[2025] 3 S.C.R. 1431 : 2025 INSC 431

Akhilesh
v.
State of Uttar Pradesh & Ors.

(Criminal Appeal No. 1758 of 2025)

28 March 2025

[Sudhanshu Dhulia and K. Vinod Chandran, JJ.]

Issue for Consideration

Whether the High Court was justified in setting aside the trial court's summoning order.

Headnotes†

Code of Criminal Procedure, 1973 – s.319 – Summoning of the assailants to face trial – Dispute over the boundary of agricultural field between the parties – Four persons, including respondent no.2 and 3, shot dead the victim – FIR filed by the appellant-victim's son – Respondent no.2 and 3 named in the FIR but not named in the chargesheet as accused – Chargesheet was filed u/ss.302, 504 and 506 IPC against the other two, while a final report was filed in relation to respondent nos.2 and 3 – Trial court, on basis of the testimonies of the prosecution witnesses, summoned respondent nos.2 and 3 to face trial – Challenge to – High Court setting aside the trial court's summoning order – Correctness:

Held: Powers u/s.319 are wide and if, during the trial or inquiry, any person, who appears to be involved in the commission of a crime but not brought before the Court as an accused, can be summoned by the Court to face the trial and such a person can be tried together with the other accused being tried before the Court – Respondent nos.2 and 3 were named in the FIR but were not named in the chargesheet as accused – After recording the depositions of prosecution witnesses which inspired the confidence of the trial court, these respondents were summoned to face trial u/s.319 – Doubts raised on the credibility of the prosecution witnesses, should not be gone into at this stage – High Court erred in setting aside the well reasoned order of trial court by giving undue weightage to the s.161 statements of some witnesses – When the trial court, on the strength of the testimonies of prosecution witnesses, has summoned respondent nos.2 and 3 to face trial, then the decision of the trial court does not merit interference in the light of the

evidence before the Court – Thus, the impugned order set aside and that of the trial court is restored – s.161. [Paras 8-13]

Case Law Cited

Rajesh v. State of Haryana **[2019] 8 SCR 187 : (2019) 6 SCC 368;** *S. Mohammed Ispahani v. Yogendra Chandak* **[2017] 10 SCR 29 : (2017) 16 SCC 226 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Summoning order; Dispute over the boundary of agricultural field; Chargesheet; Final report; Trial or inquiry; Testimonies of prosecution witnesses; Credibility of the prosecution witnesses; Undue weightage to s.161 CrPC statements of witnesses.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1758 of 2025

From the Judgment and Order dated 08.07.2024 of the High Court of Judicature at Allahabad in CRLR No. 4486 of 2023

Appearances for Parties

Advs. for the Appellant:
Divyesh Pratap Singh, Ms. Shivangi Singh, Amit Sangwan, Jay Veer Yadav, Ashu Bhindwar, Suraj Prakash Singh, Vikram Pratap Singh.

Advs. for the Respondents:
Ms. Sakshi Kakkar, Mrs. Phsephalika Srivastava, Ms. Pratiksha Tripathi, Chand Qureshi, Roshan Lal, Ashish Dixit, Keshav Dev, Ms. Monika Sharma, Vijay Kumar.

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. The appellant before this Court has challenged the order dated 08.07.2024 passed by the High Court of Judicature at Allahabad

where criminal revision filed by respondent no.2 (Krishna Pal Singh) and respondent no.3 (Sanju @ Sanjay) was allowed and the Trial Court's order dated 07.07.2023, summoning the above respondents under Section 319 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), was set aside.

3. The brief facts of the case are as follows:

   (a) On 15.11.2021, the appellant filed an FIR (No.349/2021) at P.S Dataganj, Badaun (Uttar Pradesh) under Sections 302, 504 and 506 of IPC, alleging that four persons, namely Gajendra, Mahendrapal, Krishnapal (respondent no. 2) and Sanju (respondent no. 3) shot his father (deceased) dead due to a dispute over the boundary of an agricultural field.

   (b) The chargesheet was filed under Sections 302, 504 and 506 of IPC against Gajendra and Mahendrapal, while a final report was filed in relation to Respondent nos. 2 and 3.

   (c) Based on the depositions of PW-1 and PW-2, who stated that respondent nos.2 and 3 were amongst the assailants, the Trial Court, by its order dated 07.07.2023, exercised its powers under S.319 CrPC and summoned respondent nos.2 and 3 to face the trial. This order of the Trial court was challenged before the High Court in revision.

   (d) Vide impugned order dated 08.07.2024, the High Court has allowed the criminal revision filed by respondent nos.2 and 3, setting aside the Trial Court's order dated 07.07.2023. Aggrieved by the same, the appellant-complainant is before us.

4. We heard both sides and perused the material on record.

5. The Post-Mortem of the deceased was conducted on 16.11.2021 i.e. the day after the incident. In the Post-Mortem report, there is mention of three gunshot entry wounds corresponding to three gunshot exit wounds. There is no doubt that the deceased was shot dead in broad daylight on 15.11.2021. The FIR, which was lodged based on information given by appellant, mentions that four persons, including respondent nos.2 and 3, fired upon the deceased, and ran away when one Santosh Kumar and Prithviraj raised an alarm.

6. During the trial, the appellant was examined as PW-1. He deposed that the deceased and one of the accused (Gajendra) had some

quarrel over the boundary of their agricultural field. He further deposed that when the deceased was returning from the field on his motorcycle, the four accused, including respondent nos.2 and 3, surrounded and opened fire on the deceased. As per PW-1, he had seen the incident from a distance.

7. PW-2 (Prithviraj), who is a cousin of the deceased, was mentioned as an eyewitness in the FIR. He too deposed that on that fateful day he was at his field which is near the spot of the incident and saw the four accused, including respondent nos.2 and 3, fire on the deceased.

8. Based on the above depositions, it is our considered opinion that the Trial Court rightly summoned respondent nos.2 and 3 under Section 319 CrPC to face the trial. In its summoning order, Trial Court further noted that one Santosh, who was also named in the FIR as an eyewitness, had stated in his Section 161 CrPC statement that all four persons named in the FIR were present at the spot. The Trial Court observed that the police erred in exonerating Krishnapal and Sanju @ Sanjay (respondent nos.2 and 3, respectively) because some witnesses in their Section 161 CrPC statements said that these two were present at the Shiv temple of the village in connection with a funeral of another villager, on the day of the incident.

9. Within a few hours of the incident, the FIR was lodged in which respondent nos.2 and 3 have been named as accused and the eyewitnesses have also deposed before the Court, regarding the presence of these two persons at the spot. Under these circumstances, we see no reason why respondent nos.2 and 3 should not face the trial.

10. This Court in ***Rajesh v. State of Haryana,*** **(2019) 6 SCC 368** in regard to Section 319 CrPC had noted that:

> *"(i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can*

be summoned under Section 319 CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial."

(emphasis supplied)

Further, ***Rajesh (Supra)*** took note of this Court's judgment in ***S. Mohammed Ispahani v. Yogendra Chandak,*** **(2017) 16 SCC 226**, where this Court had observed as follows:

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

Thus, powers under Section 319 CrPC[1] are wide and if, during the trial or inquiry, any person, who appears to be involved in the commission

1 **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 the 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.

of a crime but not brought before the Court as an accused, can be summoned by the Court to face the trial and such a person can be tried together with the other accused being tried before the Court.

11. In the present case, respondent nos.2 and 3 were named in the FIR but they were not named in the chargesheet as accused. After recording the depositions of PW-1 and PW-2 which inspired the confidence of the Trial Court, these respondents were summoned to face trial under Section 319 CrPC. The learned counsel for respondent nos. 2 and 3 would argue that credibility of PW-1 is in doubt since PW-1 was not present at the spot at all and thus, was not an eyewitness to the incident. Further, doubts have been raised on the credibility of PW-2 stating that he is a close relative of the deceased. However, we are of the view that this Court, at this stage, cannot go into these details as these are the issues that would be determined during the trial.

12. In our considered view, the High Court erred in setting aside the well reasoned order of Trial Court by giving undue weightage to the Section 161 CrPC statements of some witnesses. When the Trial Court, on the strength of the testimonies of PW-1 and PW-2, has summoned respondent nos.2 and 3 to face Trial, then this decision of the Trial Court does not merit interference in the light of the evidence before the Court.

13. Considering all the facts and circumstances of the case, we allow this appeal and hereby set aside the impugned order dated 08.07.2024 and consequently, the Trial Court's order dated 07.07.2023 is restored.

14. We also make it clear that any observations made hereinabove shall not have any bearing on the trial, as these are only for the disposal of the present limited issue.

15. Pending application(s), if any, stand(s) disposed of.

16. Interim order(s), if any, stand(s) vacated.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Nidhi Jain