

**HIGH COURT OF UTTARAKHAND AT NAINITAL****Criminal Revision No. 217 of 2021****13 July, 2026**

Dr. Yuvraj Pant and
Smt. Rashmi Pant

--Revisionists

Versus

State Of Uttarakhand
and Smt. Parveen Jahan

--Respondents

Presence:-

Mr. R.S. Sammal, learned Senior Counsel, assisted by Mr. Vishal Singh Mahara, learned counsel for the revisionists.

Mr. S.S. Chauhan, learned D.A.G. alongwith Mr. Vikas Uniyal, learned Brief Holder for the State.

Hon'ble Alok Mahra, J.

The present criminal revision is preferred against the impugned order dated 17.08.2021 passed by learned 2nd Additional Sessions Judge, District Nainital in Session Trial No. 26 of 2018, State Vs. Umesh Singh Bankoti, under Section 302 of IPC, registered at Police Station-Haldwani, District Nainital, by which, the application filed by the prosecution under Section 319 Cr.P.C. was allowed and the revisionists were summoned as accused to face trial under Section 302 IPC.

2. Brief facts of the case, in a nutshell, are that:-



An FIR was lodged by mother of the deceased on 25.06.2017 under Section 302 IPC, wherein, it was alleged that the deceased was admitted for de-addiction in the Nirvana Drug Addiction Eradication/Rehabilitation Centre, Heera Nagar, Haldwani, District Nainital, where revisionist no. 2 is the coordinator. It is further alleged that her son-in-law Mr. Mohsin received a phone call in the night of 23.06.2017 at about 11:00-11:30 PM, wherein, revisionist no. 2 informed him that 10-12 patients have escaped from the Rehabilitation centre and thereafter when his son-in-law reached there, he found that the deceased was lying injured and unconscious in the ambulance of rehabilitation centre. When her son-in-law asked them to take the deceased to Sushila Tiwari Hospital, the staff of the Rehabilitation Centre refused to take the deceased in their ambulance car. Thereafter, the staff members of the rehabilitation centre shifted the deceased to the car of Mr. Mohsin and Mr. Mohsin took the deceased to Sushila Tiwari Hospital, Haldwani, where the doctors declared him brought dead. After investigation, chargesheet was submitted under Section 302 IPC against one Umesh Singh Bankoti, who was the driver in Rehabilitation Centre. The charge framed against him was that while trying to catch hold of the



deceased, the accused stabbed him which led to the death of the deceased. The Investigating Officer recovered the knife from the spot from where such incident was alleged to have taken place. Thereafter, trial was committed and on the basis of statement of the PW-3, Mr. Mohsin, who was son-in-law of the informant, the application filed by the prosecution under Section 319 Cr.P.C. was allowed, wherein, he has stated that he received a phone call in the night of 23.06.2017 at about 11:00-11:30 PM whereby revisionist no. 2 had informed him that 12-13 inmates of the Centre have tried to escape from the Centre and the staff of the Centre have gone in their search. Thereafter, PW3, son-in-law of the informant arrived at the Centre where he was told that deceased is lying in the ambulance and when he asked to take him to Sushila Tiwari Hospital, they refused. Then he himself took him to the hospital where the doctors declared him brought dead.

3. Mr. R.S. Sammal, learned Senior Counsel appearing for the revisionists would submit that revisionist no. 1 is a psychologist while revisionist no. 2 is the coordinator of the Rehabilitation Centre, Haldwani where the deceased was admitted. Learned Senior Counsel for the revisionists would also submit that the



trial has concluded and the main accused has been acquitted in the trial and there is no evidence found against the chargesheeted person inasmuch as even the weapon alleged to have been used in the incident was not verified and it was proved doubtful. It is further submitted that the revisionist no.1 only makes a day visit to the De-Addition/Rehabilitation Centre and he has no role to play in the affairs of the Centre while revisionist no. 2 is Coordinator of the Centre and she also leaves the Centre everyday in the evening. It is further submitted that during the investigation and also in the chargesheet, no role has been assigned to the revisionists.

4. Learned Senior Counsel for the revisionists has placed reliance upon a judgment passed by Hon'ble Supreme Court in the case of Hardeep Singh Vs. State of Punjab and Others reported in (2014) 3 SCC 926, wherein, it is held that power under Section 319 Cr.P.C. 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 such power should be exercised and not in a casual and cavalier manner. For ready reference, paragraph nos. 105 and 106 of the judgment are extracted hereinbelow:-

“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 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.”

5. Learned Senior Counsel for the revisionists has further placed reliance upon a judgment passed by Hon’ble Supreme Court in the case of Periyasami and Others Vs. S. Nallasamy, reported in (2019) 4 SCC 342. For ready reference, paragraph no. 11 of the judgment is extracted hereinbelow:-

“11. The learned counsel for the appellants also refers to a recent order of this Court in Labhuji Amratji Thakor v. State of Gujarat [Labhuji Amratji Thakor v. State of Gujarat, (2019) 12 SCC 644 : 2018 SCC OnLine SC 2547] , where, the order of summoning the additional accused on the basis of the statements of some of the witnesses in the witness box was set aside for the

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reason that there is not even suggestion of any act done by the appellants amounting to an offence under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. It was held as under : (SCC OnLine SC para 12)

“... The Court has to consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] has to apply the test i.e. ‘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 unrebutted, would lead to conviction.’....”

6. On this basis, learned Senior Counsel has submitted that in the whole investigation, not a single doubt has been raised against any of the revisionists and moreover it is submitted that in the trial, the person namely Umesh Singh Bankoti, who was chargesheeted under Section 302 of IPC have also been acquitted vide order dated 23.04.2026 passed by learned 2nd Additional Session Judge, Nainital in Session Trial No. 26 of 2018. It is thus submitted that the impugned order deserves to be set aside and the criminal revision deserves to be allowed.

7. Heard learned counsel for the parties and perused the record.

8. This Court finds that the application of the prosecution under Section 319 Cr.P.C. have been allowed by the learned 2nd Additional Sessions Judge, District Nainital only on the basis of the statement of PW-3. This



Court, after perusing the statement of PW-3, would reveal that no allegation or role has been assigned against the revisionists in relation to the said incident. The Trial Court, while considering the substance of evidence, has to apply the test that there should be 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 unrebutted, would lead to conviction. Before allowing the application under Section 319 Cr.P.C., the evidence against the persons, who have been made the accused, should be strong and cogent rather than mere suspicion. The power under Section 319 Cr.P.C. is extraordinary and should be exercised sparingly. The Court must assess whether the evidence on record, if unrebutted, reasonably indicates the involvement of the proposed accused.

9. In view of the above, this Court finds that there was no cogent and strong evidence against the revisionists and the application under Section 319 Cr.P.C. have been allowed and the revisionists have been summoned as proposed accused only on the basis of suspicion.

10. Accordingly, the criminal revision is allowed.



Consequently, the impugned order dated 17.08.2021 passed by learned 2nd Additional Sessions Judge, District Nainital in Session Trial No. 26 of 2018; State Vs. Umesh Singh Bankoti (now-Sessions Trial No. 12 of 2024) is set-aside.

11. Pending applications, if any, also stand disposed of accordingly.

(Alok Mahra, J.)

13.07.2026

Ujjwal