

Court No. - 86

Case :- CRIMINAL REVISION No. - 684 of 2025

Revisionist :- Umesh Alias Udayveer

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

Counsel for Revisionist :- Rohit Sharan Tomar

Counsel for Opposite Party :- G.A.,Rahul Singh Dahiya

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the revisionist, learned A.G.A. for the State and learned counsel for the opposite party no. 2 and perused the record.

2. Counter and rejoinder affidavits have been exchanged between the parties, which are on record.

3. The instant criminal revision has been preferred by the accused revisionist Umesh @ Udayveer against the order dated 29.01.2025 passed by the learned Additional Sessions Judge, Court No. 05, Bulandshahr in S.T. No. 2029 of 2022 (State Vs. Girraj), arising out of Case Crime No. 510 of 2021, under Sections 304, 504 I.P.C., Police Station Chhatary, District Bulandshahr whereby he was summoned to face trial under Sections 304, 504 I.P.C. on an application moved by the prosecution alongwith the accused Girraj who was already facing the trial.

4. The factual matrix of this case, as unfolded in the F.I.R., which was lodged by the informant Smt. Latesh Devi on 12.11.2021 at 12.06 A.M. under Sections 304, 504 I.P.C. is that on occasion of Deepawali on 04.11.2021 at about 9.00 P.M. when her husband Sonu @ Sonpal was sitting outside his house, the villagers Girraj and his younger brother came to his house and started abusing him due to some old animosity and when it was protested, they caught him by his neck and when he fell down, he was further assaulted by kicking, fisting and iron rod and his head was also dragged and due to this, he sustained injuries. The informant tried to rescue him but they had bitterly beaten her and fled away. When his condition became worse, he was admitted in the hospital on 06.11.2021 but could not survive due to the injuries. It is also explained in the F.I.R. that the lady informant was busy in the funeral of her husband it caused delay in lodging of the F.I.R. which was registered against two named accused persons Girraj and Umesh @ Udayveer. After investigation, Investigating Officer submitted

charge sheet only against one accused Girraj and accused Umesh @ Udayveer was exonerated by the I.O.

5. The trial started and after framing the charges, statements of PW-1, the informant Smt. Latesh Devi, PW-2 Yogendra Singh, eye witness, PW-3 constable clerk Bhuri Singh, PW-4 Dr. Aatm Prakash, PW-5 Retired Sub Inspector Kamlesh Kumar Upadhyay, the witness of inquest report were recorded.

6. It was at this stage an application under Section 319 Cr.P.C. was moved by the informant to summon the revisionist Umesh @ Udayveer to face trial under Section 304, 504 I.P.C. and ground taken in the said application was that the proposed accused Umesh @ Udayveer was named accused in the F.I.R. and the I.O. of this case deliberately and in an arbitrary manner exonerated him and no charge sheet was submitted against him whereas the witnesses of fact PW-1 and PW-2 corroborated the prosecution version in their testimony and active role of proposed accused/revisionist was disclosed by them in the commission of the alleged crime. PW-2 in his evidence stated that the accused Umesh @ Udayveer was carrying an iron rod and he alongwith other accused caught hold the neck of the deceased and he fell down and thereafter he was bitterly beaten by kicking, fisting and iron rod and he sustained serious head injury as well alongwith other injuries. She tried to rescue her husband but the accused persons did not leave him. Hence, PW-1, the wife of the deceased is an eye witness of the occurrence and corroborates the prosecution version in her deposition.

7. PW-2 is an eye witness and stating the ocular version of the incident narrated the story as disclosed in the F.I.R. corroborating the prosecution story. Rest of the prosecution witnesses are formal witnesses and support the prosecution case.

8. Learned counsel for the revisionist vehemently opposed the present application. It is submitted that it is an admitted case that both the parties have long enmity and he has been falsely implicated due to animosity. It is also submitted that due to this reason, I.O. could not find any evidence against the revisionist and no role was played by him in the commission of the alleged crime. It is further submitted that PW-2 Yogendra Singh although in examination-in-chief supported the prosecution case but however, in his cross-examination he stated that he is a previous convict and he was awarded punishment for life imprisonment alongwith co-accused persons in a case relating to the murder of Roop Ram, the villager. The accused Girraj used to attend the court for the pairvi of the said case alongwith Kripal who was a man of the informant. It is also submitted that

PW-2, the alleged eye witness assigned the role of assault by use of Saria to the revisionist whereas PW-1 deposes that the revisionist was using iron rod in the occurrence. It is next submitted that no iron rod was retrieved by the police on the pointing out of the revisionist. In fact, the deceased sustained injuries either in some accident or due to falling down on the road. It is next submitted that no witness of the same vicinity where the deceased resided, has supported the prosecution case. Their statements were recorded by the I.O. under Section 161 Cr.P.C. wherein they have not named the present revisionist as accused.

9. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

10. The law prevailing over the subject has been well explained by the Constitution Bench of Hon'ble Apex Court in the case of **Hardeep Singh Vs. State of Punjab and others, 2014 (85) ACC 313**, wherein it was held that under Section 319 Cr.P.C. a person against whom it appears from the evidence that he, though not an accused in the case so far, could be tried together with the accused already facing the trial and in such event by virtue of Section 319 (4) Cr.P.C. the proceedings against such person shall be commenced afresh and it shall be presumed as if he had been an accused when the court took cognizance of the offence upon which the trial was commenced and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by the cross-examination. The degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. is in fact much stronger evidence than mere probability of his complicity. Thus, 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. The difference in the degree of satisfaction for summoning the original accused and the subsequent accused is on account of the fact that the trial may have already been commenced against the original accused and it is in the course of such trial that materials are discussed against the newly summoned accused, fresh summoning of the accused will result in delay of the trial, therefore, the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

11. Further, the Court while invoking its power under Section 319 Cr.P.C. with regard to the accused, who is not named in the F.I.R. or if named, no charge-sheet was submitted against him or even he has been discharged by the Court is recognized

under Section 319 Cr.P.C. At the stage of inquiry when the Court uses its power for the aforesaid purpose, it may take into consideration all the materials collected by the Investigating Officer during investigation or even the statement recorded under sections 200 and 202 Cr.P.C., as the case may be, and it acts at a pre-cognizance stage of the matter before filing the charge-sheet by the police. However, after submission of the charge-sheet and after framing of charges when the trial commences and evidence of witnesses are recorded, the trial court may pass an order under Section 319 CrPC to summon a person as co-accused alongwith the accused persons who are already facing trial and at this stage no extraneous material are to be looked into or considered by the trial court except the deposition of the witnesses recorded before the Court. At this point, a decision of Hon'ble Supreme Court in **Brijendra Singh & Others Vs. State of Rajasthan, 2017 (7) SCC 706** particularly, paragraph 15 of the said pronouncement is relevant to quote here, which is extracted as below.

"15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record.'"

12. However, in the authority judgment of the Full Bench in **Hardeep Singh case** (supra), the Hon'ble Supreme Court held that-

"117.2. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet."

"117.3. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial."

13. It is pertinent to mention here that the Constitution Bench

of Hon'ble Supreme Court in the case of **Hardeep Singh** (supra) dealt with the issue which was framed as question no.3 like this -

"Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?"

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused."

14. The dictum of law promulgated by the Hon'ble Supreme Court in the judicial pronouncements may be summarized as mentioned hereinafter and it can be safely held that the Court during trial is justified to look into the materials collected during investigation by the Investigating Officer but however such materials and evidence can be used only for corroboration of the evidence recorded in the Court after the trial commences for the exercise of power under section 319 Cr.P.C.

15. So far as the case in hand is concerned, a perusal of the impugned order reveals that the present revisionist was named in the F.I.R. but however, his name was exonerated during investigation by the I.O. and charge sheet was submitted against co-accused Girraj. However, the informant challenged the closure report filed in favour of the revisionist and no protest petition was filed by her but subsequently an application under Section 319 Cr.P.C. was moved by the informant-opposite party no. 2 which was allowed by the impugned order.

16. It is pertinent to mention here that the impugned order was passed by the learned trial court after recording the statements of PW-1, PW-2, PW-3, PW-4 and PW-5 and on the basis of which the present revisionist was summoned to face trial under Section 304, 504 I.P.C. on application under Section 319 Cr.P.C. alongwith co-accused Girraj who was already facing trial in this case. PW-1 states in her examination-in-chief that the alleged offence was committed by Girraj and his younger brother Umesh @ Udayveer in her presence and she had also tried to save her husband who sustained serious injuries and subsequently he died of the said injuries. In the same fashion, PW-2 Yogendra Singh has also given ocular evidence in respect

of the occurrence and he has assigned the specific role to the present revisionist for inflicting the injuries in the head of the deceased by use of an iron rod. PW-3 constable clerk Bhuri Singh is the formal witness whereas PW-4 is Dr. Aatm Prakash who performed the postmortem report of the deceased and opined that cause of death was ante-mortem head injury to the deceased and coma. It is again pertinent to mention here that role of causing head injury has been assigned by eye witness to the present revisionist which was proved fatal to the deceased. PW-5 is witness of the inquest proceeding. There are no material contradictions or inconsistencies in the testimony of PW-1 and PW-2 which were recorded before the trial court. The minor contradictions are ignorable and their evidence so far as the complicity of the present revisionist in commission of the crime is concerned, cannot be washed off as a whole.

17. It is a trite law, particularly after the pronouncement of the judgment of the Hon'ble Supreme Court in the case of Hardeep Singh (supra) that an effective order under Section 319 Cr.P.C. may very well be passed by the trial court relying only on the statement made by a witness in his examination-in-chief and there is no need to wait for the cross-examination of such witness which makes the prosecution easy to move an application under Section 319 Cr.P.C. and to force the court to rely upon it.

18. The matter is different in the circumstances of the instant case. At the time of passing the impugned order for summoning the revisionist as co-accused in this matter, reliable evidence was available before the trial court. It is clarified by the Hon'ble Supreme Court in **Hardeep Singh** (supra) case that the evidence collected and found during investigation or inquiry under section 200 and 202 Cr.P.C. may be seen at the stage of passing the order under Section 319 Cr.P.C. but however such materials and evidence can be used only for the corroboration of the evidence recorded in the court after commencement of trial to invoke its power under Section 319 Cr.P.C. There was reliable material on record before the trial court to pass an effective order under Section 319 Cr.P.C. on the basis of statement of P.W.1 and P.W.2 and the said statements fully corroborate the prosecution story qua the revisionists also.

19. Now it is trite law particularly after the judgment of Hon'ble Supreme Court passed in **Hardeep Singh** (supra) case that since the Court exercises discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction for the role played by the proposed accused and 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.

20. On the basis of aforesaid discussion, in the peculiar facts and circumstances of the case, this Court is of the view that the impugned order is sustainable. The evidence on record which was recorded before the trial court definitely makes out a prima facie case against the proposed accused persons which is more than a prima facie case as exercised at the time of framing of charge but less than such a satisfaction that the evidence, if goes un rebutted, would lead to conviction. The injured has sustained serious injuries upon his head and body and the nature of injuries which reveals from the perusal of the autopsy report also shows that the injuries were inflicted by the use of such weapons as mentioned in the F.I.R. and narrated by PW-1 and PW-2.

21. In view of the above discussion, in my view, there is no infirmity, illegality, perversity or lack of judicial mind in the impugned order dated 29.01.2025 and the said order is liable to be affirmed and the criminal revision deserves to be dismissed.

22. The criminal revision is accordingly **dismissed**. The impugned order order dated 29.01.2025 passed by the learned Additional Sessions Judge, Court No. 05, Bulandshahr in S.T. No. 2029 of 2022 (State Vs. Girraj), arising out of Case Crime No. 510 of 2021, under Sections 304, 504 I.P.C., Police Station Chhatary, District Bulandshahr is affirmed.

23. Copy of this order be sent to the court concerned for compliance and necessary action.

Order Date :- 23.8.2025

Rmk.