

Neutral Citation No. - 2025:AHC:82918

Judgment Reserved on 09.05.2025

Judgment Delivered on 19.05.2025

Court No. - 88

Case :- CRIMINAL REVISION No. - 6712 of 2023

Revisionist :- Khursheed

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

Counsel for Revisionist :- Ratnesh Kumar Jaiswal, Suresh Chandra Dwivedi

Counsel for Opposite Party :- Anil Kumar Tripathi, Ashish Kumar Maurya, G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Against the order dated 19.10.2023 passed by learned Additional Session Judge-I Bhadohi at Gyanpur in ST No.24 of 2021 (State Vs. Naushad Quraishi), by the impugned order learned court below has summoned Arman, Quamraj, Khursheed (present revisionist), Ramzan and Kaushari in said case arising out of Case Crime No.106 of 2021, under Section 302, 307 IPC in exercise of powers under Section 319 Cr.P.C. to face trial, as accused in said session trial together with accused Naushad Quraishi who is already facing trial in the case.

2. Pleadings have already been exchanged between the parties.

3. Heard Sri Ratnesh Kumar Jaiswal, learned counsel for the revisionists, Sri Anil Kumar Tripathi, learned counsel for the opposite party No.2, and learned A.G.A. for the State-respondent and perused the material available on record.

4. The factual matrix of the case as culled out from FIR and other material available on record are that informant Khursheed Quraishi (the revisionist) lodged an FIR on the basis of written report on 23.05.2021 at

19:35 hours with avements that he is resident of Mohalla Jamund Kasai Tola, Bhadohi, District Bhadohi. On 23.05.2021 at around 04:30 pm accused Naushad Quraishi slashed his elder brother Zameel Quraishi, Rubi wife of Zameel Quraishi and their one year old son Mohammad Ali badly by sharp edged knife resulting in death of Zameel Quraishi and his wife in Government Hospital and their son is hospitalized in Pratima Trauma Centre Indira Mau in serious condition. The FIR was lodged under Sections 302 and 307 IPC against named accused Naushad Quraishi and the police investigated the case. The informant in his statement under Section 161 Cr.P.C. has supported FIR version and stated that on 23.05.2021 at around 16:30 hours his neighbour Naushad Quraishi engaged in quarrel with his brother Zameel Quraishi and Bhabi Rubi Quraishi in view of some family matters in the gallery built outside the house and during the course of quarrel, suddenly assaulted his brother, bhabi, sister-in-law and their one year old son by sharp edged knife in continuous manner, which resulted in death of Zameel Quraishi and his wife Rubi and his son was hospitalized in serious condition. The people of the locality had assembled on the spot, who had witnessed the incident. The Investigating Officer prepared the site plan of the place of occurrence. On 23.05.2021 the knife used in commission of offence was recovered by Investigating Officer on pointing out of named accused Naushad Quraishi, an inventory was made in this regard. Jeans and shirt worn by named accused were also recovered on pointing out of accused, which was stained with blood. The named accused Naushad Quraishi was arrested by police on 09.07.2021 who confessed his guilt before the police.

5. Eye-witness Niaz Ahmad also supported the FIR version, other witnesses also deposed regarding the complicity of named accused in their statements under Section 161 Cr.P.C. In the inquest on dead body

of deceased Zameel Quraishi and his wife Rubi which was carried out on the place of incident by SI Anwar Khan, P.S. Bhadohi on 23.05.2021, wherein it is stated that deceased were killed by knife blow. In postmortem report of dead body of Rubi as many as 10 incised wounds were found on different parts of the body, cause of death was hemorrhage and shock due to ante-mortem injuries. In postmortem report of deceased Zameel Quraishi seven ante-mortem injuries were found on him and on different part of the person, which were in the nature of incised and stabbed wound. Cause of death was shock and hemorrhage due to ante-mortem injuries.

6. During investigation, this fact also come into light that named accused Naushad Quraishi and his mother Kausari Begum were involved in selling of meat in open during Covid-19 Pandemic and an FIR was lodged against them under Sections 188, 269, 270 IPC and Section 3 of Epidemic Act, 1897 at the instance of police. This fact also emerged in statement of Rizwan Ali, (the brother of deceased Rubi Quraishi) that one day prior to the incident on 22.05.2021 his sister Rubi had told him about incident of quarrel with Naushad Quraishi and he assured her to get the matter reconciled after visiting them. But on 23.05.2021 he was informed by his cousin Salman telephonically that Naushad had killed his sister and brother-in-law. He reached on the spot at around 06:00 to 07:00 pm on the date of incident. This fact emerged also during investigation that named accused Naushad Quraishi, his brothers Arman and Kamran and mother Kausari Begum, Ramzan and Khursheed, the informant used to slaughter cows in the house of Zameel, which was opposed by Zameel and his wife, due to which these persons were harboring enmity with Zameel.

7. On 23.05.2021 Naushad assaulted Zameel and his wife Rubi by several blows of knife resulting in their death, their eight months old son Mohd. Ali also received serious injuries in the incident. This fact also surfaced that marriage of deceased Rubi was solemnized with Zameel on 23.05.2018. The couple were killed on 23.05.2021 in brutal manner and their eight months old son, any how could be saved and was later living under protection of his maternal uncle.

8. The Investigating Office filed chargesheet against named accused Naushad Quraishi after conclusion of investigation under Sections 323, 302, 307 IPC. Learned CJM committed the case for trial to court of session where evidence of PW-1 Khursheed, the informant PW-2 Ramzan and PW-3 Rizwan has been recorded. In the course of trial of the chargesheeted accused Naushad, after recording of evidence of three witnesses an application under Section 319 Cr.P.C. was moved by Ramzan (PW-2) who is real brother of the deceased Rubi Quraishi with prayer to summon Arman Quraishi, Kamran Quraishi, their mother Kausari, Ramzan and Khursheed (informant) as accused to face trial together with accused Naushad Quraishi who is already facing trial in the case.

9. Learned court below vide impugned order dated 19.10.2023 allowed the application under Section 319 Cr.P.C. and summoned Arman, Kamran, Khursheed, Ramzan and Kausari as accused to face trial for charge under Sections 304, 307, 302 IPC together with accused are already facing trial in S.T. No. 224 of 2021. The case was taken by prosecution also that accused persons and deceased resided in the same house, in lower portion of the house slaughtering of cow was under-taken by accused Naushad and others. Both the deceased and their eight months old child were brutally assaulted by meat cutting knife (Chapar).

10. Learned court below has placed reliance on evidence of PW2 and 3 who are real brothers of the deceased and concluded that there are sufficient grounds to proceed against proposed accused in exercise of powers under Section 319 Cr.P.C. as the prima facie case to summon them under Sections 319 Cr.P.C. has been established. With this finding the learned court below has summoned the accused persons. The newly added accused have assailed impugned order by filing present criminal revision.

11. Learned counsel for the revisionist submitted that revisionists are not named in the FIR. In FIR only one accused Naushad Quraishi is named. This is also not stated in FIR that apart from that Naushad and some other persons were involved in the offence. It is settled law that the learned trial court while exercising powers under Section 319 Cr.P.C. must arrive at a conclusion that evidence available on record is sufficient for convicting the accused, without giving such finding summoning of an accused who is not facing trial in exercise of powers under Section 319 Cr.P.C. is not sustainable in the eye of law. The revisionists are neither named in the FIR, nor their names surfaced as accused in the statement of prosecution witnesses PW-2 and 3 recorded during investigation. PW-2 and PW-3 have named the revisionists for the first time in their sworn testimony before the court. Thus, there is material improvement in their testimony before the court from their version under Section 161 Cr.P.C.. PW-1 has not supported the prosecution case and has been declared hostile. Admittedly PW-2 and PW-3 are brothers of deceased Rubi, they are resident of District Varanasi and admittedly they are not eye-witnesses. Their testimony is based on hearsay evidence which finds no foundation, they are partisan witnesses and therefore their testimony requires scrutiny under law.

12. Learned court below has not considered evidence collected during investigation while issuing process against the revisionists in exercise of powers under Section 319 Cr.P.C. In fact, complicity of accused persons was not found by the investigating officer during investigation and none of the witnesses examined during investigation have deposed against the revisionist. The evidence of PW-2 and PW-3 does not inspire confidence, as their testimony regarding complicity of revisionist is based on conjecture and surmises and imagination.

13. Per contra, learned counsel for the respondent No.2 and learned A.G.A. countenanced the impugned order and submitted that the same is supported with cogent evidence of PW1, PW-2 and PW-3 who are examined during trial of co-accused. There is strong prima facie case against the present revisionist and co-accused who are summoned alongwith him regarding their complicity in the offence and the purpose of exercise of powers under Section 319 Cr.P.C. by the trial court is that any person who is author of the crime should not be spared and he should be put on trial. Both the deceased had suffered in total as many as 18 incised wounds on their persons, apart from injuries suffered by the minor child whose life any how could be saved by medical treatment and such a large number of injuries cannot be caused by a single person, as stated in FIR. The informant being relative of main accused has tried to save himself as well as other accused persons in his statement before the court. As PW1 has himself been involved in the commission of offence, he deviated from FIR version, wherein he earlier stated that he witnessed the crime which was authored by his cousin Naushad. He has not testified even against Naushad in his testimony before the court and was declared hostile. The surviving son of the deceased persons namely Mohammad Ali is presently residing in the custody of Fakharuddin Ali, his maternal grand father in Varanasi.

14. In the instant case, FIR has been lodged at the instance of Khursheed Quraishi who is cousin of named accused Naushad Quraishi and is also one of the revisionist who have been summoned under Section 319 Cr.P.C. alongwith Arman, Kamran, Ramjan and Kausari. Deceased Zameel Quraishi was the real brother of named accused Naushad Quraishi. In FIR only one person is named as accused namely Naushad Quraishi, who is said to be sole author of the crime of double murder, in which his brother Zameel Quraishi and sister-in-law (bhabhi), Rubi wife of Zameel Quraishi were brutally killed and their one year old son was also seriously assaulted by knife in the incident and he received serious injuries. Subsequently he could be saved by due medical assistance and supervision. In FIR it is not stated that Naushad Quraishi was accompanied with some known or unknow persons, even when the police recorded statement of named accused Naushad Quraishi after his arrest, in which he has not named any accomplice in the offence. The apparel worn by a victim at the time of incident which was blood stained and knife used in commission of trial as weapon of offence were recovered by police on pointing out by said accused. The Investigating Officer recorded the statement of informant Khursheed Quraishi and eyewitness Niaz Ahmad, a neighbour of the deceased, Ramzan Ali the real brother of deceased Rubi Quraishi, Rizwan Ali another real brother of deceased Rubi Quraishi, Fakruddin father of deceased Rubi Quraishi, Salman and Rashid, but in statements of these witnesses, none of them have stated about complicity of present revisionists in their statements recorded under Section 161 Cr.P.C. The investigating officer submitted chargesheet only against named accused Naushad Ali, name of present revisionists have not surfaced during investigation in statements of any of the witnesses examined by the investigating office. During the course of trial of chargesheeted accused Naushad, evidence of PW-1 Khursheed, PW-2 Ramzan Ali and PW-3 Rizwan

Ali have been recorded before the court, out of them the witness Khursheed Ali who is also informant in the present case has not supported prosecution version, even in respect of chargesheeted accused Naushad, he stated that Naushad is three brothers, Zameel, Arman and Naushad. A quarrel occurred between Zameel and Naushad, but what happened in the quarrel he cannot tell, Zameel died. He was sleeping at her home at the time incident, he awoke on hearing heavy noise and then he rushed to the spot and a crowd was present there. When he reached there, dead body of Zameel and his wife were lying. The son of Zameel was not found there, he was taken away by some person. He had not asked about the incident from any person as he become disturbed, Naushad was not present there. The witness acknowledged his signature on written report Ext. Ka-1, but denied its contents. Thus, there is nothing in evidence of PW-1 suggesting complicity of any of the accused person in the incident. In statement of PW-2 Ramzan Ali who is one of the real brothers of deceased Rubi Quraishi, this fact surfaced for the first time on 23.05.2021 that accused Naushad Quraishi and his brother Arman, Kamran and mother Kausari and uncle Khursheed and Ramzan a neighbourer of Naushad used to slaughter cows in the house and sell it. This act of accused persons was objected by his sister and brother-in-law due to which they were harboring enmity with the couple. On 23.05.2021 all these persons, driven by prior enmity with the deceased, appeared at the place of deceased Zameel between 04 to 05:00 pm and gave several blows of knife to Zameel Quraishi his wife Rubi and their lone son Mohd. Ali. Mohd. Ali any how could survive the incident after hospitalization in Jeevandeep Trauma Centre Bhadohi. He received information from his cousin Salman and others telephonically, where as at that time he was in Varanasi and rushed to the place of incident at 06-07:00 pm. He found pool of blood spread on the spot and hundreds of persons were present there. His brother

Rizwan had gone to police station to lodge an FIR, but Sub Inspector kept the written report with him and reflected procrastinating attitude while lodging the FIR and ultimately lodged FIR on the basis of written report filed by Khursheed. One day prior to incident dated 22.05.2021 at 06:30 pm, a missed call appeared on mobile number of her father, the witness called back to Rubi who was very much frightened and weeping, she stated that these persons had again slaughtered cows in the house, as usual. She as well as her husband had objected to this and on that count there is altercation was allowed.

15. In cross examination the witness has stated that when he reached the spot, the dead bodies of Rubi and her husband were sent for postmortem, his brother-in-law and sister were living separately from accused Naushad. Naushad was living together with his mother, brother and nephew Kamran. The deceased and accused were living in same house in separate rooms.

16. PW-3 Ramjan Ali who is also a real brother of the deceased and resident of Varanasi. His testimony is similar to that of PW-2.

17. Learned court below has summoned as four accused persons on the basis of evidence of these two witnesses PW-2 and PW-3 who are real brothers of the deceased. The occurrence took place at Bhadohi in District Bhadohi, the witnesses are relatives of the deceased Ruby and resident of Varanasi. Admittedly, they are not eye witnesses, they have stated that they rushed to the place of incident after receiving telephonic information from other persons of the locality of their sister and brother-in-law that his sister and brother-in-law were killed. These witnesses have nowhere stated in their statement under Section 161 Cr.P.C. that apart from Naushad the present revisionists were also involved in the double murder of his brother-in-law and sister. No specific role has been assigned in the statements of these witnesses

regarding complicity of the revisionist and co-accused. They have also not stated that how they came to know that newly added accused had killed Zameel and his wife alongwith named accused Naushad. These persons are not named in the FIR also.

18. The fact has emerged in evidence of these witnesses recorded before the court that named accused Naushad is real brother of deceased Jameel and accused Arman. Ramjan is their neighbour and Kausari is their mother. These persons used to slaughter cows in a portion of the house inherited by the deceased, Naushad and his mother and brothers. The deceased couple Zameel and Rubi used to oppose this horrifying act of accused persons. The witnesses have stated that Naushad and newly added accused had killed the deceased persons at around 04:30 pm on the date of incident by inflicting several blows of knife, but they had not disclosed their sources of information about manner and mode of commission of this crime of double murder.

19. Learned court below has summoned the revisionists in the impugned order on the ground that accused persons were having motive of crime as they used to slaughter cows in a portion of the house which was opposed by deceased persons and accused were bearing animosity with the deceased for that reason. Informant is himself made an accused in impugned order. He has lodged FIR in concerted manner and for that reason true facts have not surfaced before the court. The photographs of deceased persons are filed on record which reveal that they were killed by some sharp edged weapon. Deceased and his brothers and mother were living in same house in different rooms and PW-2 had stated that slaughtering of cows was carried out by accused persons in the same house. The court is well within its right under Section 319 Cr.P.C. to summon any

person whose complicity is found in the offence. Learned court below has also observed that it is not necessary that proposed accused person is named in the FIR, because the FIR from deceased side has not been lodged as none has survived in the house of in-laws of deceased Rubi from her side.

20. I have given a thoughtful consideration to submissions of learned counsel for parties to the facts of the case and State of law.

21. In the impugned order, learned court below has nowhere stated that strong prima facie case has been found against person accused and co-accused persons to summon them in exercise of powers under Section 319 Cr.P.C. to face trial alongwith the accused Naushad who is already facing trial.

22. Hon'ble Supreme Court in **Sagar Vs. State of U.P. and another** AIR 2022 SC 1420 observed as under:-

".....8. The scope and ambit of [Section 319](#) of the Code has been well settled by the Constitution Bench of this Court in [Hardeep Singh v. State of Punjab and others](#) 1 and paras 105 and 106 which are relevant for the purpose are reproduced hereunder:

"105. Power under [Section 319](#) CrPC 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 1 (2014) 3 SCC 92 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](#) CrPC. In [Section 319](#) CrPC 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](#) CrPC to form any opinion as to the guilt of the accused.”

9. The Constitution Bench has given a caution that power under [Section 319](#) of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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 learned Single Judge of the High Court has even failed to consider the basic principles [laid down by](#) this Court while invoking [Section 319](#) of the Code, which has been considered by the learned trial Judge under its order dated 30th January, 2018.”

23. Hon’ble Supreme Court in **Juhru and others Vs. Karim and another (2023) 0 Supreme (SC) 144** held that it is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under [Section 319](#) Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the

absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.

24. Hon'ble Supreme Court in **Brijendra Singh and others Vs. State of Rajasthan 2017 (7) SCC 706** placed reliance on Constitution Bench judgment of the Court in **Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92** observed as under:-

*.....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.*

.....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. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.

25. Learned counsel for the revisionist placed reliance on a recent judgment of Hon’ble Supreme Court in **Hetram @ Babli Vs. State of Rajasthan and another in Criminal Appeal No.4656 of 2024**. Wherein Hon’ble Supreme Court observed as under:-

“In the facts of the case, the occasion for considering the application under Section 319 of the CRPC arose after the cross-examination of the only eye witnesses was recorded. Therefore, while deciding an application under Section 319 of the CRPC, the Court must consider the cross-examination as well. 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. The power under Section 319 of the CRPC cannot be exercised when there is no case made out against the persons sought to be implicated. In view of the omissions which are material and which amount to contradiction, obviously no Court could have recorded a satisfaction which is contemplated by Section 319 of the CRPC. It is impossible to record a finding that even a prima facie case of involvement of the appellant has been made out.”

26. In the present case, the learned court below has not recorded his satisfaction regarding existence of strong prima facie case as envisaged in Hardeep Singh’s Case (supra) against proposed accused persons who are revisionists before this Court while summoning the revisionists in exercise of powers under Section 319 Cr.P.C.

27. In the absence of recording such satisfaction, summoning of revisionists in exercise of powers under Section 319 Cr.P.C. cannot be sustained.

28. In the present case, learned court below has not discussed the evidence which connects the revisionist with the crime in question in precise and cogent manner, except evidence of PW-2 and PW-3 who have testified about existence of motive of the offence with the accused persons including present revisionist. Therefore, the impugned summoning order under Section 319 Cr.P.C. issued by learned trial court cannot be sustained and it is liable to be set-aside.

29. The impugned summoning dated 19.10.2023 passed against the revisionists in S.T. No. 224 of 2021, Under Section 302 and 307 IPC is set-aside and matter is remitted to learned court below to decide the application under Section 319 Cr.P.C. filed against the revisionist afresh in accordance with law after recording a clear finding in the nature of satisfaction regarding prima facie case against the revisionist for issuing process against him to appear as an additional accused.

30. Revision is **allowed** accordingly.

Order Date :- 19.05.2025

Ashish/-