

Reserved Judgment
IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Revision No.218 of 2021

Jagbir Singh

.....Revisionist

Versus

State of Uttarakhand & Another

.....Respondents

Ms. Manisha Bhandari, learned counsel for the revisionist.

Mr. Atul Sah, learned Deputy Advocate General for the State of Uttarakhand.

Mr. Siddhartha Sah, learned counsel for the private respondent/complainant.

Judgment Reserved on: 09.03.2022
Judgment Delivered on: 16.03.2022

JUDGMENT

NARAYAN SINGH DHANIK, J.

The present Criminal revision has been preferred against the order dated 23.08.2021, passed by the First Additional Sessions Judge, Udham Singh Nagar, whereby the application under Section 319 of the Code of Criminal Procedure, moved by the prosecution, has been allowed and the revisionist has been summoned by the trial court as an accused to face trial along with other accused persons for the offences under

Sections 147, 148, 307, read with Section 149 IPC and Section 302 read with Section 149 IPC.

2. Facts, in brief, of the case are that on 07.01.2018, respondent no. 2 Angrez Singh lodged an FIR against six persons with the averments that his father was murdered on 17.07.2015 and he was the informant in the said case and the accused persons were exerting pressure to enter into compromise and settle the dispute. Because of this enmity, at about 1:15 PM on 07.01.2018, when the said respondent, his cousin brothers Daljeet Singh and Rajvender Singh, and his relatives Kuldeep Singh and Harvansh Singh were participating in a Nagar Kirtan in Sitarganj, the accused persons, armed with sharp-edged weapons, *lathis* and *dandas* and pistols, attacked the complainant, his brothers and relatives. In the said incident, Daljeet Singh and Harvansh Singh died at the spot and Rajvender Singh suffered serious injuries.

3. After investigation, police submitted the charge sheet and thereafter trial commenced against the accused persons. On 25.06.2019, examination-in-chief of the complainant (respondent no.2) was recorded but the same could not be completed because of the poor

health of the witness and it was deferred to 16.07.2019 at the request of prosecution. The examination-in-chief of the complainant resumed on 16.07.2019, but the same again could not be completed on that day as the court time was over. On 25.11.2019, while recording further examination-in-chief of the complainant, a CCTV footage, collected during investigation by the police which was captured in the CCTV cameras installed at the shops situated near the place of occurrence, was played before the trial court. After watching the said CCTV footage, the complainant, inter alia, identified the presence of the present revisionist at the place of incident and narrated his role in the alleged crime. The complainant further stated that at one point of time, he is being seen doing *hathapai* with Daljeet Singh (deceased) and Rajvender Singh (injured). In yet another scene of the said CCTV footage, the revisionist was seen making exhortation to the other accused persons to attack Daljeet Singh and Rajvender Singh.

4. After the above deposition of the complainant (PW1), the prosecution moved an application to summon the revisionist as an additional accused under Section 319 Cr.P.C. and the same was allowed by the trial court vide impugned order, as stated hereinabove.

5. Heard learned counsel for the parties and perused the material available on the record.

6. Ms. Manisha Bhandari, learned counsel for the revisionist, contended that the court below has committed grave error of law by summoning the revisionist as an accused inasmuch as the complainant, who claims to be an eyewitness of the alleged incident, did not assign any role to the revisionist in the FIR. During the course of investigation as well, the name of the revisionist as an assaulter did not surface. After commencement of the trial, on 25.06.2019 and on 16.07.2019, the complainant did not make any allegation against the revisionist in his examination-in-chief. It was only after seeing the CCTV footage on 25.11.2019, the complainant made serious allegations that it was on the exhortation of the revisionist that the accused persons committed the crime and killed Harvansh Singh and Daljeet Singh and inflicted injuries to others. Learned counsel for the revisionist argued that in the above facts and circumstances, it was totally illegal on the part of the trial court to summon the revisionist under Section 319 Cr.P.C. on the basis of the deposition made by the complainant in his examination-in-chief. Learned counsel for the revisionist contended that it is

clear that the complainant tried to develop a completely new story after watching the said CCTV footage, which is without audio. Learned counsel further contended that had the complainant been an eye-witness of the alleged incident, which he claims, he would have taken the name of the revisionist in the FIR itself.

7. Learned counsel for the revisionist contended that the said CCTV footage is without audio and the PW1 tried to develop a new story of exhortation. Learned counsel contended that from the stills of the said CCTV footage and from the gesture of the revisionist, it cannot be concluded that the revisionist was instigating or exhorting the other accused persons to commit the alleged crime. The complainant made allegations against the revisionist after almost 19 months of the alleged incident and there is material contradiction in the deposition of PW1. Learned counsel further contended that presence of the revisionist, even if admitted, at the place of occurrence does not connect the revisionist with the alleged crime. Prosecution will have to prove and establish a more than prima facie case and that the revisionist was voluntarily a member of unlawful assembly and he knew the intention of said unlawful assembly which resulted into the alleged crime.

8. Mr. Siddhartha Sah, learned counsel for the respondent/complainant, argued that presence of the revisionist at the place of incident is not denied and it is also quite clear that the revisionist was seen doing *hathapai* with Daljeet Singh and Rajvender Singh. Revisionist was also seen making exhortation to other accused to commit the crime. PW1, who is an eyewitness, has identified the revisionist and has deposed against him. Motive to commit the alleged crime is also proved. Learned counsel further argued that as regards not naming the revisionist in the FIR, it is a settled law that FIR is not an encyclopedia of all facts and figures of the case. Learned counsel submitted that a more than prima facie case of the complicity of the revisionist in the crime is made out and there is no jurisdictional error committed by the trial court in summoning the revisionist as an additional accused as there exists a strong and cogent evidence against the revisionist.

9. Learned counsel for the complainant further argued that the scope of revisional power of this court under Section 397 Cr.P.C. is limited and detailed appreciation of facts and evidence is not open in the revision. In this regard, learned counsel relied upon a judgment rendered by the

Hon'ble Apex Court in the case of *Sheonandan Paswan Vs State of Bihar & Others*, (1987) 1 SCC 288.

10. Learned Counsel for the revisionist and learned Counsel of the complainant/respondent no. 2, both have relied upon a precedent rendered by a Constitutional Bench of Hon'ble Apex Court in *Hardeep Singh v. State of Punjab & Others*, reported in (2014) 3 SCC 92.

11. Undoubtedly, Section 319 CrPC empowers the Trial Judge to summon any other accused person, if his complicity is reasonably appear to be involved. In paragraph 106 of the aforementioned judgment, the test laid down by the Hon'ble Apex Court is as under:

“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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court

should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C 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 Cr.P.C. to form any opinion as to the guilt of the accused.”

12. Therefore, it is amply clear that in order to exercise the power under Section 319 Cr.P.C., a case more than prima facie, but short of satisfaction to an extent that evidence if goes un rebutted would lead to conviction, must have been there. Now, on this anvil, if I just have a glance on the backdrop of the controversy and in the light of animosity persisting between the parties, and the deposition of the PW1, who is complainant as well as an eyewitness of the incident and who identified the revisionist in the CCTV footage and stated his role in the alleged crime, then I am of the opinion that the trial court has not committed any error in summoning the revisionist to face trial like other accused persons. Hon'ble Apex Court has approved of relying upon

deposition which has not suffered cross-examination for the purpose of invoking Section 319 Cr.P.C.

13. The upshot of the above discussion is that a more than prima facie case has been made out against the revisionist to invoke Section 319 of the Cr.P.C. and summon him as an additional accused to face the trial. Learned counsel for the revisionist failed to show that the revisionist has been summoned in casual and cavalier manner. Hence, I find no reason to interfere with the impugned order.

14. Consequently, the present Criminal Revision fails and is hereby dismissed. Interim order, if any, stands vacated.

15. It is made clear that any observation made by this Court is only for the purpose of deciding the present revision and the same shall not prejudice the trial court in any manner.

N.S. DHANIK, J.