

**Court No. - 87**

**Case :-** CRIMINAL REVISION No. - 3142 of 2021

**Revisionist :-** Ram Kumar @ Tuntun

**Opposite Party :-** State of U.P. and Another

**Counsel for Revisionist :-** Akhilesh Singh, Yogendra Yadav

**Counsel for Opposite Party :-** G.A.

**Hon'ble Shekhar Kumar Yadav, J.**

Supplementary affidavit has been filed today, is taken on record.

Heard learned counsel for the revisionist and learned AGA for the State.

The instant revision has been filed for quashing the impugned judgment and order dated 27.10.2021 passed by learned Additional District & Sessions Judge, FTC II, Deoria in Session Trial No.201 of 2015 (State of U.P. vs. Lal Bahadur and others) arising out of Case Crime No.323 of 2015, under Sections 147, 148, 323/149, 302/149, 504, 506 IPC and Section 7 Criminal Law Amendment Act at Police Station Ikauna, District Deoria. Further prayer has been made to stay the effect and operation of the above mentioned case crime.

In short the prosecution story is that on 13.07.2015 at about 05.00 PM and first informant Ganesh and his father Ramdhari went in Harijan Basti where accused persons, namely, Daya Shankar Tiwari, Lal Bahadur, Ashok @ Bablu Yadav, Ram Kumar @ Tuntun, the revisionist, Gama, Veer Singh and Ram Pravesh @ Sonu armed with Bhala, Kudal, Rod, Hockey and Tamancha assaulted the informant and his father. It is further alleged that the accused revisionist Ram Kumar @ Tuntun have caused injuries upon the head of Ramdhari by using Kudal, as a result, he sustained serious injuries and fell down on the earth. The other accused, namely, Ashok @ Bablu, Lal Bahadur and Gama also assaulted the injured. Upon quarrelling, Smt. Tara Devi, the wife of injured Ramdhari Yadav and brother Ram Naresh and other villagers came at the spot and rescued the injured. Thereafter, the injured Ramdhari Yadav was taken to Government Hospital where he was referred to Deoria Government Hospital where the injured was declared dead.

Learned counsel for the revisionist has submitted that the incident took place on 13.07.2015 at about 5.00 PM whereas the impugned first information report has been lodged on 15.07.2015 at about 7.30 PM i.e after two days of the alleged incident. As per prosecution story, the revisionist and other co-accused persons have caused injury upon the head of deceased

by using Kudal, but as per postmortem report, the deceased has not received any head injury. He has further submitted that there is material contradiction in the statements of PW-1 and PW-2 but the court below ignoring the same has illegally passed the impugned summoning order, which cannot be justified. He has further submitted that during investigation, an application under Section 319 Cr.P.C. has illegally been filed by the witness, namely, Ram Naresh who happens to be the brother of the deceased who has no right. The court below has committed manifest error while summoning the revisionist and other accused persons, hence, the same is liable to be set aside.

Per contra, learned A.G.A. has vehemently opposed the prayer for quashing the impugned order dated 27.10.2021 and has submitted that the revisionist and other co-accused persons were named in the impugned first information report. The injured Ganesh Yadav in his statement has clearly stated that accused Shankar Tiwari, Lal Bahadur, Ashok @ Bablu Yadav, Ram Kumar @ Tuntun, the revisionist, Gama, Veer Singh and Ram Pravesh @ Sonu armed with Bhala, Kudal, Rod, Hockey and Tamancha assaulted his father. He has further stated that revisionist Ram Kumar @ Tuntun has caused injuries upon the head of his father by using Kudal, as a result, his father sustained serious injuries and fell down on the earth. The other accused, namely, Ashok @ Bablu, Lal Bahadur and Gama also assaulted his father. The alleged incident have been witnessed by PW-1 and PW-2, who have also supported the prosecution story. He has further submitted that the medical report of the deceased also supported the prosecution story, therefore, the court below has rightly summoned the revisionist and other accused persons, hence, the same does not suffer from any illegality or infirmity. In support of his contention, learned counsel for AGA has relied upon a judgment of Hon'ble the Supreme Court in the case of **Sartaj Singh Vs. State of Haryana & another [AIR 2021 SC 1513]**.

I have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record.

The scope and ambit of Section 319 Cr.P.C. have been elucidated in the case of **Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92** by the Hon'ble Apex Court. It has been held that, all that is required by the Court for invoking its powers under Section 319 Cr.P.C. is to be satisfied that from the evidence adduced before it, the person against whom no charge had been framed, but whose complicity appears to be clear, should be tried together with the accused. It has further been held that though under Section 319 (4) (b) Cr.P.C., the accused

subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge.

The trial court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned thus the court need not wait for the evidence of such witness to be tested by cross-examination. In case of **Sartaj Singh (supra)**, Hon'ble the Apex Court held thus:-

*"7. Applying the law laid down by this Court in the aforesaid decisions to the case of the accused on hand, we are of the opinion that learned Trial Court was justified in summoning the private respondents herein to face the trial as accused on the basis of the deposition of the appellant – injured eye witness. As held by this Court in the aforesaid decisions, the accused can be summoned on the basis of even examination-in-chief of the witness and the Court need not wait till his cross-examination. If on the basis of the examination-in-chief of the witness the Court is satisfied that there is a prima facie case against the proposed accused, the Court may in exercise of powers under Section 319 CrPC array such a person as accused and summon him to face the trial. At this stage, it is required to be noted that right from the beginning the appellant herein – injured eye witness, who was the first informant, disclosed the names of private respondents herein and specifically named them in the FIR. But on the basis of some enquiry by the DSP they were not chargesheeted. What will be the evidentiary value of the enquiry report submitted by the DSP is another question. It is not that the investigating officer did not find the case against the private respondents herein and therefore they were not charge sheeted. In any case, in the examination-in-chief of the appellant injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein – injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial."*

The aforesaid judgment in fact lay down very clearly that power under Section 319 Cr.P.C. can be exercised by Court against a person not named in First Information Report or no charge sheet is filed by police against him and the accused can be summoned only on the basis of examination-in-chief of witness and need not wait for cross-examination etc. With regard to degree of satisfaction of Court for summoning the accused under Section 319 Cr.P.C., Court has said that test are same as applicable for framing charge.

In view of the above facts and circumstances as well as

judgment cited above, I am of the considered opinion that the the observation of the trial court is one of the view that is possible in the circumstances, and this Court is also of the view that the view taken by the trial court is not based upon wrong appreciation of evidence.

On what has been said above, the order of the trial court dated 27.10.2021 does not suffer from any irregularity, illegality or impropriety. No interference is called for by this Court.

The revision fails and is hereby dismissed. The revision is, accordingly, **dismissed**.

No order as to costs.

**Order Date :- 18.4.2022**

Ajeet