

Court No. - 86

Case :- CRIMINAL REVISION No. - 4426 of 2024

Revisionist :- Nitesh Kumar Singh

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Prabhakar Awasthi, Surendra Kumar Chaubey

Counsel for Opposite Party :- Anand Vijay Singh, G.A., Satyendra Kumar Gupta

Hon'ble Nalin Kumar Srivastava, J.

1. Heard Sri S.K. Chaubey, learned counsel for the revisionist, Sri Satyendra Kumar Gupta, learned counsel for the opposite party no.2, Sri Anand Vijay Singh, learned counsel for the opposite party no.3, Sri Nitesh Kumar Srivastava, learned A.G.A. for the State.

2. This revision is directed against the order dated 10.6.2024 passed by the Additional Session Judge, Court No.3, Ballia in Session Trial No.123 of 2022 (State Vs. Sabbal Singh @ Amritesh Singh and others) arising out of case crime no.167 of 2021 under Sections 302, 120-B IPC, Police Station Bairiya, District Ballia whereby the application under section 319 Cr.P.C. moved by the revisionist / informant Nitesh Kumar Singh to summon opposite parties no.2 and 3 as co-accused was rejected.

3. The brief facts of the case are that an F.I.R. was lodged by the revisionist in respect of murder of his brother Jaleshwar Singh @ Balveer Singh alleging therein that four named and two unknown accused persons committed murder of the deceased by use of firearm. After investigation charge-sheet was submitted by the police against the named accused but so far as the unknown

shooters are concerned, the investigation was still going on. Trial started and during the trial P.W.2 Ankur Kumar Singh was examined, who disclosed the names of two unknown persons as Raju Pandey and Rishabh Singh @ Onkar Singh alleging that he had seen them making fire upon the deceased during the incident. After recording the statement of P.W.2, the revisionist filed an application under section 319 Cr.P.C. for summoning the aforesaid two unknown shooters for trial but the said application was rejected by the trial court. Hence, this revision.

4. It is submitted by the learned counsel for the revisionist that the impugned order is bad in the eye of law and it has been passed by the learned trial court without properly considering the evidence available on record. It is further submitted that the said application under section 319 Cr.P.C. was moved during the pendency of Session Trial No.123 of 2022 (State Vs. Sabbal Singh @ Amritesh Singh and others) but the learned trial court without deciding the application under section 319 Cr.P.C. firstly preferred to pass judgment in aforesaid session trial on the same day and subsequently the application under section 319 Cr.P.C. was rejected. It is also submitted that the learned trial court completely ignored the fact that P.W.2 Ankur Kumar Singh has given the ocular evidence in his statement recorded before the Court and the Investigating Officer as well and he has also submitted his affidavit before the Addl. Superintendent of Police wherein he has made a categorical statement that in the F.I.R., two accused persons who were arrayed as unknown persons, were Raju Pandey and Rishabh Singh @ Onkar Singh but the learned trial court discarded the ocular evidence of P.W.2 as well as the affidavit submitted by him to the police during investigation corroborating the prosecution story. It is also submitted that in the postmortem

report, cause of death of the deceased has been shown as antemortem gun injuries and the same statement has been given by P.W.2. It is also submitted that since the statement of P.W.2 was recorded belatedly, his name does not find place as eyewitness of the occurrence in the charge-sheet but only as "other witness". It is further submitted that the other three co-accused persons were acquitted by the learned trial court and when the application under section 319 Cr.P.C. was moved to summon the accused persons / opposite parties no.2 and 3 as co-accused in this matter, it was rejected by the learned trial court by passing the impugned order. The learned trial court completely ignored this fact that Ankur Kumar Singh who appeared as P.W.2, is an eyewitness of the incident and discarded his evidence only on the ground that he was a chance witness whereas there is no law that the evidence of a chance witness can never be accepted as a reliable piece of evidence. On these grounds a request has been made to allow the present revision by setting aside the impugned order dated 10.6.2024 passed by the Additional Session Judge, Court No.3, Ballia in aforesaid session trial.

5. Per contra, learned counsels for the opposite parties no.2 and 3 / the proposed accused persons vehemently opposed the revision. It is submitted that in the F.I.R., the proposed accused persons have not been named and the names of three other co-accused persons have been specifically mentioned therein. It is also submitted that in the F.I.R. itself it is averred that while taking to the hospital the deceased made a statement before the informant as to who were the assailants and in the said statement also he has not named the opposite parties no.2 and 3 / the proposed accused persons. The reason behind it may be the fact that out of the aforesaid two proposed accused persons, one was wearing a mask and second

one was wearing helmet and that is why they could not be identified. It is also submitted that during the course of entire investigation, the Investigating Officer could not find any evidence against the opposite parties no.2 and 3. It is further submitted that suddenly after six months of the occurrence, the alleged eyewitness P.W.2 appeared before the Investigating Officer and gave his affidavit mentioning therein the ocular evidence of the occurrence. It is further submitted that in his statement under section 161 Cr.P.C., P.W.2 Ankur Kumar Singh has also stated that he had met the informant of this case just on the next day of the occurrence but did not disclose the names of the present proposed accused persons / opposite parties no.2 and 3. His conduct is totally unnatural and improbable and throws shadow of doubt upon the prosecution story as well as on the story of involvement of opposite parties no.2 and 3 in the alleged crime of murder. On these grounds a prayer has been made for the dismissal of the present revision.

6. It is also submitted that as per record the trial court firstly rejected the application under Section 319 Cr.P.C. on 10.6.2024 and thereafter judgment was passed on the next day i.e. on 11.6.2024.

7. In the instant matter, P.W.2 Ankur Kumar Singh is the key witness who recorded his ocular evidence before the trial court and in his examination-in-chief he has stated that Rishabh Singh @ Onkar Singh and Raju Pandey opened fire upon the deceased and this incident was seen by him. He had also stated that on 7.7.2021 at about 12:00 noon when he was present near the shop of Jauhar, he had seen Rishabh Singh @ Onkar Singh and Raju Pandey coming there by motorcycle, meanwhile one XUV vehicle

carrying Sabbal Singh and Jaleshwar Singh @ Balveer Singh (the deceased) also came there and when the car stopped, he and some other persons saw Rishabh Singh @ Onkar Singh and Raju Pandey opening fire upon the deceased. He was very scared and went away to Ballia. Further he stated that he had heard that on account of some political animosity, the murder was committed on the conspiracy of Hari Singh and other persons. However, he has also made a statement that on the next day of the incident he had gone to the house of the informant but he did not disclose him of being an ocular witness of the incident. However, he has further explained that after six months he returned from Ballia and then moved an affidavit before the police disclosing therein the names of the main assailants and also narrated the ocular evidence of the incident.

8. At this stage an issue was raised that while examining the role of a proposed accused for the trial of whom application under section 319 Cr.P.C. was moved, whether the trial court may consider the statement of the witnesses recorded during trial only or materials collected during investigation of the I.O. may also be taken cognizance of.

9. Emphasis has been laid down by the learned counsel for the revisionist upon the decision of the Hon'ble Supreme Court in **Brijendra Singh & Others Vs. State of Rajasthan, 2017 (7) SCC 706** and paragraph 15 of the said pronouncement is relevant to quote here, which is extracted 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.'

10. A perusal of the impugned order shows that the learned Session Court has taken into account not only the statement of P.W.2 recorded before the court but also the materials collected by the I.O. during investigation. The affidavit given by witness Ankur Kumar Singh to the police was not appreciated by the I.O. The learned counsel for the revisionist vehemently submitted that since apparently there appears to be no animosity between P.W.2 Ankur Kumar Singh and the present opposite parties no.2 and 3 and there was no reason for false implication of both of them on the part of P.W.2, the learned trial court rejected the application under section 319 Cr.P.C. on wrong assumptions whereas it ought to have not discarded the ocular evidence of P.W.2. This fact was also not properly appreciated by the learned trial court that besides the named accused persons, two unknown persons have also been mentioned in the F.I.R. as participants into the crime and after the affidavit filed by witness Ankur Kumar Singh to the police and his testimony before the trial court subsequently, the active role played by the present opposite parties no.2 and 3 in the commission of murder of the deceased was explicitly clear.

11. The Hon'ble Supreme Court in **Brijendra Singh and others (supra)** case further held as under:

"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."

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"The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence." It also goes without saying that Section 319 Cr.P.C., which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Section 207/208 Cr.P.C., the committal etc., which is only a pre- trial stage intended to put the process into motion."

12. The aforesaid legal principles have further been followed in catena of decisions like **Sugreev Kumar vs. State of Punjab and others; AIR 2019 SC 2903, Mani Pushpak Joshi vs. State of**

Uttrakhand and another; AIR 2019 SC 5263 etc.

13. In **Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92**, 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."

14. 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."

15. The dictum of law promulgated by the Hon'ble Supreme Court in the judicial pronouncement 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.

16. On the basis of the aforesaid legal conclusion, the instant matter may be concluded after considering the settled principles of law and submissions advanced by the learned counsel for the parties, the order passed by learned Additional Sessions Judge could not be sustained. Learned trial court has not properly appreciated the evidence available on record. The ocular version of the occurrence as narrated by P.W.2 in the Court cannot be ignored and the Court has to take cognizance thereof for the purpose of deciding the application under section 319 Cr.P.C. Although there exist some unnatural situations in respect of the statement of P.W.2 but it is sufficient to show the complicity of accused other than those who are already facing the trial as co-accused in the instant matter who can be prosecuted along with the named accused persons already facing trial. Consequently, the impugned order is liable to be set-aside.

17. Revision is **allowed**. The impugned order dated 10.6.2024

passed by the Additional Session Judge, Court No.3, Ballia in Session Trial No.123 of 2022 (State Vs. Sabbal Singh @ Amritesh Singh and others) arising out of case crime no.167 of 2021 under Sections 302, 120-B IPC, Police Station Bairiya, District Ballia is set-aside. The matter is remitted to the Court of Additional Session Judge concerned to decide the application under Section 319 Cr.P.C. afresh and to pass a fresh order in the light of the observations made in this order.

Order Date :- 6.8.2025

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