

Neutral Citation No. - 2025:AHC:128679

**Reserved on- 18.07.2025**

**Delivered on-01.08.2025**

**Court No. - 82**

**Case :- CRIMINAL REVISION No. - 6196 of 2023**

**Revisionist :- Monu Singh @ Dhirendra Singh**

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

**Counsel for Revisionist :- Satyendra Narayan Singh, Sharwan Kumar Tripathi**

**Counsel for Opposite Party :- G.A., Jitendra Pratap Singh, Sunil Vashisth**

with

**Case :- CRIMINAL REVISION No. - 6297 of 2024**

**Revisionist :- Vishwajeet Singh**

**Opposite Party :- State Of Up 3 And Others**

**Counsel for Revisionist :- Om Singh Rathaur, Rahul Yadav, Rajrshi Gupta**

**Counsel for Opposite Party :- G.A., Jitendra Pratap Singh, Sunil Vashisth**

**Hon'ble Sameer Jain, J.**

1. As both the revisions arose from the common impugned order dated 15.09.2023 passed by trial court in Special Session Trial No. 299 of 2015 relates to same FIR by which revisionists have summoned under Section 319 Cr.P.C., therefore, both the revisions are being disposed of by common order.

2. Heard Sri Satyendra Narayan Singh, learned counsel for the revisionist- Monu Singh @ Dhirendra Singh, Sri Rajrshi Gupta, learned counsel for the revisionist- Vishwajeet Singh, Sri Sunil Vashisth, learned counsel for O.P. No.2 and Sri Jhamman Ram, learned AGA for the State-respondent.

3. The instant revisions have been filed by the revisionists with the prayer to set aside the impugned order dated 15.09.2023 passed by Learned Additional District & Sessions Judge( Rape and POCSO Act)-3, Gorakhpur in Special Session Trial No. 299 of 2015 (State Vs. Suraj Singh) arising out of Case Crime No. 86 of 2015, under Sections 147, 376, 511, 294, 326-A, 302 IPC and 7/8 POCSO Act, Police Station- Sikriganj District-Gorakhpur, by which revisionists have been summoned under Section 319 Cr.P.C. and with further prayer to stay the effect and operation of aforesaid impugned order and to stay the further proceeding of aforesaid case.

**Brief facts of the case**

4. FIR of the present case was lodged on 27.06.2015 against revisionists and three others under Sections 147, 326, 376, 511 IPC and Section 18 Protection of Children from Sexual Offences Act and according to FIR, in the intervening night of 26/27.06.2015 at about 1:30 hours when O.P. No.2 on a shriek arrived inside the house then found that his daughter aged about 16 years was in burnt condition and she informed him that after crossing wall, revisionists and three others tried to commit rape upon her and when on her shriek, her elder sister Priyanka Shukla arrived at spot and raised alarm and when thereafter her mother also ran towards the place of incident then revisionists and other accused after pouring kerosene oil set fire upon her and ran away.

5. After registration of the FIR, investigation was commenced and during investigation, Investigating Officer recorded the statements of witnesses including statement of victim (younger daughter of O.P. No.2) under Section 161 Cr. P.C. and during investigation, her statement (dying declaration) was also recorded by Naib Tahsildar but subsequently during treatment she died. After investigation, however, charge sheet was filed against co-accused Suraj but against the revisionists, no charge sheet was filed.

6. During trial, O.P. No. 2, the informant of the case and her elder daughter i.e. elder sister of the deceased were examined by the trial court as P.W.-1 and P.W.-2 respectively and on the basis of their testimonies on the application of O.P. No. 2, trial court summoned the revisionists under Section 319 of Cr.P.C. to face trial along with other accused. Hence these revisions.

**Submission advanced on behalf of revisionists**

7. Learned counsels for the revisionists submitted that it is a case in which, on the basis of false allegations, revisionists were made accused by O.P. No. 2 in the FIR of the present case.

8. They further submitted that from the FIR and statements of witnesses recorded under Section 161 Cr.P.C., it is apparent that no one could see the revisionists and other accused while they were allegedly trying to commit rape upon the deceased and setting fire on her and entire prosecution story since beginning i.e. from the FIR is based on hearsay evidence i.e. alleged information given by the victim since deceased.

9. They further submitted that, however, when the statement of victim since deceased was recorded by the Investigating Officer under Section 161 Cr.P.C., then she disclosed the name of revisionists and other accused and stated that they firstly tried to commit rape upon her and thereafter set fire upon her but when her dying declaration was recorded by Naib Tahsildar then she, although,,disclosed the name of the revisionists but not with regard to the alleged incident of attempt to commit rape and setting fire and from her dying declaration recorded by the Naib Tahsildar, it reflects, for the incident of attempt to commit rape and setting fire, she disclosed the name of only two accused namely Ritesh and Suraj and as her dying declaration recorded by Naib Tahsildar is contrary to her alleged statement recorded by the Investigating

Officer under Section 161 Cr.P.C., therefore, her statement recorded by Investigating Officer cannot be relied. They further submitted that law is settled dying declaration recorded by Naib Tehsildar is having more sanctity than the statement recorded by Investigating Officer.

10. They further submitted that during investigation when forensic team re-constructed the scene of incident then they found that alleged manner of incident does not appear to be probable and they created doubt on the alleged incident and after considering the entire material available on record including report of forensic team Investigating Officer found that revisionists have been falsely made accused in the present matter and, therefore, charge sheet has not been filed against them.

11. They further submitted that during trial when informant and elder sister of the deceased were examined as P.W.1 and P.W.2 respectively then, however, P.W.1 i.e. informant of the case reiterated the version of the FIR and stated that when after hearing the shriek he arrived at spot then deceased informed him that revisionists and others tried to commit rape upon her and thereafter they set fire upon her but statement of P.W.2 i.e. elder sister of the deceased is contrary to her earlier statement recorded during investigation under Section 161 Cr.P.C.. They further submitted that from her statement recorded before the trial court, it reflects, in this statement she started claiming herself as an eye-witness and stated that when after hearing shriek of the deceased, she arrived at spot then witnessed that revisionists and other accused were present and they were trying to commit rape upon her and thereafter they set fire on her and ran away but in her statement recorded under Section 161 Cr.P.C., she categorically stated that when she arrived at spot, then her sister i.e. deceased informed her that revisionists and other accused tried to commit rape upon her and thereafter

they set fire upon her and ran away and in this statement, she did not claim herself to be eye-witness of the alleged incident and, therefore, statements of both P.W.1 and P.W.2 were neither reliable nor sufficient to summon to revisionists under Section 319 Cr.P.C. Thus, court concerned committed illegality while summoning the revisionists under Section 319 Cr.P.C.

12. They further submitted that even while passing the impugned order court concerned failed to consider the evidence collected by Investigating Officer during investigation. They further submitted that summoning of revisionists under Section 319 Cr.P.C. after ignoring other material available on record collected by I.O. during investigation is wholly illegal.

13. They further submitted that law is by far now settled that summoning of any additional accused under Section 319 Cr.P.C. is an extraordinary power and the same should be exercised sparingly only in appropriate and desirable cases. They further submitted that at the time of passing summoning order under Section 319 Cr.P.C., only prima facie case against the proposed accused is not sufficient and material must be of such a nature which indicates towards more than prima facie case but court concerned failed to consider this settled legal position and wrongly summoned the revisionists under Section 319 Cr.P.C.

14. They placed reliance upon the judgment of the Apex Court passed in case of **Brijendra Singh and others Vs. State of Rajasthan (2017) 7 SCC 706** and submitted that in this case The Apex Court after considering the judgment of the Constitutional Bench of the Apex Court passed in case of **Hardeep Singh Vs. State of Punjab and others MANU/SC/0025/2014 : (2014) 3 SCC 92** categorically observed that while passing an order of summoning under Section 319 Cr.P.C. trial court is duty bound to look whether there is much stronger evidence than prima facie case

or not. They further submitted that in this case The Apex Court also criticized the trial court for ignoring evidence collected by I.O. during investigation while summoning accused under Section 319 Cr.P.C.

15. They further submitted that in present case, from the report of the forensic team, it is apparent that the manner in which incident is said to have taken place, cannot take place and the report of the forensic team creates serious doubt upon the prosecution case and as there was no reliable evidence against the revisionists, therefore, merely on the basis of hearsay evidence and on the basis of contrary statement of P.W.2, it was not desirable for the trial court to exercise the power under Section 319 Cr.P.C., therefore, impugned order dated 15.09.2023 passed by the court concerned is illegal and is liable to be set aside.

**Submissions advance on behalf of State and Opposite Party No.2**

16. Per contra, learned AGA as well as learned counsel for O.P. No.2 vehemently opposed the prayer and submitted that there is no illegality in the impugned order dated 15.09.2023 passed by the court concerned and court concerned rightly summoned the revisionists under Section 319 Cr.P.C. in the present matter.

17. They further submitted that law is settled, during trial after recording some statements if trial court is of the view that a person, who is although not charge sheeted, appears to commit the offence then trial court can summon him under Section 319 Cr.P.C. They further submitted that no doubt for summoning under Section 319 Cr.P.C. mere suspicion is not sufficient and more than prima facie case should be made out for summoning of an additional accused under Section 319 Cr.P.C. but in case at hand, there is strong

evidence against the revisionists, which shows that they committed the alleged crime along with others.

18. They further submitted that even during investigation when statement of the deceased before her death was recorded by the Investigating Officer under Section 161 Cr.P.C. then she in her statement also categorically stated against the revisionists and her statement recorded by the Investigating Officer during investigation is her dying declaration. They further submitted that even before death of the deceased her dying declaration was also recorded by Naib Tehsildar and in her dying declaration she disclosed the name of the revisionists and others and stated that on 22.06.2015 revisionists and three others started abusing her parents and thereafter on call, although, police arrived but due to intervention of the village pradhan, they were released and with regard to present incident, she further stated that in the intervening night of 25/26.06.2015 at about 12:30 hours above accused persons i.e. revisionists and others entered in her room and set fire upon her and ran away and, therefore, from her dying declaration recorded before the Naib Tehsildar also it reflects that revisionists and three others entered in her room and set fire upon her and it cannot be said that she did not disclose the name of revisionists in her dying declaration recorded by Naib Tehsildar.

19. They further submitted that in spite of two dying declarations of the deceased, one recorded by Naib Tehsildar and one recorded by Investigating Officer, final report has been submitted in favour of the revisionists, which should not be filed.

20. They further submitted that when the statements of O.P. No.2 and his elder daughter were recorded before the trial court then they categorically stated against the revisionists and from their statements, it reflects, there is strong evidence against the

revisionists and more than prima facie case is made out against them.

21. They further submitted that as from the material collected by Investigating Officer during investigation and statements of the witnesses recorded during trial more than prima facie case is made out against revisionists and there is strong evidence against them, therefore, court concerned rightly summoned them under Section 319 Cr.P.C.

22. They further submitted that merely on the basis of report submitted by forensic team neither testimony of a witness nor dying declarations of the deceased at this initial stage can be disbelieved.

23. They further submitted that, therefore, there is no illegality in the impugned order and both the revisions are devoid of merits and are liable to be dismissed.

### **Analysis**

24. I have heard both the parties and perused the record of the case.

25. From the record, it reflects, however revisionists were named in the FIR but during investigation, their involvement was found false by the Investigating Officer and final report was submitted in their favour but during trial after recording the statements (examination-in-chief as well as cross-examination) of P.W.1 and P.W.2 i.e. O.P. No.2, the informant of the case and his elder daughter respectively, they were summoned under Section 319 Cr.P.C.

26. As per Section 319 Cr.P.C. if during trial, it appears, from the evidence that a person not being accused has committed any offence for which such person could be tried along with the



accused then trial court can summon him. The law with regard to summoning of an additional accused under Section 319 Cr.P.C. is no more *res integra*. The Constitution Bench of the Apex Court in case of **Hardeep Singh(supra)** has held that courts should not exercise their power under Section 319 Cr.P.C. in routine manner and for summoning of an additional accused under Section 319 Cr.P.C. more than prima facie case must be made out against him. The Apex Court in case of **Brijendra Singh(supra)**, on which reliance was placed by the learned counsel for the revisionists, after placing reliance upon the judgment of Constitution Bench of the Apex Court passed in case of **Hardeep Singh(supra)** opined that while summoning a person under Section 319 Cr.P.C. evidence collected by Investigating Officer during investigation should not be completely ignored. Therefore, on the basis of evidence available on record including material collected by Investigating Officers during investigation, it is to be analysed, whether more than prima facie case is made out against the revisionists, which indicates that they have committed the alleged offence.

27. From perusal of the material available on record, it reflects, during investigation Investigating Officer also recorded the statement of deceased before her death under Section 161 Cr.P.C. and from its perusal, it reflects, in her statement, she categorically stated against the revisionists and stated that they along with others entered in her room in the night while she was sleeping and tried to commit rape upon her and thereafter set fire upon her. Record also suggests that before her death her statement was also recorded by Naib Tehsildar and from its perusal, it reflects, before Naib Tehsildar, she stated that on 22.06.2015 revisionists and three others abused her parents and thereafter police arrived and due to intervention of village pradhan subsequently they were released. She further stated, above mentioned accused i.e. revisionists and

three others in the intervening night of 25/26.06.2015 at about 12:30 hours after entering in her room made attempt to commit rape upon her and thereafter set fire upon her. Both the above statements of the deceased are her dying declarations, however, sanctity of her statement recorded by Naib Tehsildar is more than her statement recorded by I.O.

28. In both the above dying declarations of the deceased, one recorded by Investigating Officer under Section 161 Cr.P.C. and another recorded by Naib Tehsildar, she disclosed the name of the revisionists and from her both the dying declarations complicity of the revisionists is quite apparent but it reflects, merely as forensic team after recreating the crime scene opined that the manner in which incident is said to have occurred cannot be occurred, Investigating Officer submitted final report in favour of the revisionists. In view of this Court after ignoring the dying declarations of the deceased, it was not proper for the Investigating Officer to exonerate the revisionists on the basis of report of forensic team.

29. Further, however, from the statements of the other witnesses recorded during investigation including the statements of informant and elder sister of the deceased, it reflects, their statements are based on information given by the deceased and they themselves did not witness the real incident but the alleged information given by the deceased to them finds corroboration from her dying declarations. The veracity of the statements of the witnesses and dying declarations of the deceased could only be adjudicated by trial court during trial.

30. Therefore, from the material collected by I.O. during investigation, it cannot be said that revisionists did not commit alleged offences but in spite of that I.O. did not file charge sheet against them.

31. Further, when during trial O.P. No.2 i.e. informant of the case and elder sister of the deceased were examined as P.W.1 and P.W.2 then it reflects, P.W.1 (O.P. No.2) reiterated the version of the FIR and his statement recorded during investigation under Section 161 Cr.P.C. and stated that when he arrived at spot then his daughter i.e. deceased informed him that revisionists and others tried to commit rape upon her and thereafter set fire upon her. However, as far as testimony of P.W.2 is concerned, from her testimony, it reflects, before trial court she started claiming herself to be an eye-witness and stated that when she arrived at spot then witnessed that revisionists and others were trying to commit rape upon the deceased and thereafter they ran away after setting fire upon her, therefore, it appears, her statement is contrary to her earlier statement recorded during investigation under Section 161 Cr.P.C. in which she did not claim herself to be eye-witness and only stated that when she arrived at spot then her sister i.e. deceased informed her that revisionists and others tried to commit rape upon her and set fire upon her but from the record, it reflects, during investigation when Investigating Officer made subsequent query from her and asked some particular question from her then she stated to Investigating Officer that she witnessed the incident and she also disclosed the name of the revisionists along with others.

32. In view of this Court, from the statements of P.W.1 and P.W.2 recorded before the trial court and material collected by I.O. during investigation, it cannot be said that there was no material available on record, on the basis of which, revisionists could be summoned under Section 319 Cr.P.C. rather it reflects, there was strong evidence that they have committed the alleged offence along with other accused and more than prima facie case was clearly made out against them.

33. Therefore, from the discussion made above, in view of this Court, trial court did not commit any illegality by summoning the revisionists under Section 319 Cr.P.C. and impugned order dated 15.09.2023 cannot be said to be illegal.

34. Accordingly, both the revisions are devoid of merits and are hereby **dismissed**

**Order Date :- 1.8.2025**

KK Patel