

JUHRU & ORS.

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v.

KARIM & ANR.

(Criminal Appeal No.549 of 2023)

FEBRUARY 21, 2023

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[SURYA KANT AND J.K. MAHESHWARI, JJ.]

Code of Criminal Procedure, 1973 – s. 319 – Additional accused – Summoning of – Appeal filed by the father-in-law(appellant no.1), sister-in-law(appellant no.2), and brother-in-law(appellant no.3) of the deceased against the High Court judgment wherein the High Court summoned them u/s 319 of the CrPC, 1973 as additional accused – Earlier, respondent no. 1 (brother of the deceased woman) had filed an FIR u/s 304B, 498A, 406, 323 and 34 IPC against the husband of the deceased, the mother-in-law of the deceased, and the abovementioned appellants – The investigating agency did not find any incriminating material against the appellants, and a challan was filed only against the husband and the mother-in-law of the deceased – Thereafter, respondent no. 1 filed an application u/s 319 Cr.P.C. before trial Court to summon the appellants as additional accused – Trial Court dismissed the said application – Respondent no. 1 approached the High Court – The High Court summoned the appellants to face trial – Discontented with their summoning, the appellants filed appeal before the Supreme Court – Held: Power of summoning u/s. 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused – The procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial Court must evaluate the evidence against the persons sought to be summoned – In absence of any credible evidence, the power u/s.319 Cr.P.C. ought not to be invoked – In the instant case, the record reveals that appellant no.1 had asked respondent no.1 to spend 20 lakhs on marriage – Therefore, High Court summoning appellant no.1 satisfies the ingredients of s.319 Cr.P.C. – However, no credible evidence to connect the death of deceased with appellant nos.2 and 3.

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A **Partly allowing the appeal, the Court**

Held: 1. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a *prima facie* case is *sine qua non* to summon an additional accused. This Court may add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial *dictums* referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked. [Para 17][525-H; 526-A-C]

Hardeep Singh v. State of Punjab (2014) 3 SCC 92 :
2014 (2) SCR 1; *Sukhpal Singh Khaira v. The State of Punjab* (2023) 1 SCC 289 – relied on.

Case Law Reference

E	(2014) 2 SCR 1	relied on	Para 13, 15
	(2023) 1 SCC 289	relied on	Para 14, 16

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.549 of 2023.

F From the Judgment and Order dated 27.01.2020 of the High Court of Punjab and Haryana at Chandigarh in CRM-M No.40507 of 2018.

S. K. Verma, Atul Kumar, Abhimanyu Sharma, Ms. Deepali, Janmayjai Verma, Advs. for the Appellants.

G Deepkaran Dalal, Raunaq Dalal, Ashish Jhamb, Arun Kumar, Dr. Monika Gusain, Advs. for the Respondents.

The Judgment of the Court was delivered by

SURYA KANT, J.

H Leave Granted.

2. The instant Criminal Appeal originates from a judgment dated 27.01.2020 whereby the High Court of Punjab and Haryana at Chandigarh (in short 'High Court'), while setting aside the order dated 12.07.2018 passed by the Additional Sessions Judge, Nuh, has ordered the summoning of the Appellants under Section 319 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') as additional accused.

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A. FACTS

3. Briefly stated the facts are that FIR No. 270 dated 09.07.2017 was registered at Police Station Tauru, District Nuh under Sections 304B, 498A, 406, 323 and 34 of the Indian Penal Code, 1860 (hereinafter 'IPC') on the statement of Karim - Respondent No. 1 to the effect that the marriage of his deceased sister (Rukseena) was solemnised on 04.12.2016 with one Aamir. An Alto car, Rs.3 lakhs in cash, 3 kg of silver, 30 grams of gold, furniture and other household items were allegedly given to Aamir and his family members as dowry at the time of marriage. The family of Aamir comprised of Akhlma (mother), Juhru (father) – Appellant No.1, Sonam (sister) – Appellant No.2 and Rijwan (brother-in-law) – Appellant No.3. The complainant further alleged that the family of Aamir was dissatisfied with the dowry and subjected the deceased to continuous torture and harassment. Respondent No.1 and his family tried to settle the matter with Aamir and his family but all their efforts proved futile. Respondent No. 1 was telephonically informed on 09.07.2017 that the deceased had hung herself to death.

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4. The investigating agency did not find any incriminating material against the Appellants in the course of investigation and Challan was filed only against the husband and the mother-in-law of the deceased, who are now facing trial.

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5. During the trial, Respondent No. 1 stepped into the witness box as PW-1 on 01.03.2018 and reiterated the allegations levelled against all the accused persons, including the Appellants. Soon thereafter, Respondent No. 1 filed an application under section 319 Cr.P.C before the Trial Court to summon the Appellants as additional accused.

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6. The Trial Court dismissed the said application observing that the extraordinary power vested under section 319 Cr.P.C ought to be exercised only if the evidence adduced on record strongly indicates the possible involvement of the person(s) aimed to be prosecuted. The Trial

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A Court further opined that it did not appear from the deposition of Respondent No. 1 or from other material on record that the persons sought to be summoned had committed any offence for which they could be tried together with accused Aamir and Akhlima.

7. The aggrieved Respondent No. 1, approached the High Court under Section 482, Cr.P.C. and vide impugned order dated 27.01.2020 his petition was allowed and the appellants were summoned to face trial. The High Court observed that the FIR as well as the testimony of Respondent No. 1 during the trial revealed that the insinuations against the Appellants were exactly the same as those attributed to the accused already facing trial. Hence, in the absence of any distinguishable features, the Appellants were also liable to be tried along with Aamir and Akhlima. The High Court further viewed that there existed sufficient grounds for summoning the Appellants as additional accused.

8. Discontented with their summoning by the High Court, the Appellants are before us.

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B. CONTENTIONS

9. Mr. S.K. Verma, learned counsel for the Appellants, vehemently contended that the High Court has committed a grave error of law in not appreciating that the powers under Section 319 Cr.P.C. are to be exercised sparingly only if the evidence vividly points out the possible involvement of the person(s) proposed to be prosecuted. There is not an iota of evidence against the appellants to glean a conclusion of their involvement. Further, the fact that the Appellants were found innocent during the course of two-fold investigation has not been adequately considered by the High Court. There is no evidence to suggest even remotely that the Appellants were cruel to the deceased shortly before her death. The allegations are general and vague in nature without attributing any specific role to the Appellants.

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10. On the other hand, Mr. Deepkaran Dalal, learned Counsel for the Ist Respondent, strongly defended the approach of the High Court and submitted that, given the allegations made in the FIR and the deposition of Respondent No.1, the High Court was justified in summoning the Appellants, who were actively involved in harassing the deceased for not bringing enough dowry and which eventually led to the unfortunate death of Rukseena just within 7 months of her marriage.

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C. ANALYSIS

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11. There is no gainsaid that the alleged offence is grave and heinous in nature. The long arms of law must find out whether any person is guilty of abetting or taking away the precious life of a young girl who soon after her marriage met with such a tragic end. However, the only issue that falls for our consideration is whether there is sufficient evidence against the Appellants to summon them as additional accused?

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12. Section 319 Cr.P.C. contemplates that:

“....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.”

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13. Illuminating the scope of Section 319 Cr.PC, the Constitution Bench of this Court in *Hardeep Singh vs. State of Punjab*¹ laid down that :

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“57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.”

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“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

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¹(2014) 3 SCC 92

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A *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.”

14. This Court has very recently, in *Sukhpal Singh Khaira vs. The State of Punjab*², succinctly explained the powers bestowed on the Court under section 319 Cr.P.C. and ruled that:

E *“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”*

G 15. In *Hardeep Singh (Supra)*, it has been eloquently held that the word “evidence” in Section 319 Cr.P.C. has to be broadly understood and thus materials which have come before the Court in course of enquiry can be used for : -

H ² (2023) 1 SCC 289

- (i) corroboration of evidence recorded by Court after commencement of trial; A
- (ii) for exercise of power under Section 319 Cr.P.C.; and
- (iii) also to add an accused whose name is shown in column no.2 of the chargesheet. B

It was further explained that statement made in examination-in-chief also constitutes “evidence” and the Court while exercising power under Section 319 Cr.P.C. post commencement of trial, need not wait for evidence against person proposed to be summoned, to be tested by cross-examination.

16. In *Sukhpal Singh Khaira (Supra)*, the Constitution Bench refreshed the guidelines that the competent court must follow while exercising power under Section 319 Cr.P.C. It was ruled that :- C

- (i) if the competent court finds evidence or if application under Section 319 Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C.; D
- (ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and E
- (iii) if the power under Section 319 Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a split-up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated trial). F

17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a *prima facie* H

A case is *sine quo non* to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial *dictums* referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.

C 18. Adverting to the case in hand, the allegations against the Appellants are that they too played an active role in the commission of the alleged offence.

D 19. The record reveals that after the application under section 319 Cr.P.C was dismissed by the Trial Court, Respondent No.1 was called on 06.12.2018 for further examination-in-chief as PW-1. His deposition distinctively unravels that at the time of marriage, Appellant No.1 – Juhru (father-in-law) had asked Respondent No.1 to spend a sum of Rs. 20 lacs on the marriage of Aamir and the deceased, to which Respondent No.1 had agreed. Appellant No.1 and his wife Akhlma (mother-in-law) were living under the same roof as his son Aamir (husband) and he would have been privy to all the alleged occurrences of torture, harassment or demand for more dowry. Viewed from this angle, it appears that the Ist appellant might have to sink or swim with his son and wife. The High Court order, to the extent of summoning Appellant No. 1, therefore, satisfies the ingredients of Section 319 Cr.P.C. and may not warrant any interference by this Court.

G 20. As regard to Appellant Nos. 2 and 3, i.e., Sonam (sister-in-law), and Rijwan (brother-in-law) of the deceased, it appears to us that despite both of them being named in the FIR and in the examination-in-chief of Respondent No.1, there is no credible evidence to connect them with the unnatural death of Rukseena. There is no cogent material that Appellant No. 2, even after her marriage with Appellant No. 3, continued to reside in her parents' house or that they used to inter-meddle in the day to day marital life of the deceased and Aamir. In the absence of any authentic evidence to bring them in close proximity of the reported crime,

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it would be unjustified to call upon Appellant Nos. 2 and 3 to face trial as additional accused in this case. A

D. CONCLUSION :

21. In light of above discussion, we are of the considered view that while summoning of Appellant No. 1 sustains, but that of Appellant Nos. 2 and 3 will be farfetched and they cannot be subjected to trial on the basis of mere strong suspicion. The High Court order under challenge is accordingly set aside qua Appellant Nos. 2 and 3. B

22. Having held that Appellant No.1 has been rightly summoned and is liable to be tried along with his son and wife, the next question that requires consideration is as to the manner in which the trial will proceed hitherto. C

23. The information available on record suggests that the trial is at the stage of defence evidence. The guidelines that the Trial Court must follow, while commencing the trial against Appellant No.1 have been extensively iterated by the Constitution Bench in *Sukhpal Singh Khaira (Supra)*, in the following terms: D

“41 (III). What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?

41.1 If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage. E

41.2 The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon. F

41.3 If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case. G

41.4 If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately. H

- A **41.5 If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.**
- 41.6 If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.”**
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24. The Trial Court shall, thus, follow the cited *dictum* and proceed against Appellant No. 1 in accordance with law.

- C 25. For the reasons aforesaid but without expressing any views on merits, we partly allow this appeal and modify the impugned order of the High Court dated 27.01.2020 in above terms.

26. Pending applications, if any, stand disposed of.

Ankit Gyan
(Assisted by : Mahendra Yadav, LCRA)

Appeal partly allowed.