

# Omi @ Omkar Rathore vs The State Of Madhya Pradesh on 3 January, 2025

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2025 INSC 27

IN THE SUPREME COURT OF INDIA

EXTRAORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) No(s). 17781 OF 2024

OMI @ OMKAR RATHORE & ANR.

VERSUS

THE STATE OF MADHYA PRADESH & ANR.

O R D E R

1. This petition arises from the judgment and order passed by the High Court of Madhya Pradesh at Gwalior dated 23-10-2024 in Criminal Revision No.3172/2022, by which the High Court rejected the revision application filed by the petitioners – herein and thereby affirmed the order passed by the 4 th Additional Sessions Judge, Gwalior in Sessions Trial No.233/2018 summoning the petitioners – herein to face the trial for the offence of murder in exercise of powers under Section 319 of the Code of Criminal Procedure, 1973.

2. The First Information Report bearing Crime No.96/18 came to be registered with the Padav Police Station, District Gwalior for the offence punishable under Sections 302, 307, 147, 148 and 149 of the Indian Penal Code (for, short the “IPC”).

3. The FIR came to be registered in all against seven individuals. The FIR includes the name of the two petitioners – herein.

Date: 2025.01.06 15:35:27 IST Reason:

4. At the end of the investigation, the Investigating Officer filed a closure report so far as the two petitioners – herein are concerned. Against the other accused persons, the charge-sheet was filed for the offences enumerated above.

5. The Trial Court started recording oral evidence. The original first informant – PW3 stepped into the box. In his examination-in- chief, he reiterated what he narrated in the FIR.

6. In his examination-in-chief the PW3 – Raghvendra Tomar, deposed as under :-

“1. The date of the incident is 20.02.2018. I had gone to the District Court with Abhishek Tomar for appearing in a case. While returning after hearing, Pankaj Sikarwar, Veeru Tomar in an Apache vehicle, Sonu Rathore, Omi Rathore, Ravindra Sikarwar, Vijay Bhadoriya and Amit Bhadoriya in a Safari car surrounded us near the LIC office at Tansen Nagar Road. After surrounding us, Pankaj Sikarwar shot at us with a pistol which hit Abhishek in his head. The second shot was fired by Veeru Tomar which hit Abhishek in the stomach. Then Sonu Rathore, Omi Rathore, Ravindra Sikarwar, Vijay Bhadoriya, Amit Bhadoriya, all of them together shot Abhishek with the common intention of killing him. Then Raman and Sanjay came from behind on a bike and tried to save Abhishek. All these people fired at them too. After firing, these people fled from the place of occurrence.

2. After this we called an ambulance. As soon as the ambulance arrived, the police also arrived on the spot. As soon as the police arrived, we brought Abhishek to Sahara Hospital by an ambulance. In Sahara Hospital, the doctors declared Abhishek dead. As soon as all his family members arrived then his body was taken for postmortem. I lodged a Dehatinalishi, which is Ex.P/10, whereupon A to A part bears my signature. First Information Report was registered on the basis of Dehatinalishi. The map panchayatnama was prepared before me which is Ex.P/11, on which A to A part bears my signature. Police called me to the police station and questioned me and took my statement. I am able to identify the accused persons. Among the accused persons produced through VC of Gwalior jail, I recognize accused Veeru Tomar, but I do not know the remaining accused Rahul Rajawat and Anand Rathore. I do not recognize to accused Banti alias Ajay produced through VC of Badwani jail.

Seeing the accused Prithviraj present in the court, the witness expressed that I do not recognize him. I also do not recognize to the absent accused Gaurav. I do not know to Vikram by name; if he appears in the Court then I can recognize him.”

7. Thus, it appears that in the examination-in-chief, the original first informant categorically deposed against the two petitioners – herein and also attributed a specific overt act.

8. Relying on the oral evidence of PW-3, an application was filed under Section 319 of the Code to summon the two petitioners as accused for the purpose of facing the trial along with the other co-accused.

9. The petitioners being dissatisfied with the order passed by the Trial Court summoning them to face the trial preferred Criminal Revision Application before the High Court. The High Court rejected the revision application and thereby affirmed the order passed by the Trial Court

summoning the petitioners in exercise of its powers under Section 319 of the CrPC.

10. In such circumstances, referred to above, the petitioners are here before this Court with the present petition.

11. We have heard Mr. Anil Kaushik, the learned Senior counsel appearing for the petitioners.

12. In *Ramesh Chandra Srivastava v. State of U.P. & Another* (2021) 12 SCC 608 while this Court has approved of relying upon deposition which has not suffered cross-examination for the purpose of invoking Section 319 CrPC, it is relevant to note the standards which have been fixed by this Court for invoking the power under Section 319 CrPC. The statement of law in this regard is contained in paras 105 and 106 respectively of *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] : (SCC p. 138)* “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.”

13. The test as laid down by the Constitution Bench of this Court for invoking the powers under Section 319 CrPC inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 CrPC should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie which is applied at the time of framing of charges. It will all depend upon the evidence which is tendered in a given case as to whether there is a strong ground within the meaning of para 105 of *Hardeep Singh* (supra) referred to above.

14. The only argument canvassed before us is that the Trial Court before summoning the petitioners as accused in exercise of its powers under Section 319 of the CrPC should have taken into consideration the closure report filed by the I.O. exonerating the petitioners from the alleged offence. According to the learned counsel, the Trial Court as well as the High Court should not have overlooked the report because the report clearly states that the two petitioners – herein are in no

manner connected with the alleged crime.

15. The closure report is on the record of this case. The relevant portion of the closure report reads thus:

“Since the offence under section-302,307,147,148,149,120B IPC & 25/27 Arms Act was found proved against Accused persons Gajendra alias Gadra S/o Ramjilal Koli (Mahor) aged 25 years resident of Tundila Police station Malanpur , Bhind and Pussu alias Pushpendra Bhadoriya son of Yogendra Singh Bhadoriya aged 26 years, R/o Kashi Naresh ki Gali, P.S. Kilagate Gwalior, so issuing the supplementary chargesheet No.86D/2018 on 08.11.2020 , it was produced before the court of respected CJM Sir Gwalior vide missal No. 1776/18 on 09/11.2020.

That the complainant Raghvendra Singh Tomar has got written the names of Pankaj Sikarwar, Ravindra Sikarwar, Sonu Rathore, Omi alias Omkar Rathore, Vijay Bhadoriya, Amit Bhadoriya in the FIR. During the investigation, applications were given in the superior office by Poonam Rathore, Rajendra Singh Bhadoriya, Santosh Singh Sikarwar who are the family members of aforesaid persons. Action was taken by including the applications in the investigation. During the proceedings, CDR and statements of Smt. Poonam Rathore, Rajendra Singh Bhadoriya, Santosh Singh Sikarwar, Rakesh alias Banti Mishra, Mukesh Bhadoriya, Mahesh Singh alias Pintu Shikarwar, Rajabeti Tomar, Anita Sikarwar, Girija Devi Sikarwar, Dharmendra Singh Parihar, Vinod Nagar, Shambhu Singh Parihar, Bharat Singh Parihar, Narayan Chhawda, Dharmendra Gaud, Anurag alias Cheeku Rine were recorded and records relating to FIR of named accused persons and complainant in the case in various police stations were collected. It was found suspicious the presence of the above named accused at the scene of incident. Presently sufficient evidence is not available against them.

Statement of witness Rajender Singh Bhadoriya was recorded regarding presence of accused Vijay Bhadoria and Amit Bhadoriya in different place from the incident. Applicant Rajendra Singh Bhadoriya stated in his statement that he had three sons, the eldest being Ajay Bhadoria, second son Sanjay Bhadoria both are mentally handicapped and third son was Suraj Bhadoria who was murdered on the door of my house on 21.10.2013 by Abhishek Tomar, Parimal Tomar, Manish Kori, Deepak Jat and other here persons whose FIR was lodged under section 302 in police station Gwalior. Abhishek Tomar was the main accused, he had shot a bullet to my son Suraj. Amit Bhadoriya is a witness in a case of my son Suraj and Vijay Singh Bhadoria is family uncle (Tau) of Suraj. Amit Bhadoria is with me in the case of my son Suraj. Names of Amit and Vijay Bhadoria have been got written to put pressure in the case. On the date of incident 20.02.2018, Amit Bhataria had gone to attend his duty in Civil Hospital Morar at 7.30 am in the morning and he stayed there till 3.45 pm in the evening, after that, he returned to his home Yadav Dharam Kanta where he stayed till 6:00 O'clock of evening and Vijay Bhadoria is posted with me and my guard

Rajkumar Bhadoria HC 188 in 13th Battalion is posted in Gwalior. Sanjay Agarwal, Uma Bauhan, Arvind Singh Kushwah R/o Indore were present in the wedding of my friend Rakesh Vyas's brother-in-law's daughter in Kanak Garden at 2:00 pm, in which all of we stayed till 3:30 pm and then went to Maharajpura Air Force Station to drop Uma aunty. We stayed there till about 4:00 pm, after leaving to Uma Chauhan, all of we went to Vijay Tomar's house behind Hotel Adityaj, we took tea there and we stayed till 5:00 O'clock in the evening, writing the detailed statement, it was included with CD, thus presence of accused persons Amit Bhadoria and Vijay Bhadoria has not been found at the place of incident.

Statements of witnesses Pintu Sikarwar, Smt. Girja Devi, Raja beti and Anita Sikarwar were recorded in respect of the presence of accused Pankaj Sikarwar and Ravindra Sikarwar apart from the incident place. They told that Pankaj Sikarwar and Ravindra Sikarwar were sleeping at their home at about 4.30 O'clock in the evening on 20.02.18 and Witness Santosh Singh stated in his statement that Pankaj Sikarwar and Ravindra Sikarwar were present at their home at 4.30 O'clock in the evening on 20.02.18. Thereafter Pankaj Sikarwar and Ravindra Sikarwar reached at their side (workplace) at Adityapuram and reached City Centre at 5:00 pm. Raghavendra Tomar, Ravindra Chauhan and Sanjay Tomar used to have animosity with Pankaj and Ravindra.

That Pankaj Sikarwar had lodged a case Crime No. 22/17 under Section 307 of IPC against Raman Chauhan, Manoj Kirar, Parmal Tomar and deceased Abhishek Tomar in police station Hajira in which Pankaj was shot a bullet in which chargesheet has been produced before the court. Manoj Kirar had lodged a cross case relating to same incident Crime No. 23/17 under section 307 against Pankaj Sikarwar, Ravindra Shikarwar, Sonu Rathore and Pankaj's brother Bhoora alias Omkar Sikarwar. In which during investigation, due to not getting any evidence for chargesheet, FR was issued. Raman Chauhan's brother Neeraj Chauhan had lodged a case crime No. 275/17 under Section 308,34 of IPC in PS Hajira on 15.06.17 against suspects Pankaj Sikarwar, Ravindra Sikarwar, Sonu Rathore and Saurabh Rajawat and on 27.10.17, Sandeep Sikarwar who is brother-in-law of Raman Chauhan had lodged a case Crime No. 534/10 under section 307 in PS Gole Ka Mandir against Pankaj Sikarwar, Sonu Rathore and Ravindra Sikarwar in which involvement of Pankaj Sikarwar, Sonu Rathore and Ravindra Sikarwar was not found, and investigation was conducted by the C.S.P. Maharajpura Sir in his matter, it was disclosed in the investigation that complainant Sandeep Sikarwar brother in law of Raman Chauhan had lodged the names due to animosity. Pankaj had lodged a case bearing Crime No. 22/2017 under Section 307 of IPC against Raghvendra Tomar's brother Parmal Tomar, due to which, Raghvedra Tomar had got the names of Vijay Bhadoria, Amit Bhadoria, Pankaj Sikarwar, Sonu Rathore, Ravindra Sikarwar and Omi alias Omkar Rathor lodged for mounting pressure in the matter.

That the call details of 20.02.18 of Pankaj Sikarwar and Ravinder Sikarwar were obtained in which at 15.08 pm at the time of occurrence of crime, tower location of Pankaj Sikarwar's mobile no. 9425187361 was in Rameshwari Nagar Gadaipura Gwalior from 16.15 to 16.45 pm and tower location of Ravindra Sikarwar's Mobile No. 9754530830 was obtained in which it was found at Rameshwari Nagar Gadaipura Gwalior from 14:00 and 16:48 pm, Pankaj Sikarwar has been murdered in the area of police station Hazira.

That when the statement of Neeraj Mishra was recorded then he stated that on 20.02.18, he talked with Ravindra Sikarwar at about 4.30 p.m. then Ravindra Sikarwar was at his home at that time of the incident and witness Rakesh alias Banti Mishra told in his statement that the information was received at about 4.00 O'clock in the evening on 20.02.18 that Abhishek Tomar has been murdered then I reached to the house of Pankaj Sikarwar, Pankaj Sikarwar was sleeping at his home at that time, I got awake to Pankaj and told about the happening of incident then I went to Ravindra's house with Pankaj, after that Ravindra and Pankaj went somewhere by a car. Similarly, the presence of accused persons Pankaj Sikarwar and Ravindra Sikarwar has not been found at the scene of the incident. That in connection with the presence of accused Sonu Rathore separate from the incident, statement of witness Poonam Rathore wife of accused Sonu Rathore was recorded, who said in her statement that on 20.02.18, my husband Sonu Rathore had gone to the shop named Subham Band Rajakheda in village Padua Pura, Pinahat, district Agra at 10-30 O'clock in the morning by his Innova car to get a band for the wedding of my nephew Annu alias Anupam, who was with the band owner between 4:00 to 5:00 pm, the bill of the band is made in the name of my husband, the statement of the shop owner named Vinod was recorded, who told in his statement that Sonu Rathore was present at his shop Subham Band Rajakheda in Pinahat district Agra between 4:00 to 5:00 o'clock in the evening on 20.02.18 thus the presence of accused Sonu Rathore was not found at the spot of incident.

That on 05.01.18, witness Santosh Singh Sikarwar appeared at the police station who had stated that the CCTV footage of accused in the case Omi alias Omkar Rathore in the bank from 4:00 to 5:00 pm on 20.02.18 was preserved in the bank. Thereafter correspondence was made with Bank and CCTV footage was obtained in which Omi alias Omkar Rathore is seen present in the bank from 4:00 to 5:00 pm on 20.02.18, photos of which are attached in the diary. Similarly, the presence of Omi alias Omkar Rathore was not found at the place of incident. The above mentioned facts have come to light in the investigation conducted by the then investigating officer Inspector Santosh Singh.

That, after the transfer of Inspector Santosh Singh, further investigation of the case was conducted by Inspector Kamlesh Prajapati of Police Station Padav, Inspector Sanju Kamle Officer Incharge of Police Station padav, Inspector Anil Bhadauriya officer Incharge of Police Station Padav, Inspector Prashant Yadav officer Incharge of Police Station Padav, S.I. Balbir Mawai officer Incharge of Police Station Padav, Inspector Gyanendra Singh, officer Incharge, Police Station Padav, later on the investigation of the case was done by me, Inspector Vivek Ashthana, Police Station Padav.

Another accused in the case Pankaj Sikarwar has been murdered earlier in area of police station Hajira. Name of Pankaj Sikarwar is separated from this case. Death certificate of Pankaj Sikarwar is included in this regard.

The above named accused persons are 01 - Vijay Bhadoria son of Faujdar Bhadoria resident of Kala Mahal Char Shahar ka Naka, 02 - Amit Bhadoria son of Shiv Singh resident of Sadar, 03- Ravindra Sikarwar son of Rambir Singh Sikarwar, 42 years, resident of Gopal Nagar Gadaipura, Birlanagar Gwalior 04- Sonu Rathore son of late Shri Brijendra Singh Rathore, 39 years, resident of Char Shahar Ka Naka, Ranipur Hajira Gwalior, 05. Omi alias Omkar Rathore son of late Shri Brajendra Singh Rathore, age 45 years, resident of Dhar Shahar Naka Ranipur Hajira Gwalior, have not been

found present at scene of incident. There is complete lack of evidence against the above accused persons. At present, no sufficient evidence is available against them for challan proceedings. After obtaining permission from the Superintendent of Police, District Gwalior, Closure report was made against the above accused persons on 04.03.2022. Which would be produced before the Honourable Court.

Previously arrested accused persons in the case : Due to being found the offence proved against i.e. 1. Prithviraj alias Raj son of Vijay Singh Chauhan aged 20 years resident of Gudha Gudhi ka Naka Kampu Gwalior, 2. Banty alias Ajay Bhadoriya son of Shyam Singh Bhadoriya aged 23 years, Resident of Shitla Mata ke bagal ke Kanchmill Hajira Gwalior 3. Anand alias Annu Rathore son of Naresh Rathore, aged 23 years, Resident Hanuman Chauraha opposite Gupta Coal Depot, Laxmiganj Gwalior 4. Virendra alias Veeru Tomar son of Bahadur Singh Tomar, age 37 years, resident of Indranagar Char Shahar ka Naka Hajira Gwalior

5. Gaurav Rana s/o Manoj Rana, aged 21 years, resident of village Udaipur Post Bijoli, Police Station Bijol, District Gwalior 6. Rahul Rajawat son of Ravindra Rajawat, aged 26 years, resident of New Colony No.-01, Kanchmill, Hajira Gwalior 7. Vikram Singh Rana son of Diwan Singh Rana, age 27 years, resident of village Bijoli, Gwalior 8. Surendra alias Meenu Rathore son of Pan Singh Rathore, age 25 years, resident of Indranagar Vyas Wali Gali, Char Shahar ka Naka, Hajira Gwalior, 9. Gajendra alias Gadra Koli alias Mahor son of Ramji Lal Koli, aged 25 years, resident of village Tundila, Police Station Malanpur, District Bhind, 10. Pushpendra alias Pussu son of Gopendra Singh Bhadoriya, age 26 years, resident of Kashi Naresh Ki Gali Kila gate Gwalior the crime was proved against Kilagate Gwalior, a challan has already issued and produced before the honourable court. Therefore the report is respectfully sent to your goodself.

Sd/- 16.03.2022  
Officer in charge Police  
Station Padav, District  
Gwalior."

16. We are not impressed with the submission as noted in para 14 above canvassed by the learned Senior counsel for the simple reason that a person is named in the FIR by the complainant but the police, after investigation finds no role of that particular person and files 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.

17. In the aforesaid context, we may refer to a decision of this Court in the case of S. Mohammed Ispahani v. Yogendra Chandak, (2017) 16 SCC 226 wherein the Court observed in Para 35 as under:-

"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.”

18. Thus, even in a case where the stage of giving opportunity to the complainant 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 has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in the FIR but not implicated in the charge-sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

19. It is relevant to note at this stage that the closure report filed by the police in the case on hand is yet to be looked into by the court concerned. The same has not been accepted till this date. However, the closure report now pales into insignificance in view of the order passed by the trial court under Section 319 of the Cr.P.C. summoning the petitioners herein to force the trial. We may only add that it would have been in fitness of things if the Court concerned would have looked into the closure report at the earliest & passed an appropriate order one way or the other after hearing the defacto-complainant. The Court should not keep the closure report pending for consideration for a long time. Such report should be looked into promptly.

20. In the overall view of the matter, we are convinced that the High Court committed no error not to speak of any error of law in passing the impugned order.

21. The principles of law as regards Section 319 of the CrPC may be summarised as under:

a. On a careful reading of Section 319 of the CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial.

b. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence.



c. The power of the court under Section 319 of the CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the chargesheet by the police against the person concerned. As regards the contention that the phrase 'any person not being the accused' occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in column No. 2 of the charge sheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the Criminal Court are included in the said expression.

c. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the Investigating Officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the Investigating Officer hardly matters. If satisfaction of Investigating Officer is to be treated as determinative then the purpose of Section 319 would be frustrated.

22. In the result, this petition fails and is hereby dismissed.

23. It is needless to clarify that it shall be open for the petitioners to raise all contentions available to them in law before the Trial Court including placing reliance on the closure report whatever its worth.

24. Pending applications, if any, also stand disposed of.

.....J. (J.B. PARDIWALA) .....J. (R. MAHADEVAN) New Delhi.

3rd January, 2025.