

Neutral Citation No. - 2024:AHC:3954

Reserved on: 10.10.2023

Delivered on: 09.01.2024

In Chamber

Case :- CRIMINAL REVISION No. - 2098 of 2021

Revisionist :- Priyanka Mall @ Mahima

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Shashi Ranjan Srivastava

Counsel for Opposite Party :- G.A.,Manoj Kumar Maurya

Hon'ble Ram Manohar Narayan Mishra,J.

1. Heard learned counsel for the revisionist, learned counsel for respondent no. 2 and learned AGA for the State.
2. By means of instant criminal revision, revisionist has assailed the impugned order dated 10.8.2021 passed by learned Additional District and Sessions Judge, Fast Track Court No. 1, Deoria by which the learned Judge has dismissed the application 131 Kha under section 319 Cr.P.C. in Session Trial No. 134 of 2018 (State vs. Ramkeshwar and others), under Section 364 IPC for summoning the respondent no. 4, Satendra @ Santosh Mall as conspirator to face trial with the accused, respondent nos. 2 and 3, who are already facing trial.
3. Factual matrix of the case in brief is that the informant/revisionist lodged F.I.R. at P.S. Kotwali on 2.10.2012 at 6:25 hours stating therein that she is resident of village Parwa Tarwa (Parsia Mall), P.S. Kotwali, Deoria. Her uncle Santosh Mall @ Satendra Mall has got executed a fraudulent sale deed of property of her father in the name of his wife. She had gone to the court of SDM, Deoria in connection with that sale deed and after getting her statement recorded, she came to Kotwali. Her father went to Tehsil from there and she left for her village. When she reached near overbridge, her co-villagers Ramkeshwar Chauhan and Sambha Bhartiya offered her lift on their motorcycle and assured her that they will leave her at her village. As they were also going on same route, she sat at pillion of the motorcycle on their request. However, she noticed on the way that instead of taking her towards village, they were going to Kasaya road and when she asked as to why they had changed the route, they stated that they were taking her away from the village as her uncle has given

money to them for her murder. They stopped the motorcycle near Ranchhor Kuti and consumed liquor. She anyhow get herself rescued from the clutches and run towards her village by shouting for help whereupon Gram Pradhan and other persons assembled there and caught one accused and other succeeded to escape from the place. FIR was lodged against Ramkeshwar and Sambha Bhartiya.

4. The victim, in her statement under section 161 Cr.P.C., has stated that Ramkeshwar was caught by the public at around 7:30 pm on 1.10.2012 but Sambha Bhartiya escaped from the place. IO also recorded statement of Durgesh Mall, constable Omkar Nath Tiwari and other witnesses during investigation. This fact surfaced during investigation that Ashok Mall, father of the victim is two brothers. The other is Satendra @ Santosh Mall, the proposed accused Santosh Mall got disputed sale deed executed in the name of his wife Savita which was strongly opposed by the victim and her family and they had gone to the court of SDM on the day of incident to get their statement recorded alongwith number of co-villagers in protest of this act of respondent no. 4. The victim was abducted on the way by the co-accused who are already facing trial. The allegations against the respondent no. 4 are that he conspired with named co-accused persons to get the victim abducted who was to be killed subsequently but she got narrow escaped from the clutches of perpetrators of crime.

5. On commencement of trial, evidence of PW-1 Priyanka Mall, PW-2 Durgesh, PW-3 Tribhuvan was recorded who supported the FIR version in their testimony. The informant moved an application under section 319 Cr.P.C. before the trial court to summon Satendra @ Santosh Mall to face trial together with accused Ramkeshwar and Sambha who are already facing trial in the case. He has been attributed role of chief conspirator in the offence.

6. Learned court below dismissed the application under section 319 Cr.P.C. with observations that proposed accused Satendra @ Santosh is not named in the FIR. No particulars are disclosed during evidence that who has conspired for kidnapping and murder of the informant alongwith co-accused persons and as to how she got rescued herself during course of evidence. It is also not clear that whether there is any evidence that any money (Supari) paid by the proposed accused to co-accused. The evidence required to summon the proposed accused in exercise of power under section 319 Cr.P.C. is not of such quality that it is of higher degree than that is required for framing of charge. The only fact with regard to uncle of the victim has

emerged in the FIR that kidnappers had told the victim that her uncle has given money to kill her and same fact has been narrated by her in her statement as PW-1 during trial. No cogent evidence is found on record with regard to third person Satendra @ Santosh which could justify his summoning to face trial in exercise of power under section 319 Cr.P.C.

7. Learned trial court has dismissed the application under section 319 Cr.P.C. with above observations. Feeling aggrieved by the impugned order the victim / informant has filed present revision with prayer to set aside the impugned order and pass appropriate order in the case with regard to summoning of respondent no. 4.

8. Learned counsel for the revisionist pressing the ground taken in present revision submitted that uncle of victim has falsely executed the sale deed in favour of his wife on behalf of her father and for that reason she went to get her statement recorded before the SDM Deoria alongwith her mother and father and after giving her statement she left for her home. Two co-accused persons Ramkeshwar and Sambha met her on the way to her village and offered ride on their motorcycle and they also assured her to drop her at the village. However, they changed the route and when she asked the reasons for that they told her that her uncle has given money to kidnap and kill her. The victim has supported her FIR version in the statement under section 161 Cr.P.C. and statement recorded during trial. She has disclosed the name of her uncle in the statement under section 161 Cr.P.C. and further in statement recorded during trial as PW-1. The version of PW-1 is corroborated by the statement of PW-2 and PW-3 who has stated in their statement that they are co-villagers of the victim. PW-3 has stated that father of the victim is of feeble minded person and taking benefit of that the respondent no. 4 got sale deed executed in the name of his wife. The victim and co-villagers had appeared before the SDM Deoria in protest of this act of respondent no. 4 who got sale deed of the land of father of victim executed by playing fraud. PW-2 and PW-3 left for the village after meeting SDM by riding motorcycle. They had seen that their co-villagers Ramkeshwar and Sambha were also riding motorcycle and going towards the village. They asked victim to take ride on their bike and assured her to drop her in the village but the subsequently she came to know that instead of taking village, she was taken to Ranchhor Kuti. The accused intended to kill her, however, she got herself rescued and one of them Ramkeshwar

was arrested by the villagers and taken to police station where victim was also present.

9. Per contra, learned counsel for respondent no. 2 and learned AGA submitted that there is no cogent evidence on record which could form satisfaction of the court below to exercise of its power under section 319 Cr.P.C. to summon the respondent no. 4 as accused to face trial with respondent no. 2 and 3 who are already facing trial. The impugned order is prompted by reasoned and speaking order. There is no infirmity or illegality in the impugned order whereby learned trial court has dismissed the application under section 319 Cr.P.C. moved by the revisionist/ informant.

10. Learned counsel for respondent no. 2 further submitted that even no time of occurrence is mentioned in the FIR except the version of victim that co-accused had told her during course of kidnapping that they were bribed by her uncle to kill her. There is no independent evidence against the respondent no. 4. The disputed sale deed executed in favour of wife of respondent no. 4 has already been challenged by the parents of the victim before the civil court by instituting Civil Suit as OS No. 713 of 2012 (Ashok and another vs. Savita Devi) which is pending in the court of Civil Judge (SD) court no. 18, Deoria and competent court has to decide regarding as to whether the disputed sale deed is fraudulent. Ashok Kumar, father of the victim has assailed the sale deed and sought his cancellation by claiming him as feeble minded whereas in said civil suit itself he has filed an affidavit to the effect that he is healthy and seeks to prosecute the suit personally. There is no particulars of offer or payment of any money by respondent no. 4 to accused persons who are already facing trial as contract money to kill or kidnap the victim. There is enmity of litigation between respondent no. 4 and PW-3 Tribhuvan and he is being implicated in the case due to village party bandi.

11. The stand of the accused persons who are facing trial, is that they were implicated in the offence at the behest of Gram Pradhan Anil Mall who was having enmity with previous Pradhan Neelamber who is brother of present accused Sambha Bhartiya. Neelamber had also visited the office of SDM on the date of incident.

12. Learned court below while rejecting the application placed reliance on the judgement of Hon'ble Apex Court in **Shiv Prakash Mishra vs. State of UP, 2019(4) CCSC 1974(SC)**, wherein, Hon'ble Supreme Court placed reliance on its Constitution Bench judgement

in **Hardeep Singh vs. State of Punjab (2014) 3 SCC 92** and **Brijendra Singh vs. State of Rajasthan, (2017) 7 SCC 706** wherein it was held that power under Section 319 Cr.P.C. has to be exercised by the trial court sparingly, only on the existence of compelling reasons. Provision of Section 319 Cr.P.C. is being reproduced as under:

- (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—
 1. the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;
 2. 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.

13. Hon'ble Apex Court in Shiv Prakash (supra) has held as under:-

“9. The standard of proof employed for summoning a person as an accused person under [Section 319](#) Cr.P.C. is higher than the standard of proof employed for framing a charge against the accused person. The power under [Section 319](#) Cr.P.C. should be exercised sparingly. As held in [Kailash v. State of Rajasthan and another](#) (2008) 14 SCC 51, “the power of summoning an additional accused under [Section 319](#) Cr.P.C. should be exercised sparingly. The key words in Section are “it appears from the evidence””any person””has committed any offence”. It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under [Section 319](#) Cr.P.C. would be used by the court.”

10. As held by the Constitution Bench in Hardeep Singh (supra), the power under [Section 319](#) Cr.P.C. is discretionary and is to be exercised sparingly which reads as under:-

“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.”

11. The above view was followed in Brijendra Singh as under:-

“13. In order to answer the question, some of the principles enunciated in Hardeep Singh case (2014) 3 SCC 92 may be recapitulated: However, since it is a discretionary power given to the court under [Section 319](#) CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

14. In present case motive has been attributed to respondent no. 4 that he had got sale deed executed in favour of his wife through father of the victim, of his property, which was a fraudulent transaction and victim and many co-villagers alongwith Gram Pradhan Nilamber Singh had visited the office of SDM to lay their protest. The victim was allured by present accused persons for being ride on their motorcycle to travel for journey to her village. However, she was taken to other route and alleged perpetrators said that they were bribed by her uncle to kill her, however, she got herself rescued anyhow and one of the kidnappers was chased and caught by the villagers. She has nowhere stated in FIR regarding presence of PW-2 and PW-3 at the time of her kidnapping. The only evidence laid against respondent no. 4 is that perpetrators of offence had told the victim in course of her kidnapping that they were bribed by her uncle to kill her.

15. The allegation with regard to complicity of respondent no. 4 in present case as conspirator is based on alleged extra-judicial confession of co-accused persons before the victim during course of her kidnapping to the effect that they were bribed by her uncle to kill her. Motive has also been attributed to respondent no. 4 by the victim and witnesses as he had got a sale deed executed through father of the victim allegedly in a fraudulent manner, which was objected by the victim and her family members and a representation was made to this effect before the SDM. PW-2 and PW-3 have nowhere stated that accused persons had made any extra-judicial confession regarding their complicity in the offence or involvement of respondent no. 4 before them. They have only deposed before the court that they came to know that accused Ramkeshwar and Sambha had stated that they were bribed by respondent no. 4, Satendra @ Santosh to kill the victim.

16. Insofar as extra-judicial confession is concerned, it is treated a very weak piece of evidence and has to be received with care and caution, it can be relied upon only when it is consistent, clear and convincing. To use extra-judicial confession as evidence, the court requires some materials independent or satisfactory corroboration. It should not suffer from any material discrepancy and inherent improbabilities. There has been consistent view of various High Courts in this regard that confession of co-accused could be used solely in a corroborative capacity and not itself a basis of conviction. Hon'ble Supreme Court in **Subramanya vs. State of Karnataka, 2022 Liv-law (SC) 88** recently held that extra-judicial confession of co-accused should not be reduced as substantive evidence. Confession of co-accused could be used only in respect of evidence and could not be made foundation of conviction.

17. Hon'ble Supreme Court in **Hardeep Singh (supra)** settled the legal position that crucial test, which must be implied while summoning a person as additional accused, in exercise of power under section 319 Cr.P.C., is to find out more than a prima facie case against the accused as exercised at the time of framing of charge but falls short of satisfaction to the effect that evidence if unrebutted would lead to conviction.

18. Above view has been reiterated by the Apex Court in **Jitendra Mishra vs. State of U.P., (2023) 7 SCC 344** as well as in **Priyanka Mishra vs. State of U.P., 2023 (SCC online) SC 978**. Section 30 of

Evidence Act deals with confession of a co-accused, which provides as under:-

“Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.”

19. On perusal of this provisions it appears that it is discretionary for the court to take into consideration the confession of co-accused while dealing with case of concerned person as well as against the person, who is maker of such confession. Therefore, it is mandatory for the court to take into consideration the confession of co-accused in every case. The provision is enabling in nature. In recent judgement Hon’ble Supreme Court in **Moorthy vs. State of Tamilnadu** in Criminal Appeal No. 975 of 2011 observed in its judgement dated 18.8.2023 as below:-

“Generally, it is a weak piece of evidence. However, a conviction can be sustained on the basis of extra judicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the 1 (2011) 11 SCC 111 2 (2013) 12 SCC 383 3 2023 SCC OnLine SC 259 CrI.A.No.975 of 2011 person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra judicial confession is corroborated by other evidence on record, it acquires more credibility.”.

20. With foregoing discussion and considering the rival submissions of learned counsel for the parties as well as material on record including the impugned order, I find no infirmity or illegality in the impugned order passed by the court below while rejecting the application under section 319 Cr.P.C. moved by the revisionist to summon the respondent no.4 as accused to face trial together with accused, who are already facing trial. The parameters laid down by Hon’ble Supreme Court for invoking power under section 319 Cr.P.C. in Hardeep Singh (supra), is not fulfilled by facts of this case in respect of respondent no. 4. There is no cogent and strong evidence

against the respondent no. 4 to invoke power under section 319 Cr.P.C. available to the trial court. There was no prima facie material and evidence for satisfaction of the court below that there was more than prima facie case as exercised at the time of framing of charge but short of satisfaction to the extent that evidence if goes unrebutted would lead to conviction. Revision devoid of merits and deserves to be dismissed.

21. Accordingly, the instant revision is dismissed with above observations.

Order Date :- 09.01.2024

Dhirendra/