

Court No. - 90

Case :- CRIMINAL REVISION No. - 5726 of 2023

Revisionist :- Ved Vasu And Another

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

Counsel for Revisionist :- Anuj Kumar Gupta,Manu Sharma,Mayank Yadav,Vivek Kumar Singh

Counsel for Opposite Party :- G.A.,Waseem Akram

Hon'ble Anil Kumar-X,J.

1. Heard Mr. Ashutosh Yadav, learned counsel for the revisionist, Mr. Waseem Akram, learned counsel for the opposite party No.2, Mr. Shyam Narayan Rai, learned A.G.A. for the State respondents, and perused the material brought on the record.

2. The revisionist, Ved Vasu and Daya Shankar, have challenged the legality and validity of the impugned order dated 05.10.2023 passed by the learned Additional District and Sessions Judge, Sambhal at Chandausi, in Sessions Trial No.137 of 2020 (State Vs. Dipanshu and others) arising out of Case Crime No.288 of 2020, under Sections 147, 148, 149, 323, 504, 307, 302, and 34 I.P.C. By the impugned order, Trial Court has summoned the revisionists u/s 319 CrPC to face trial along with other co-accused.

Factual matrix of the case

3. First Information Report was lodged by the informant, Satyapal, which was registered as Case Crime No.288 of 2020 under Sections 147, 148, 149, 323, 504, and 307 of the I.P.C., at the Police Station- Rajpura, District- Sambhal . Informant has stated that he along with other persons accompanying him was ambushed by five accused persons Ved Vasu, Daya Shanker, Dipanshu, Kunwar Pal, and Narendra who assaulted them .They also opened fire at them in which Dharmpal ,Yadram, and Munesha sustained gunshot injury . Dharampal succumbed to injuries. Case was converted from section 307 to 302 I.P.C. During Investigation, involvement of three accused persons, namely; Dipanshu, Kunwar Pal, and Narendra was found and charge sheet was filed against them. The complicity of Daya Shanker and Ved Vasu was not found, and accordingly, the final report was submitted against them.

4. During trial, prosecution examined three witnesses, Satyapal, Munesh, and Pappu Yadav. They stated that Ved Vasu and Daya Shankar were also involved in the incident. Subsequently, an application under Section 319 of Cr.P.C. was filed by informant and he made a prayer to summon Daya Shankar and Ved Vasu who were wrongly exonerated by Investigating Officer. Application was allowed by the learned Trial Court vide its impugned order dated October 5, 2023, in Sessions Trial No.137 of 2020 (State Vs. Dipanshu and others). Aggrieved by the aforesaid order, the revisionists herein have preferred the instant criminal revision.

Arguments by Revisionists

5. The learned counsel for the revisionist has submitted that evidences were collected by Investigating Officer (I.O.) during Investigation. He found that Ved Vasu was not present on the spot at the time of occurrence and another accused, Daya Shanker, was paralysed at that point of time. On the basis of said evidence, final report was submitted by I.O. However, the informant and prosecution witnesses have made unsubstantiated allegations in their testimony before the Trial Court by repeating the same facts as stated in the First Information Report (F.I.R.). The learned Trial Court while passing the impugned order has failed to consider the evidence collected by the I.O. during the investigation whereas the Court was bound consider the said evidence along with the testimony of witnesses. Said evidence collected during investigation was before the Court when it was considering the application. Whatever was stated by the witnesses during the trial was not new rather it was reiteration of the story as alleged in the F.I.R. In order to fortify his arguments, learned counsel has placed his reliance upon *Brijendra Singh and Ors vs State of Rajasthan, 2017 AIR (SC) 2839, Sanju and 6 others vs State of U.P. And another, 2024 AHC 10649.*

6. Even the testimony of the prosecution witnesses lacks credibility. It is alleged in F.I.R. that all the accused persons were armed with rifles and country made guns. Prosecution witnesses have stated in their deposition that firing by accused persons continued for 20-25 minutes. If said testimony is believed, it's inconceivable that only one person, the deceased Dharam Pal, would sustain a single bullet shot injury, while others would only suffer simple injuries. None of the witnesses in their testimony have divulged about the specific role played by individual accused persons. They have not even disclosed whose bullet caused death of Dharampal. Their testimony does not inspire confidence. It is well-settled law that a court must be satisfied that strong and

cogent evidence is available against the person who is to be tried along with other accused persons before it passes any order under Section 319 of the Cr.P.C. Courts can not summon a person only on the basis of prima facie evidence. To support his arguments, learned Counsel has placed his reliance upon *Labhuji Amraji Thakor & Ors vs State of Gujarat and Anr, 2019(12) SCC 644* and *Shankar Vs State of Uttar Pradesh and ors, 2024 INSC 366*.

7. It was further submitted that application under Section 319 Cr.PC was not moved by the Prosecuting Officer, rather it was filed by the informant. Same was submitted by Prosecuting Officer before Trial Court. Informant or his private counsel has no right to move an application under Section 319 of the Cr.P.C. but it can only be filed by the Prosecution. But if same is filed by informant or his Counsel, then it cannot be entertained. Trial Court has committed gross illegality in entertaining the application filed by the informant. Counsel further submitted that all three witnesses produced by the prosecution were cross examined by the defence. It was imperative for Trial Court to assess the entire testimony of witnesses. Court was bound to appreciate examination-in-chief along with its cross examination, before coming to conclusion that there exists strong and credible evidence against the person whom it is going to summon u/s 319 Cr.PC. However, learned Trial Court has not considered the cross-examination of witnesses. In order to buttress his argument, learned counsel has placed his reliance upon *Hetram @ Babli vs State of Rajasthan, 2024 INSC 903*. Counsel summarised his arguments, stating that the impugned order is unsustainable. He argued that the applicant's petition under Section 319 of the CrPC was not filed by the prosecution, and the cross-examination of prosecution witnesses was not evaluated. The court, he contended, has relied on unreliable testimony to summon the revisionists in a casual and cavalier manner. Consequently, the impugned order suffers from illegality and is liable to be set aside.

Arguments by Respondent

8. Per Contra, learned counsel for the respondents argued that Section 319 Cr.P.C. does not postulate that such application can only be filed by the Prosecution. It does not restrict the informant from filing the application. It is incorrect to claim that no evidence against the revisionist/ accused persons was discovered during the investigation. At initial stage of investigation, incriminating evidence against revisionists was discovered. In the meantime, the investigation was transferred to another I.O. and he dropped the names of the revisionists for reasons best known to him. He exonerated the accused persons for extraneous consideration. He

further emphasised that the testimony of the three prosecution witnesses is sufficient to indicate the role and complicity of the accused person. He submitted that Court has acted within its jurisdiction by summoning revisionists on basis of examination-in-chief. He has placed reliance upon *Sartaj Singh Vs State of Haryana & another*, LL 2021 SC 161 where Supreme Court has reiterated the law laid down in *Hardeep Singh (Supra)* where it was held that accused can be summoned on the basis of even examination-in-chief of witnesses and Court need not wait till his cross examination. Concluding his arguments, he submitted that impugned order does not warrant any interference, and the instant revision is liable to be dismissed.

Conclusion

9. Heard the learned counsel for the parties and perused the record. Before considering the factual aspects of arguments, it would be appropriate to examine the legal questions raised by the Revisionist. The first contention is that the informant lacked the legal authority to submit an application under Section 319 of the CrPC, as it could only be filed by the prosecution. Supreme Court while discussing the scope of Section 319 Cr. PC in *Sarojben Ashwinkumar Shah Etc vs State Of Gujarat & Anr*, 2011 (13) SCC 316 has held that such power can be exercised by the Court itself or on an application moved by someone. Relevant part of the judgement is reproduced herein:-

"16. The legal position that can be culled out from the material provisions of Section 319 of the Code and the decided cases of this Court is this :

(i) The Court can exercise the power conferred on it under Section 319 of the Code suo motu or on an application by someone."

Similarly in Guriya @ Tabassum Tauquir And Ors vs State Of Bihar And Anr, AIR 2008 S C 95 Supreme Court held that such an application can also be moved by accused persons. Relevant portion of the said judgement is reproduced here :-

"14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused."

10. Next contention of Revisionist is that Court has committed illegality in ignoring the evidence collected by the Investigation Officer. In this respect, will be relevant to consider the meaning of word " evidence " as envisaged in Section 319 (1) of Cr.PC. While discussing the power and jurisdiction of Courts exercising their

powers under Section 319 CrPC , Supreme Court in para 14 of *Guriya @ Tabassum Tauquir (Supra)* has held that "The word "evidence" in Section 319 contemplates evidence of witnesses given in Court." Said controversy is no longer *res integra* as the same was set to rest in *Hardeep Singh vs State Of Punjab & Ors, AIR 2014 S C1400 (Constitutional Bench)*. Five questions were framed by the Supreme Court in this judgement. One of the questions was "(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 ?" It was held-

"69. Therefore, for the exercise of power under Section 319 Cr.P.C., the use of word 'evidence' means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it has also committed the offence, it may summon such person under Section 319 Cr.P.C.

70. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench, that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

71. It is, therefore, clear 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.

72. The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court itself for collecting information to draw back a curtain that hides something material. It is the duty of the court to do so and therefore the power to perform this duty is provided under the Cr.P.C."

11. Therefore, it is evident that Courts can not consider the evidence collected during investigation while deciding an application under Section 319 Cr.P.C. Revisionists have placed reliance upon *Brijendra Singh (Supra)* where it was observed that Trial Court as well High Court has failed to notice that deposition of complainant and other persons in their examination-in-chief was nothing more than the statement which was already there under Section 161 Cr.PC whereas plethora of evidence was collected by the I.O during the investigation which suggested otherwise. It was held by the Supreme Court that Trial Court was duty bound to look into the same while forming prima facie opinion. Said judgement

was followed by this Court in *Sanju (Supra)*. It will be pertinent to mention that judgement in *Brijendra Singh (Supra)* was delivered by Division Bench of Supreme Court while Hardeep Singh(Supra) was delivered by Constitutional Bench. It is settled law that the law laid down by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. Same was held in Central Board of *Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673*. Therefore this Court is bound to follow the law laid down by Constitutional Bench.

12. Another contention of revisionist is that the learned trial Court has not considered the cross examination of the witnesses while deciding the application under Section 319 Cr.P.C. Said point was also discussed by the Supreme Court in *Hardeep Singh(Supra)* and it was held "Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination." Therefore, there is no need to go into the cross examination of witnesses before summoning the accused under section 319 CrPC. In *Hetram @ Babli (Supra)* ,it was held that if an application under section 319 of the CrPC is made after the cross examination of witnesses, it will be unjust to ignore the same. This judgement is in conformity with *Hardeep Singh (Supra)*. Hardeep Singh (Supra) says that there is no need for the courts to wait for cross examination of the witnesses. This judgement lays down that if cross examination of witnesses is over, same should also be considered.However, at this stage, when the Revisionists have challenged the order of summoning under Section 319 of the CrPC, it was imperative for them to present those facts from cross-examination that could lead to a re-look at the summoning order. But they have not brought on record any such thing related to cross examination which could lead to another conclusion. There is one more aspect from which it will become clear that considering cross examination of prosecution witnesses will be a futile exercise. Before the court embarks on summoning additional accused under Section 319 of the CrPC, the evidence available to it is the testimony of witnesses who have already been cross-examined by the accused persons currently facing trial. However, this cross-examination will not benefit the proposed accused persons as they have not had the opportunity to cross-examine the witness.Accused who have already cross-examined the witnesses will not bother to cross examine witnesses

in respect of the proposed accused persons.

13. It was vehemently argued by Revisionist that the testimony of the witnesses is wholly unreliable. Prosecution story claims that incident lasted for half an hour and involved continuous firing from the side of the accused persons. However, this contradicts the fact that only one person received a gunshot injury, while other two sustained simple injuries. If the prosecution's story is admitted, it becomes difficult to believe that only one person would receive a gunshot injury when firing continued for half an hour. Witnesses have not assigned specific roles to each individual accused. They have not stated which of the accused caused the firearm injury. Impugned order was carefully perused in the light of this particular argument. Learned Trial Court has discussed the testimony of all the three witnesses examined before it. It has observed that that informant has corroborated the version of the F.I.R. Other two witnesses P.W.-2 Munesh and P.W.-3 Pappu have also supported the prosecution version as narrated in the F.I.R.

14. The testimony of witnesses, Annexure no. 24. was perused. P.W.-1 Satyapal has stated that he reached the spot after hearing shouts and screams. P.W.-2 Munesh and P.W.-3 Pappu have also confirmed their presence at the scene of the incident. P.W.-3 Pappu recounted that while returning to his village after dropping his sister off at her in-laws, he was ambushed by armed accused persons, who were carrying rifles and country-made guns. When he raised alarm, other individuals, including Dharampal (deceased), Satyapal (witness), Yadram, Mahesh, and Netrapal, arrived at the scene. His aunt Munesh, brother Yadram, and Dharampal sustained gunshot injuries. Dharampal succumbed to his injuries on the spot. It is true that none of the witnesses have assigned any specific role to any of the accused persons. Perusal of their cross-examination reflects some contradictions. It emerges from their earlier statements made under Section 161 CrPC. But inconsistencies, contradictions and improvements in the testimony cannot be minutely scrutinised at the stage of summoning under Section 319 of the CrPC. Supreme Court in Hardeep Singh (Supra) has ruled that degree of satisfaction which is required for summoning an accused under Section 319 CrPC 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 this case, it can not be said that evidence whatsoever was before the Trial Court was not of that degree which is required for summoning the accused persons under Section 319 CrPC. Certain inconsistencies and contradictions which are apparent in

the testimony, which requires deep scrutiny, can be considered at the stage of judgement where prosecution is bound to prove its case beyond reasonable doubt. But that sort of appreciation of evidence is not required at the stage of Section 319 CrPC.

15. In light of the foregoing discussions , I do not find any merit in this Revision. Consequently, the instant revision stands dismissed.

Order Date :- 30.5.2025

Sachin