collusion with other accused persons which resulted in miscarriage of the foetus in the womb of the deceased, which resulted in severe deterioration of her condition due to profuse bleeding and even after her hospitalization, her condition could not be managed and ultimately she died.

26. The learned trial court in the impugned order has failed to record its satisfaction as herein above stated that a prima facie case more than

that they exercise at the time of framing of charge against concerned persons exists,. which is short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

27. Hon'ble Court held that in the absence of such satisfaction, the court should refrain from exercising powers under Section 319 Cr.P.C.. Thus while passing the impugned order, learned trial court neither recorded its satisfaction as envisaged in paragraph No.99 of the judgment of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others (supra)** nor it has discussed and considered the evidence of witnesses recorded during trial and based its order on averments in application under Section 319 Cr.P.C. and evidence collected during investigation.

28. Therefore, the impugned order is vitiated by by legal error and cannot be sustained. The impugned order is hereby set-aside and matter is remitted to the learned trial court to hear and decide the application under Section 319 Cr.P.C. a fresh in light of the law laid down by Hon'ble Apex Court as stated above, in accordance with law.

29. It need not be added that this Court has not given any opinion on merits of the application under Section 319 Cr.P.C.

30. The revision stands **allowed** accordingly.

Order Date :- 10.12.2024

Ashish/-