2026:AHC:211460

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 4171 of 2022

Awadha Pal And Another

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Jadu Nandan Yadav, Pushpendra Singh Yadav
Counsel for Opposite Party(s)	:	Arvind Kumar Dixit, G.A.

Court No. - 86

HON'BLE JAI KRISHNA UPADHYAY, J.

1. This criminal revision has been filed by the revisionists - **Awadh Pal** and **Anil** against the order dated 19.7.2022 passed by the Special Judge (POCSO Act)/ Additional Sessions Judge, Etawah in Special Case No. 57 of 2019 (State Vs. Km.Pooja), arising out of Case Crime No. 36 of 2019, under Sections 302, 201 read with Section 34 IPC, Police Station Civil Lines, District Etawah whereby the application under section 319 Cr.P.C. moved by the prosecution was allowed and the revisionists were summoned to face trial for the said offences.

2. Heard Shri Pranvesh, Advocate, holding brief for Shri Jadu Nandan Yadav, learned counsel for the revisionists, Shri Arvind Kumar Dixit, learned counsel for the opposite party no.2 and the learned A.G.A. for the State.

3. The brief facts of the case, as unfolded by the informant Shyam Singh in the First Information Report (in short 'FIR') are that on 24.1.2019 he and his son Vivek had gone to a wedding at a relative's house. On 26.1.2019 he alongwith his elder daughter Pooja, aged 17 years and younger daughter Rachna alias Deepanshi, aged about 15 years, was at home. When he came back from duty on 26.01.2019 around 2:00 PM, his younger daughter Rachna was not found at home and when he asked his elder daughter Pooja about Rachna, Pooja said that she had gone to school. After some time passed, when she still did not return home, he contacted his relatives and neighbors but she did not trace out. On 27.1.2019, at about 09:30 AM, when everyone was asking, Pooja hugged him and started crying and said that she had committed her murder. She had illicit relations with Avadhpal and Anil and She, Avadhpal and Anil, the three of them killed Rachna yesterday i.e

on 26.1.2019, at around 11:00 AM by strangling her and hid her body inside a sack in a pond. Then he and other family members saw the place pointed out by Pooja on 27/01/2019, and found his daughter's body around 10:00 AM.

4. It is submitted by learned counsel for the revisionist that although the present revisionists were named accused in the F.I.R. but the Investigating Officer of this case found absolutely no evidence disclosing their involvement during investigation hence they were exonerated by the Investigating Officer.

5. Further argument is that the story set up by the prosecution is false and fabricated. Some major contradictions are clearly visible in the statement of PW-1/informant recorded before the Court which makes his deposition inconsistent and unreliable. PW-1 and PW-2 have made relevant improvements in their deposition recorded before the Court. The present revisionists are innocent and they have been falsely implicated in this matter. It is also submitted that though Km. Pooja / co-accused is said to be an eyewitness but she was not examined in the present case as a prosecution witness and except hearsay evidence of PW-1 there is no other evidence at all against the revisionists to summon them to face the trial for the aforesaid offences. Hence, the trial court on the basis of hearsay, shaky and inconsistent oral testimony of PW-1, which is full of material contradictions, passed an arbitrary and illegal order to summon the revisionists to face trial under Sections 302, 201/34 IPC which suffers from infirmity and perversity warranting interference by this Court.

6. Per contra, learned A.G.A. and learned counsel for the opposite party no.2 / informant vehemently opposed the prayer and it has been submitted that the present revisionists were named in the F.I.R. of this case and role of committing murder of the deceased has been assigned to him. PW-1/ informant has been examined before the trial court and he has proved the active participation of the present revisionists in the commission of the alleged crime. It is further submitted that deposition of PW-1 has been firmly corroborated by PW-2 to PW-7. It is also submitted that while deciding the application under Section 319 CrPC the Court must take into consideration the entire testimony of the witnesses recorded before the Court. The trial court relying upon the evidence of PW-1, which corroborates the F.I.R. version and on being satisfied that there is sufficient material to summon the present revisionists to face trial for the relevant offences, summoned them accordingly. There are no material contradictions in the statement of PW-1 in respect of complicity of the present revisionists in the incident. The trial court has not committed any irregularity, illegality

or impropriety in passing the impugned order.

7. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

8. A perusal of the material available on record transpires that PW-1 - informant was examined before the trial court and at that stage an application under Section 319 CrPC to summon the present revisionists to face trial for the offences under Sections 302, 201/34 IPC was moved by the informant. The trial court relied upon the statement of PW-1, the informant, who in her examination-in-chief has stated that on 26.1.2019 he alongwith his elder daughter Pooja, aged 17 years and younger daughter Rachna alias Deepanshi, aged about 15 years, was at home. When he came back from duty on 26.01.2019 around 2:00 PM, his younger daughter Rachna was not found at home and when he asked his elder daughter Pooja about Rachna, Pooja said that she had gone to school. After some time passed, when she still did not return home, he contacted his relatives and neighbors but she did not trace out. On 27.1.2019, at about 09:30 AM, Pooja told him that both she and her sister Rachna were in her house and suddenly on 26.1.2019 at around 11.00 a.m., the accused Avadhpal and Anil entered into the house and the accused Avadhpal forcibly started doing obscene acts with her. On hearing the noise, Rachna came running from the other room and saw the accused Avadhpal doing obscene acts with her and she said that she would tell everything to her father. When the accused Anil tried to do obscene acts with Rachna also, she said that she would complain about you both to her father and brother. Saying this, she ran inside the room and tried to close the door from inside but the accused Anil pushed and tried to break the latch and tried to break the window nearby by pulling it, due to which the window broke and the accused Anil caught hold of her neck collar and took hold of it. The accused Avadhpal put a pistol on Pooja's temple and finding the other vein of Rachna's neck collar, pulled it hard, due to which Rachna died. The trial court finding a prima facie case against the revisionists allowed the application of the informant and the revisionists were summoned to face trial for the offence Sections 302, 201/34 IPC vide impugned order alongwith other accused already facing the trial.

9. It is trite law particularly after the judgment of Hon'ble Supreme Court passed in **Hardeep Singh Vs. State of Punjab and others, 2014(85)ACC 313** case that since the Court exercises discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction for the role played by the proposed accused and 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C.

10. In this matter, the oral evidence on record was examined by this court. The present revisionists, though are named in the F.I.R., and have been named by PW-1 but the Investigating Officer did not find any evidence against them during investigation. PW-1-informant is not the eyewitness of the incident and his evidence is based on hearsay on the basis of statement of a co-accused Pooja. The rule on admissibility of hearsay evidence is not res integra. It is well settled that hearsay evidence is not admissible as proof of a fact, except for in certain accepted exceptions. Further, Section 30 of the Indian Evidence Act, 1872, clarifies that the confession of one accused is not considered substantive evidence against a co-accused. Instead, it allows the court to consider such a confession along with other evidence in the case. This means that a co-accused cannot be convicted solely based on the confession of another accused. The confession of a co-accused can, however, be used to corroborate other evidence presented in the case. It can assist the court in determining the truthfulness of other evidence and in reaching a conclusion regarding the guilt of the accused. However, the conviction must ultimately be based on the strength of the other evidence presented and the confession of a co-accused can only be used to support that conclusion

11. The power enshrined under Section 319 Cr.P.C. operates strictly within the threshold of strong and cogent evidence. It is well-established through a catena of judicial pronouncements that the trial court is not required to attain the final satisfaction of proof beyond reasonable doubt at the stage of summoning an additional accused, nor it is expected to conduct a mini-trial or prejudge the ultimate guilt or innocence of the person. However, simultaneously, the power is extraordinary and discretionary in nature, and therefore, it cannot be exercised in a casual, cavalier, or routine manner based on vague allegations or weak probabilities.

12. Next, evaluating the recorded depositions against the tier of standard of proof, namely, the benchmark of "strong and cogent evidence", this Court finds that the courtroom testimony of PW-1 does not go well beyond probability of complicity. He has deposed before the court, assigning overt act and active involvement to the revisionists in the commission of the offence but they are based on hearsay evidence of co-accused. His testimony does not possess the requisite quality and probative value to potentially lead to conviction. The Court concerned committed mistake to summon her to face trial for the offence under Sections 302, 201/34 IPC.

13. In view of the above discussion, in my view, the impugned order suffers from infirmity, illegality, perversity and lack of judicial mind and the said order is liable to be set-aside and the criminal revision deserves to be allowed.

14. The criminal revision is accordingly **allowed**. The impugned order order dated 19.7.2022 passed by the Special Judge (POCSO Act)/ Additional Sessions Judge, Etawah in Special Case No. 57 of 2019 (State Vs. Km.Pooja), arising out of Case Crime No. 36 of 2019, under Sections 302, 201 read with Section 34 IPC, Police Station Civil Lines, District Etawah is set-aside.

15. Copy of this order be sent to the court concerned for compliance and necessary action.

October 8, 2026
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(Jai Krishna Upadhyay,J.)

Digitally signed by :-
MAHBOOB SAFI
High Court of Judicature at Allahabad