
(2015) 05 AHC CK 0129
In the Allahabad High Court
Case No : Criminal Revision No. 1722 of 2015

Nahar Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 193, 209, 319, 319(1)
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 3 ACR 3005 : (2015) 4 ALJ 185 : (2015) 91 ALLCC 158

Hon'ble Judges : Ranjana Pandya, J

Bench : Single Bench

Advocate : B.P. Verma, for the Appellant

Judgement

Ranjana Pandya, J—Heard learned counsel for the revisionists, Sri A.N. Pandey, learned counsel for opposite party No. 2 and learned A.G.A. This revision has been preferred against the order dated 07.04.2015 passed by Additional Sessions Judge, Court No. 6, Mathura whereby allowing the application under Section 319, Cr.P.C. and summoned the revisionists under Section 302, I.P.C.

2. Brief facts of the case are that the first information report was lodged stating that the deceased used to do the business of milk and on the fateful day at about 04:30 a.m., the deceased went to extract milk at the house of Bhagwan Das. Suddenly, unknown miscreants fired at him and he become injured. On hearing the sound of fire shots the informant and other people came there and took the injured to the hospital where he was declared dead. The first information report was lodged against unknown persons and investigation started. During the course of investigation the informant and other witnesses filed affidavit in which they mentioned the names of Kailash and the revisionists as the accused persons of the alleged incident.

3. After investigation, the I.O. submitted his charge-sheet against Kailash, Nahar Singh, Bhawar Singh and Uttam. After framing the charge against the accused persons, the prosecution examined PW-1 Dungar Singh (brother of the deceased

and the first informant), PW-2 Rajendri (wife of the deceased) and PW-3 Babu Lal (father of the deceased).

4. It has been contended on behalf of the revisionists that the revisionists were not charge-sheeted and the witnesses adduced on behalf of the prosecution are closely related witnesses to the deceased and each other, hence their evidences are not very reliable.

5. As far as the evidence of closely related witnesses are concerned, law is settled on this point that the relations of the witnesses itself would not be a ground to discard their evidences.

6. Section 319, Cr.P.C. reads as under:--

"319. Power to proceed against other persons appearing to be guilty of offence--

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then--

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

7. Thus, even the accused who has not been named in the first information report and has not been charge-sheeted can also be summoned by the court under provisions of Section 319, Cr.P.C.

8. Counsel for the revisionists has relied upon *Sarabjit Singh and Another Vs. State of Punjab and Another*, AIR 2009 SC 2792 : (2009) CLT 1327 : (2009) CriLJ 3978 : (2009) 8 JT 73 : (2009) 8 SCALE 175 : (2009) 16 SCC 46 : (2009) 8 SCR 762 : (2009) AIRSCW 4236 and Anr. in which the Hon"ble Apex Court has laid down as under:--

"12. The extent of the power of a Sessions Judge to summon persons other than the accused to stand trial in a pending case came up for consideration before this

Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, AIR 1983 SC 67 : (1983) CriLJ 159 : (1982) 2 SCALE 1124 : (1983) 1 SCC 1 : (1983) 1 SCR 884 . Therein, this Court while holding that the provision confers a discretionary jurisdiction on the court added "this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken".

13. Interpretation of the aforementioned provision, in the light of the said decision, came up for consideration before various courts from time to time. We may take note of some of them.

9. In *Shashikant Singh Vs. Tarkeshwar Singh and Another*, AIR 2002 SC 2031 : (2002) CriLJ 2806 : (2002) 2 Crimes 350 : (2002) 4 JT 386 : (2002) 4 SCALE 89 : (2002) 5 SCC 738 : (2002) 3 SCR 400 : (2002) AIRSCW 2079 : (2002) 3 Supreme 566 , this Court held:

"9. The intention of the provision here is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may proceed against him for the offence which he appears to have committed. At that stage, the court would consider that such a person could be tried together with the accused who is already before the court facing the trial. The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the cross-examination of the newly added accused is the mandate of Section 319(4). The words "could be tried together with the accused" in Section 319(1), appear to be only directory. "Could be" cannot under these circumstances be held to be "must be". The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under Section 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the newly added person appears to have committed the offence resulting in an order for his being brought before the court."

10. It was furthermore held:

"14. A Magistrate is empowered to take cognizance of an offence in the manner provided under Section 190 of the Code. Section 209 enjoins upon a Magistrate to commit the case to the Court of Session when it appears to the Magistrate that the offence is triable exclusively by the Court of Session. Section 193

provides for the power of the Court of Session to take cognizance of any offence. It uses the expression "cognizance of any offence" and not that of "offender". These three provisions read with Section 319 make it clear that the words "could be tried together with the accused" in Section 319 are only for the purpose of finding out whether such a person could be put on trial for the offence..."

11. In *Rakesh and Another Vs. State of Haryana*, AIR 2001 SC 2521 : (2001) CriLJ 3511 : (2001) 3 Crimes 330 : (2001) 5 JT 639 : (2001) 4 SCALE 522 : (2001) 6 SCC 248 : (2001) AIRSCW 2703 : (2001) 5 Supreme 300 , this Court held:

"13. Hence, it is difficult to accept the contention of the learned counsel for the appellants that the term "evidence" as used in Section 319 of the Criminal Procedure Code would mean evidence which is tested by cross-examination. The question of testing the evidence by cross-examination would arise only after addition of the accused. There is no question of cross-examining the witness prior to adding such person as accused. The section does not contemplate an additional stage of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person is to be added as accused or not. The word "evidence" occurring in sub-section (1) is used in a comprehensive and broad sense which would also include the material collected by the investigating officer and the material or evidence which comes before the court and from which the court can prima facie conclude that the person not arraigned before it is involved in the commission of the crime."

12. In *Ranjit Singh Vs. State of Punjab*, (1998) 7 AD 217 : AIR 1998 SC 3148 : (1998) CriLJ 4618 : (1998) 3 Crimes 258 : (1999) 1 CTC 108 : (1998) 6 JT 512 : (1998) 5 SCALE 375 : (1998) 7 SCC 149 : (1998) 2 SCR 8 Supp : (1998) AIRSCW 3249 : (1998) 7 Supreme 447 , this Court opined:

"20. Thus, once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. We are unable to find any other power for the Sessions Court to permit addition of new person or persons to the array of the accused. Of course it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers.

21. But then one more question may survive. In a situation where the Sessions Judge notices from the materials produced but before any evidence is taken, that any other person should also have necessarily been made an accused (without which the framing of the charge would be defective or that it might lead to a miscarriage of justice), is the Sessions Court completely powerless to deal with such a contingency? One such situation is cited by the learned Judges through an illustration narrated in *Kishun Singh and Others Vs. State of Bihar*, (1993) CriLJ 1700 : (1993) 1 Crimes 494 : (1993) 1 JT 173 : (1993) 1 SCALE 79 : (1993) 2

SCC 16 : (1993) 1 SCR 31 "

"Where two persons A and B attack and kill X and it is found from the material placed before the Judge that the fatal blow was given by A whereas the blow inflicted by B had fallen on a non-vital part of the body of X. If A is not challenged by the police, the Judge may find it difficult to charge B for the murder of X with the aid of Section 34, I.P.C. If he cannot summon A, how does he frame the charge against B?"

22. Another instance can be this. All the materials produced by the investigating agency would clearly show the positive involvement of a person who was not shown in the array of the accused due to some inadvertence or omission. Should the court wait until evidence is collected to get that person arraigned in the case?"

13. Thus, it is clear that the matter of discharge and summoning the accused under Section 319, Cr.P.C. stand at a different footing inasmuch as at the time of framing of charge, only prima facie evidence to be looked into while clinching evidence is needed at the time of summoning the accused under Section 319, Cr.P.C. in which the Court has to prima facie see that the matter may end in conviction.

14. The witnesses namely Singh, PW-1 has stated that he saw the occurrence, he saw that Kailash was firing the shot whereas Nahar Singh, Bhawar Singh and Uttam were accompanying him. Witness namely Rajendri, PW-2 being wife of the deceased has stated that she was with her husband who was going to extract milk. Suddenly Kailash Singh and the revisionists came there, Kailash fired at the deceased and other accused also fired at her husband who sustained two fire arm injuries and fell down. As far as statement of Babu Lal, PW-3, father of the deceased is concerned, he has also stated that he saw the revisionists Nahar Singh, Bhawar Singh, Uttam and Kailash fleeing away from the spot.

15. Thus, there is sufficient clinching evidences and the accused can be tried for the offence under Section 302 read with Section 34, I.P.C. The contradictions, if any, have to be looked into by the trial court.

16. At this stage, I find that the impugned order does not suffer from any illegality, irregularity and impropriety and has been passed on merits which needs no interference by this Court and the revision is liable to be dismissed. Accordingly, the revision is hereby dismissed.