

Neutral Citation No. - 2025:AHC:126946

Reserved on: 16.07.2025

Delivered on: 28.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 2886 of 2023

Revisionist :- Surendra And 3 Others

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

**Counsel for Revisionist :- Karuna Nand Tiwari, Ram Bahadur, Sr.
Advocate**

Counsel for Opposite Party :- Ashwani Kumar Pathak, G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Anil Kumar Srivastava, the learned Senior Counsel assisted by Mr. Karuna Nand Tiwari, the learned counsel for revisionists, the learned A.G.A. for State and Mr. Ashwani Kumar Pathak, the learned counsel representing first informant opposite party 2.

2. Perused the record.

3. This criminal revision has been filed challenging the order dated 19.04.2023 passed by Additional Sessions Judge, Court No.-1, Maharajganj in Sessions Case No. 543 of 2020 (State Vs. Mewati Devi), under Sections 304-B, 498-A IPC, Police Station-Kothibhar, District-Maharajganj, whereby the application dated 22.07.2020 under Section 319 Cr.P.C (paper No.10 kha) filed by the prosecution/first informant to summon the prospective accused (named but not charge sheeted) to face trial in aforementioned Sessions Trial, has been allowed. Consequently, the prospective accused i.e. the revisionists herein have been summoned

by Court below under Sections 498-A, 326, 304 IPC to stand their trial in aforementioned Sessions Trial.

4. Record shows that an incident occurred on 20.06.2020, in which, the mother of first informant namely (Priyanshu) sustained burn injuries. After the aforesaid incident had occurred, the victim i.e. the mother of first informant was taken to hospital for medical treatment. Thereafter, Priyanshu (son of deceased) lodged a delayed FIR dated 24.06.2020, which was registered as Case Crime No. 0169 of 2020, under Sections 498-A, 326 IPC, Police Station-Kothibhar, District-Maharajganj. In the aforesaid FIR, 5 persons namely - (1) Mewati Devi (mother-in-law), (2) Surendra (Devar), (3) Mamta Devi (Devar), (4) Sarita (Nand) and Sunita (Nand) of the deceased have been nominated as named accused.

5. Gravamen of the allegations made in the FIR is to the effect that named accused repeatedly committed cruelty upon the mother of first informant for demand of dowry. On 20.06.2020, the named accused are alleged to have first poured kerosene upon the mother of first informant and thereafter, immolated her on account of which, she sustained burn injuries.

6. While the victim was undergoing treatment at B.R.D. Medical College, Gorakhpur, her dying declaration was recorded by Tehsildar on 25.06.2022. Same is on record at page 66 of the paper book. The victim in her aforesaid Dying Declaration has clearly stated that Mewati Devi (her mother-in-law), Surendra (Devar), Mamta Devi (Devrani), both the Nanads namely Sarita and Sunita and their husbands poured kerosene on her and thereafter immolated her.

7. Ultimately, the victim i.e. the mother of first informant namely Ranju Devi died on 26.06.2020. Thereafter, the inquest (Panchnama) of the body of deceased was conducted on 26.06.2020. In the opinion of witnesses of inquest (Panch witnesses), the nature of death of deceased as to whether, it is homicidal or suicidal could not be categorized. However, as per the

opinion of the witnesses of inquest (Panch witnesses), the cause of death of deceased was said to be burn injuries sustained by the deceased. Thereafter, post mortem of the body of deceased was conducted on the same day i.e. 26.06.2020. In the opinion of Autopsy Surgeon, who conducted autopsy of the body of deceased, the cause of death of deceased was septic shock due to ante-mortem burn injury. The Autopsy Surgeon found following ante-mortem injuries on the body of deceased;-

“AMI

Superficial to deep septic burn all over body except liner part of abdomen with both liner limb.

Pus layer present at some places.”

8. In furtherance of the investigation of concerned case crime number, the Investigating Officer during course of investigation, examined various witnesses under Section 161 Cr.P.C. On the basis of above and other material collected by him during course of investigation and also the mitigating circumstances that emerged during course of investigation, he came to the conclusion that complicity of all the named accused in the FIR is not established in the crime in question. Accordingly, Investigating Officer submitted the charge-sheet/police report dated 30.03.2021 in terms of Section 173(2) Cr.P.C., whereby named accused Mamta and not named accused Vinay Kumar were charge sheeted under Sections 498-A, 304 IPC, whereas, the other named accused were exculpated.

9. After aforementioned charge sheet/police report was submitted, cognizance was taken upon same by the concerned Magistrate in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. As offence complained of is triable exclusively by the Court of Sessions, therefore, concerned Magistrate in compliance of Section 209 Cr.P.C. committed the case to the Court of Sessions. Resultantly, Sessions Trial No. 543 of 2020 (State Vs. Mewati Devi), under Sections 304-B, 498-A IPC, Police Station-Kothibhar, District-Maharajganj came to be registered and is now said to

be pending in the Court of Additional Sessions Judge, Court No. 1, Maharajganj.

10. Concerned Sessions Judge, in complaine of Section 228 Cr.P.C., framed charges against charge sheeted accused, who denied the same and pleaded innocence. Resultantly, the trial procedure commenced.

11. Prosecution in discharge of it's burden to bring home the charges so framed against the charge sheeted accused, adduced PW-1 Priyanshu Kumar (first informant/son of deceased) and PW-2 Brijesh Kumar (maternal uncle/Mama of first informant). After the examination-in-chief and cross-examination of aforementioned witnesses was recorded, prosecution/first informant filed an application dated 22.07.2022 under Section 319 Cr.P.C. alleging there that since as per the depositions of PW-1 Priyanshu Kumar (first informant/son of deceased) and PW-2 Brijesh Kumar (maternal uncle/Mama of first informant), the complicity of prospective accused (named but not charge sheeted accused) i.e. Surendra, Mamta, Sarita and Sunita has also emerged in the crime in question, therefore, they be also summoned to face trial in aforementioned Sessions Trial.

12. Aforementioned application dated 22.07.2022 under Section 319 Cr.P.C. filed by the prosecution/first informant was opposed by the charge sheeted accused, who filed their objections (Paper No. 12-Kha) to the same.

13. Ultimately, Court below upon examination of the averments made in the application dated 22.07.2022 under Section 319 Cr.P.C. and evaluation of same in the light of depositions of PW-1 and PW-2 as well as the objections filed by the charge sheeted accused. came to the conclusion that a prima-facie case for summoning the prospective accused (named but not charge sheeted accused) i.e. the revisionists herein is clearly made out. Accordingly, Court below, vide order dated 19.04.2023, allowed the application under Section 319 Cr.P.C. filed by the prosecution/first

informant and consequently, summoned the prospective accused i.e. the revisionists herein under Sections 498-A and 326 IPC to face trial in aforementioned Sessions Trial.

14. Perusal of order impugned dated 19.4.2023, passed by Court below will go to show that court below while passing the order impugned has concluded that P.W.1 Priyanshu (first informant/son of deceased) is an eye witness of the occurrence and in his deposition before Court below, he has clearly implicated the prospective accused also in the crime in question. Court below has further taken note of the fact that prior to the death of the deceased, her dying declaration was recorded, wherein she has clearly implicated all the named accused in the crime in question.

15. Thus, feeling aggrieved by the above order dated 19.04.2023 passed by Court below, the prospective accused i.e. the revisionists herein, who have now been summoned by Court below to face trial, have approached this Court by means of present criminal revision.

16. Mr. Anil Kumar Srivastava, the learned Senior Counsel for revisionists in support of present revision submitted that the order impugned dated 19.4.2023 passed by Court below is manifestly illegal and in excess of jurisdiction. Consequently, the same is liable to be set aside by this Court. He further contended that the revisionists were nominated as named accused in the F.I.R. giving rise to present criminal proceedings. However, during course of investigation, no such credible material could be collected by the Investigating Officer on the basis of which the complicity of present revisionists in the crime in question could be said to be even prima-facie established. Two of the prospective accused namely, Sarita and Sunita are the married Nands of the deceased whereas, Surendra is the cousin father-in-law and Mamta Devi is wife of Surendra. All the prospective accused are living separately, as such, they have been falsely implicated in aforementioned case crime number. It was also contended by the learned Senior Counsel that while P.W.1 Priyanshu

Kumar is an alleged eye witness of the occurrence, the deposition of P.W.2 Brijesh Kumar is based on hearsay evidence. PW-2 is not an eye witness of the occurrence. His deposition regarding the death of deceased is based upon the disclosure made to him by PW-1. As such, the deposition of P.W.2 is not worthy of reliance for summoning the present revisionist to face trial in aforementioned Sessions Trial.

17. Learned Senior Counsel then contended that the statement of P.W.1 was recorded under section 161 Cr.P.C. Copy of same is on record at page 68 of the paper book. With reference to the same, he submits that aforesaid witness in his previous statement under section 161 Cr.P.C. has not implicated the revisionists or the named accused in the crime in question. As such, this witness in his deposition before Court below has departed from his previous statement recorded under section 161 Cr.P.C. On account of above, serious embellishment, contradiction and exaggeration has emerged in the deposition of P.W.1. On the above premise, he, therefore, contended that since the departure so occurring in the deposition of P.W.1 from his previous statement recorded under section 161 Cr.P.C. remains unexplained, therefore, the deposition of P.W.-1 is unworthy of credit and reliance. As such, the same could not have been relied upon by Court below for summoning the revisionists to face trial. He has further submitted that during course of investigation, Investigating Officer, had discovered that the mobile location of the prospective accused is not near the place of occurrence and further affidavits had been filed by the villagers before the Investigating Officer that Surendra, Mamta and Sunita are residing separately. On the above evidence, he, therefore, vehemently urged that no prima-facie case for summoning the prospective accused i.e. present revisionists was made out. Court below, while passing the order impugned has clearly ignored the aforesaid material collected by the Investigating Officer and relied upon to infer the innocence of revisionists.

18. Placing reliance upon the judgment of Supreme Court in **Brijendra Singh and Others Vs. State of Rajasthan (2017) 7 SCC 706**, the learned Senior counsel contended that Court in aforementioned judgment has clearly held that though a prospective accused can be summoned on the basis of statement-in-chief of one prosecution witness yet the material collected by the Investigating Officer during course of investigation, is a relevant material and should be considered by Court while dealing with an application under Section 319 Cr.P.C. However, court below has passed the impugned order without considering the said material.

19. It was lastly contended by the learned Senior Counsel that P.W.1 Priyanshu Kumar is a child of tender age and residing with his maternal uncle (mama) and maternal grand father (Nana) who are the brother and father of the deceased. On the above premise, he submitted that testimony of such a child witness should be examined with much more care, caution and circumspection as observed by the Apex Court in **State of U.P. Vs. Krishna Master, AIR 2010 SC 3071** and **Panchhi Vs. State of U.P., 1988 (37) ACC 528**. The order impugned does not go to show that only such an exercise was undertaken by Court below. The failure on the part of Court below to do so has vitiated the impugned order and therefore, the same is liable to be quashed by this Court. As such, court below has erred in law and fact in summoning the prospective accused/revisionists to face trial in aforementioned sessions trial. On the edifice of aforesaid submissions, the learned counsel for the revisionist contended that the order impugned be set aside and the revision be allowed by this Court.

20. Per contra, the learned A.G.A. representing State/opposite party-1 and Mr. Ashok Kumar Pathak, the learned counsel representing first informant/opposite party-2 have vehemently opposed the present criminal revision. They submit that order impugned in present criminal revision is perfectly just and legal. As such, no interference is warranted by this Court in present criminal revision. In the submission of Mr. Ashwani

Kumar Pathak, the learned counsel representing first informant-opposite party-2, Court below has passed the order impugned after recording clear and cogent findings. Since the findings returned by Court below could not be dislodged as being illegal, perverse or erroneous, therefore, the order impugned is not liable to be interfered with. It is well settled that if the findings cannot be dislodged, the conclusion cannot be altered. According to the learned A.G.A., two incriminating circumstances have emerged against prospective accused i.e. the present revisionists: (a) the dying declaration of the deceased. (b) the deposition of P.W.1 Priyanshu who is the son of the deceased and also the first informant. Learned A.G.A. further contends that it is the deposition of P.W.1 which has been sought to be contradicted before this Court. However, no challenge has been laid to the dying declaration of the deceased, wherein, the deceased has implicated all the named accused including the present revisionists in the crime in question. The dying declaration of the deceased is required to be proved in terms of section 32 of the Evidence Act. Upto this stage, no such material has emerged on record on the basis of which prima facie the dying declaration of deceased could be discarded. He, therefore, submits that irrespective of the varied submissions urged by the learned Senior Counsel for revisionists in support of present revision, since the complicity of the prospective accused in the crime in question is prima-facie apparent as per the dying declaration of deceased, no good or sufficient ground has emerged so as to warrant interference by this Court. As such, the present criminal revision is liable to be dismissed.

21. Having heard the learned Senior Counsel for revisionists, the learned A.G.A. for State, the learned counsel representing first informant-opposite party-2 and upon perusal of record, this Court finds that the revisionists have been nominated as named accused in the F.I.R. After the F.I.R. giving rise to present criminal proceedings was lodged, the Investigating Officer proceeded with statutory investigation of same in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer collected

following material pieces of evidences regarding the innocence of revisionists namely, (a) the mobile location of prospective accused i.e. the present revisionists, which was not found within the vicinity of the place of occurrence (b) the affidavits given by the villagers that the prospective accused are residing separately. (c) the statement of first informant/son of deceased namely, Priyanshu was recorded under section 161 Cr.P.C. However, except for giving an innocent description of the occurrence, he did not implicate any of the accused in the crime in question. It is on the basis of above that the present revisionists were exculpated by the Investigating Officer.

22. Court below has, however, summoned the revisionists on the basis of (a) the deposition of P.W.1 and (b) the dying declaration of deceased.

23. So far as the deposition of P.W.1 Priyanshu- first informant/son of the deceased is concerned, this Court finds that this witness in his statement under section 161 Cr.P.C. has not implicated any of the named accused in the crime in question. However, in his deposition before Court below, this witness has departed from his previous statement under section 161 Cr.P.C. In view of above, there is clear contradiction, exaggeration and embellishment in the statement of P.W.1. However, as per the papers appended along with this revision, it is evident that the cross examination of P.W.1 Priyanshu has not yet taken place. The Apex Court in the case of **Hardeep Singh Vs. State of Punjab and Others, (2014) 3 SCC 92** has held that for summoning a prospective accused, the statement-in-chief of P.W.1 alone is sufficient. As such, no illegality or infirmity can be attached to the order impugned on the ground that the deposition of PW-1 is unworthy of reliance. The court further finds that P.W.1 Priyanshu first informant/son of deceased is a child of tender age and residing with his Nana and Mama i.e. father and brother of deceased. In view of the aforesaid peculiar fact, the statement of P.W.1 was required to be dealt with more care, caution and circumspection by Court below in the light

of observations made by the Apex Court as mentioned above. Since the examination-in-chief of PW-1-Priyanashu has yet not taken place, therefore, deposition of PW-1 shall now fall within the realm of legal evidence. As such, no evaluation of the same could be done by Court below.

24. Apart from above, the Court finds that the deceased before her death gave her statement to the Investigating Officer, which was incorporated in the case diary in terms of section 161 Cr.P.C. and is embodied in parcha no. 16 of the case diary. The deceased in her aforesaid statement has clearly implicated all the named accused including the present revisionists in the crime in question.

25. Apart from above, the dying declaration of the deceased was recorded by the Tehsildar on 25.6.2022, which is also on record at page 66 of the paper book. Here again the deceased has implicated all the named accused in the crime in question. The credibility and reliability of the dying declaration of deceased could neither be looked into nor examined by Court below nor this Court at this interim stage. Therefore, what follows from above is that the dying declaration of the deceased has to be treated sacrosanct at this stage.

26. Since something more than mere complicity of the revisionists in the crime in question is prima-facie apparent as per the deposition of PW-1, therefore, no illegality can be attached to the order impugned in present criminal revision.

27. The issue that the prospective accused i.e. the revisionists are residing separately much before the date of occurrence, the nanads of the deceased namely, Sarita and Sunita are married and living separately with her family or they were not present at the time and place of occurrence are such disputed and hypothetical questions, which cannot be considered at this interim stage. The veracity of the same can be considered only during the course of trial, as the plea of alibi is subject to trial evidence.

Reference be made to the following judgments of Supreme Court in **Akhilesh Vs. State of U.P. and others, 2025 SCC OnLine SC 727** and **Shiv Baran Vs. State of U.P. and another, 2025 SCC OnLine SC 1457**, wherein the Apex Court has observed that if prima-facie the complicity of a prospective accused has emerged in the deposition of the witnesses and thereafter, the Court has summoned a prospective accused in exercise of jurisdiction under Section 319 Cr.P.C. then the Court, while considering the veracity of such an order is not required to go into the credibility of the witness or the reliability of the witness or undertake an exercise to flush out the innocence of prospective accused. In view of above, no illegality can be said to have been committed by Court below in passing the order impugned.

28. As a result, the present criminal revision fails and is liable to be dismissed.

29. It is, accordingly, **dismissed**.

30. In the facts and circumstances of the case, there shall be no order as to costs.

Order Date :- 28.07.2025.

Vinay