Sartaj Singh vs The State Of Haryana on 15 March, 2021

Equivalent citations: AIR 2021 SUPREME COURT 1513, AIRONLINE 2021 SC 137

Author: M. R. Shah

Bench: M. R. Shah, Dhananjaya Y. Chandrachud

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 298-299 OF 2021

Sartaj Singh .. Appellant

Versus

State of Haryana & Anr. Etc. .. Responden

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.08.2020 passed by the High Court of Punjab and Haryana at Chandigarh in revision application bearing CRR No. 3238 of 2018 and CRMM No. 55631 of 2018 by which the High Court has allowed the said revision application and quashed and set aside the order dated 21.04.2018 passed by the learned Trial Court summoning the private respondents herein, the original informant has preferred the present appeals.

2. As per the case of the appellant herein – original informant, the appellant was attacked by the private respondents herein and other accused persons on 27.07.2016. That the appellant got severely injured. That a FIR was lodged by the appellant herein in which he stated that besides Manjeet Singh, Narvair Singh and other persons namely Palwinder Singh son of Ran Singh, Satkar Singh son of Rajwant Singh, Rajwant Singh son of Gurcharan Singh and Sukhdeep Singh son of Satnam Singh had inflicted injuries on his person. It was stated that while he was going in his car – Mahendra XUV-500 for personal work and stopped his car on the left side to answer the phone call,

Manjeet Singh son of Mahinder Singh, who was coming in his car from Assandh side and a lady was sitting by his side, stopped his car next to him and after rolling down his window threatened him for having ploughed his barley crop in his capacity as the Sarpanch and while going back home after finishing his work, he found that a car was parked diagonally on the road. The same car was parked in which Manjeet Singh was traveling and when he took out his head to look for the driver, Palwinder Singh son of Ran Singh, Satkar Singh son of Rajwant Singh armed with lathies and were hiding on the right side of road came and attached him and gave lathi blows on the head. Thereafter, 10□12 persons came running towards the car from both sides of the road. It was further stated in the FIR that Manjeet Singh son of Mahinder Singh, Amarjit Singh son of Ran Singh, Rajwant Singh son of Gurcharan Singh, Narvai Singh son of Tarlok Singh, Sukhdev Singh son of Satnam Singh, residents of Bandrala were holding lathies and Gandasis in their hands. Rajwant Singh came running towards his side and switched off the engine of the car and also opened the door lock of driver side of the car. Manjeet Singh opened the door from outside. Manjeet Singh and Rajwant Singh both dragged him out of the car and Rajwant Singh raised a Lalkara that "today there is an opportunity to kill him". On saying this, Amarjeet Singh, who was armed with Gandasi gave a blow on his head and Manjeet Singh, who was armed with Gandasi gave a blow on his left ear. Then Rajwant Singh who was armed with Gandasi gave blow from its front side. Thereafter, all these persons gave number of blows upon him and he started feeling unconscious and fell on the ground on his knees. He thought that they will kill him today and he was seeing his death in front of his eyes. They he took his revolver from the holster tied around his waist and fired with the same and he did not know to whom and where the shots hit. Those persons started running away upon his firing and while running away, some persons gave blows on his right shoulder and due to which his revolver fell down and those assailants ran away and he also in order to save himself came back towards Adarsh School. He entered the Dera of Chhinna situated near the Adarsh School, where Bhupinder Singh and his father were present, whom he informed that some persons wanted to kill him and kindly take him to Police Station. Thereafter, Bhupinder Singh @ Pinda took him to Assandh on his motor cycle and after sometime he became unconscious, where the doctor gave him first aid and on seeing the seriousness of injuries referred him to General Hospital, Karnal. In the meantime, his family members also reached the Hospital, Assandh took him to General Hospital Karnal in the car and after considering the number of injuries, the doctor referred him to PGI, Chandigarh. That, on the basis of the statement of the appellant, FIR no. 477 of 2016 was lodged for the offences under Sections 148, 149, 341, 323, 324, 307 and 506 IPC. That, thereafter, the DSP, Assandh submitted a report wherein it was found that only four persons were involved in the dispute and the respondents herein who were named were found not to be involved. That, thereafter, the Investigating Officer filed the charge□sheet against other accused, but not against the private respondents herein. That, thereafter, during the trial the appellant herein came to be examined by the prosecution as P.W.1, who was an injured witness. He named the private respondents herein in his evidence specifically and stood the test of cross□examination. Dr. Mahinder, the Medical Officer, Civil Hospital was also examined as P.W.2. That, thereafter, one Bhupinder Singh who took the injured appellant to the hospital was also examined as P.W.7. That, thereafter, the appellant herein filed an application before the learned Trial Court under Section 319 CrPC for summoning of the additional accused – private respondents herein on the basis of the evidence recorded. That the learned Trial Court after considering the statements of both – the appellant and other eye witnesses and the material on record allowed the application under Section

319 CrPC vide order dated 21.04.2018. The private respondents herein thereafter filed two separate revision petitions against the order passed by the learned Trial Court summoning them, before the High Court. It appears that during the pendency of the aforesaid revision applications, as the order passed by the learned Trial Court summoning the private respondents herein was not stayed and therefore the learned Trial Court proceeded with the trial and after summoning of the additional accused private respondents herein, 18 witnesses came to have been examined by the learned Trial Court. That, by the impugned judgment and order, the High Court has allowed the revision applications preferred by the private respondents herein and has quashed and set aside the order passed by the learned Trial Court summoning the additional accused private respondents herein. Hence, the present appeals.

3. Shri R. Basant, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that when the learned Trial Court, considering the evidence on record, both documentary and oral, allowed the application under Section 319 CrPC summoning the private respondents herein to face the trial, the High Court is not justified in quashing and setting aside the order summoning the private respondents herein.

3.1 It is further submitted that while quashing and setting aside the order passed by the learned Trial Court summoning the private respondents herein, which was in exercise of powers under Section 319 CrPC, the High Court has acted beyond the scope and ambit of Section 319 CrPC.

3.2 It is submitted that the High Court has failed to appreciate that in fact the private respondents herein were specifically named in the FIR and thereafter even the names have been disclosed in the evidence of the deposition of the appellant – injured eye witness. It is submitted that therefore the learned Trial Court was justified in summoning the private respondents herein in exercise of powers under Section 319 CrPC.

3.3 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that even the reasons assigned by the High Court while reversing the order passed by the learned Trial Court are not sustainable in law and on facts. 3.4 It is submitted that the High Court has erred in quashing and setting aside the order passed by the learned Trial Court summoning the private respondents herein by observing that there is no evidence except the statement of the appellant herein. It is submitted that however even the accused can be convicted on the basis of the evidence of a single witness and in the present case the appellant is an injured eye witness. It is submitted that the appellant is subjected to cross examination. It is submitted that therefore merely because there may be one witness and/or statement of only one person, is no ground not to summon the additional accused in exercise of powers under Section 319 CrPC. It is further submitted that at this stage the High Court was not justified in appreciating the deposition/evidence of the appellant on merits. It is submitted that the things which are required to be done during the trial, have been done by the High Court at this stage of summoning the additional accused in exercise of powers under Section 319 CrPC. It is submitted that the aforesaid is wholly impermissible at the stage of considering an application under Section 319 CrPC.

3.5 It is further submitted that, by the time, the High Court has passed the impugned judgment and order, as there was no stay in the revision applications, the learned Trial Court proceeded further with the trial and 18 witnesses came to be examined and the trial was at the near end. It is submitted that therefore also, the High Court is not justified in quashing and setting aside a well-reasoned order passed by the learned Trial Court summoning the private respondents herein in exercise of powers under Section 319 CrPC. 3.6 Shri R. Basant, learned Senior Advocate appearing on behalf of the appellant has relied upon the decision of this Court in the case of Hardeep Singh v. State of Punjab (2014) 3 SCC 92 and the subsequent decision of this Court in Sukhpal Singh Khaira v. State of Punjab (2019) 6 SCC 638, in support of his submission that at the stage of considering the application under Section 319 CrPC the High Court was not justified in entering into the merits and/or appreciation of the evidence on merits, which is required to be considered at that stage of trial. It is submitted that as held by this Court in Hardeep Singh (supra), the word 'evidence' in Section 319 CrPC has to be broadly understood and not literally as evidence brought during a trial. It is submitted that it is further held that the statement made in examination-in-chief constitutes 'evidence' and the court exercising powers under Section 319 CrPC post commencement of trial, need not wait for evidence against person proposed to be summoned to be tested by cross-examination. It is submitted that the degree of satisfaction for invoking Section 319 should not be more than a prima facie case as exercised at the time of framing of charge but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of person sought to be added as accused.

3.7 Making the above submissions and relying upon the above decisions of this Court, it is prayed to allow the present appeals.

4. Shri Anil Kaushik, learned AAG, Haryana has supported the present appeals and has submitted that the reasons given by the High Court while quashing and setting aside a well-reasoned order passed by the learned Trial Court summoning the private respondents herein in exercise of powers under Section 319 CrPC are not sustainable in law and even on facts.

5. Learned counsel appearing on behalf of the private respondents herein has vehemently opposed the present appeals. 5.1 It is submitted that the power under Sections 319 CrPC is a discretionary and an extra-ordinary power and has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is submitted that it is not to be exercised because the Trial Court is of the opinion that some other person may also be guilty of committing that offence. It is submitted that where strong and cogent evidence occurs against a person from the evidence led before the Court that such powers should be exercised and not in a casual and cavalier manner.

5.2 It is submitted that an order under Section 319 CrPC directing summoning of additional accused cannot be passed because the first informant or one of the witnesses seeks to implicate other persons. It is submitted that there must be sufficient and cogent reasons which are required to be assigned by the Trial Court satisfying the ingredients of the provisions under Section 319 CrPC. It is submitted that, in the present case, the appellant herein reiterated the contents of his complaint in the examination-in-chief and no new evidence was placed on record. It is submitted that the said statement does not satisfy the test for adjudication for an application under Section 319 CrPC, i.e.

evidence on record is such which would be more than what is required at the stage of framing of chares but less than if left unrebutted would lead to conviction. 5.3 It is further submitted that in the examination in chief, the appellant has reiterated what was stated in the FIR. It is submitted that the allegations in the FIR were investigated/enquired into by the DSP and as per his report no evidence was found against the private respondents herein. It is submitted that therefore the High Court is justified in quashing and setting aside the order passed by the learned Trial Court.

5.4 It is submitted that as such the appellant herein is an accused in FIR NO. 477, regarding the death of one Amarjeet Singh and the injuries having been suffered by Manjeet Singh. It is submitted that as per the said FIR, Amarjeet Singh died and Manjeet Singh suffered injuries at the hands of the appellant Sartaj Singh using his licensed revolver. It is submitted that only after the FIR No. 477 was registered against the appellant and his accomplices, belatedly a cross case in the same FIR was got registered by the police on the statement of the appellant herein, wherein he made up a concocted story of firing bullets in self defence. It is submitted that the appellant herein stated that Palwinder Singh and Satkar Singh have given lathi blows on the head, whereas Manjeet Singh, Amarjeet Singh, Rajwant Singh, Narvair Singh and Sukdev Singh were holding Gandasis and gave him blows on the head and face, which seems to be not at all possible as rightly observed by the High Court.

5.5 It is further submitted that even otherwise the only evidence against the private respondents herein was the statement of the appellant herein, who in fact is an interested witness in entire matter. He himself stands accused of killing Amarjeet Singh and grievously hurting and attempting to kill Manjeet Singh in the original and earlier FIR. It is submitted that therefore the High Court has rightly set aside the order passed by the learned Trial Court observing that there was no new evidence that had come forward against the private respondents herein, rather there was a detailed enquiry corroborating the innocence of the respondents and doubting the version of the appellant. It is submitted that the High Court has rightly come to the conclusion that the learned Trial Court has erred in exercising its jurisdiction in summoning the answering respondents. It is further submitted that even the deposition of P.W.7 Bhupinder Singh relied upon by the appellant herein does not support the appellant. It is submitted that in the light of the cross□examination of the witness Bhupinder Singh, it appears that the entire story has been concocted by the appellant herein in his testimony. It is submitted that it raises substantial doubt about the whole version of the accused stated in the cross case in FIR No. 477 of 2016.

5.6 Making the above submissions, it is prayed to dismiss the present appeals.

6. Heard learned counsel for the respective parties at length. What is under challenge in the present appeals is the impugned judgment and order passed by the High Court allowing the revision applications filed by the private respondents herein and quashing and setting aside the order passed by the learned Trial Court summoning the accused in exercise of powers under Section 319 CrPC and to face the trial.

6.1 While considering the rival submissions, the law on the scope and ambit of Section 319 CrPC is required to be considered and for that few decisions of this Court are required to be referred to. 6.1.1 In Hardeep Singh (supra), this Court had an occasion to consider in detail the scope and ambit of

the powers of the Magistrate under Section 319 CrPC, the object and purpose of Section 319 CrPC etc. It is observed in the said decision that the entire effort is not to allow the real perpetrator of an offence to get away unpunished. It is observed that this is also a part of fair trial and in order to achieve this very end that the legislature thought of incorporating the provisions of Section 319 CrPC. It is further observed that for the empowerment of the courts to ensure that the criminal administration of justice works properly, the law has been appropriately codified and modified by the legislature under the CrPC indicating as to how the Courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law. It is also observed that it is the duty of the court to find out the real truth and to ensure that the guilty does not go unpunished. In Paragraphs 8 and 9, this Court observed and held as under:

> "8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.
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> 9. The presumption of innocence is the general law of the land as every man is presumed to be innocent unless proven to be guilty. Alternatively, certain statutory presumptions in relation to certain class of offences have been raised against the accused whereby the presumption of guilt prevails till the accused discharges his burden upon an onus being cast upon him under the law to prove himself to be innocent. These competing theories have been kept in mind by the legislature. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in our opinion, in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 CrPC. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the abovementioned avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject□matter of trial." 6.1.2 In the said case, the following five questions fell for consideration before this Court.
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> (i) What is the stage at which power under Section 319 CrPC can be exercised?

(ii) Whether the word “evidence” used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the 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?

(iii) Whether the word “evidence” used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial?

(iv) What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

(v) Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?” 6.1.3 While considering the aforesaid questions, this Court in Hardeep Singh (supra) observed and held as under:

> 12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.
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> 13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?
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> 14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of CrPC and the judgments that have been relied on for the said purpose.

The controversy centres around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised. xxx xxx xxx

17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 CrPC or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any

situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot□free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

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22. In our opinion, Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial. It is this part which is under reference before this Court and therefore in our opinion, while answering the question referred to herein, we do not find any conflict so as to delve upon the situation that was dealt with by this Court in Dharam Pal (CB) [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : AIR 2013 SC 3018] .

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47. Since after the filing of the charge□sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge□sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre□ trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre□trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

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53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in Dharam Pal (CB) [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 :

> AIR 2013 SC 3018] . The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 CrPC is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 CrPC confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC.

55. Accordingly, we hold that the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

56. There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 CrPC i.e. provisions of Sections 200, 201, 202, etc. CrPC applicable in the case of complaint cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint case is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872 (hereinafter referred to as “the Evidence Act”) comes before the court. There does not seem to be any restriction in the provisions of Section 319 CrPC so as to preclude such evidence as coming before the court in complaint cases even before charges have been framed or the process has been issued. But at that stage as there is no accused before the court, such evidence can be used only to corroborate the evidence recorded during the trial (sic or) for the purpose of Section 319 CrPC, if so required. What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 CrPC acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 CrPC is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 CrPC at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses are being recorded. 6.1.4 While answering Questions (iii), namely, whether the word “evidence” used in Section 319(1) CrPC has been used in a comprehensive sense and includes

the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial, this Court, in the aforesaid decision has observed and held as under:

> "58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be "where ... it appears from the evidence" before the court.
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> 59. Before we answer this issue, let us examine the meaning of the word "evidence". According to Section 3 of the Evidence Act, "evidence" means and includes:
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> "(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
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> such statements are called oral evidence; (2) all documents including electronic records produced for the inspection of the court;

such documents are called documentary evidence." xxx xxx xxx

78. It is, therefore, clear that the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.

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82. This pre-trial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material along with the charge-sheet has been brought before the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.

83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word "evidence" as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 CrPC. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial. 6.1.5 While answering Question (ii) namely, whether the word "evidence" used in Section 319(1) CrPC means as arising in examination-in-chief or also together with cross-examination, in the aforesaid decision, this Court has observed and held as under:

> 86. The second question referred to herein is in relation to the word "evidence" as used under Section 319 CrPC, which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In Rakesh [(2001) 6 SCC 248 : 2001 SCC (Cri) 1090 : AIR 2001 SC 2521] , it was held that: (SCC p. 252, para 10) "10. ... It is true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not."
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> 87. In Ranjit Singh [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554 : AIR 1998 SC 3148] , this Court held that: (SCC p. 156, para 20) "20. ... it

is not necessary for the court to wait until the entire evidence is collected for exercising the said powers."

88. In Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899] , it was held that the prerequisite for exercise of power under Section 319 CrPC is the satisfaction of the court to proceed against a person who is not an accused but against whom evidence occurs, for which the court can even wait till the cross-examination is over and that there would be no illegality in doing so. A similar view has been taken by a two-Judge Bench in Harbhajan Singh v. State of Punjab [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] . This Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355] seems to have misread the judgment in Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899] , as it construed that the said judgment laid down that for the exercise of power under Section 319 CrPC, the court has to necessarily wait till the witness is cross-examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 CrPC.

89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases.

Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

90. As held in Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899] and Harbhajan Singh [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person could be tried" instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the

court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

91. Further, in our opinion, there does not seem to be any logic behind waiting till the cross-examination of the witness is over. It is to be kept in mind that at the time of exercise of power under Section 319 CrPC, the person sought to be arraigned as an accused, is in no way participating in the trial. Even if the cross-examination is to be taken into consideration, the person sought to be arraigned as an accused cannot cross-examine the witness(es) prior to passing of an order under Section 319 CrPC, as such a procedure is not contemplated by CrPC. Secondly, invariably the State would not oppose or object to naming of more persons as an accused as it would only help the prosecution in completing the chain of evidence, unless the witness(es) is obliterating the role of persons already facing trial. More so, Section 299 CrPC enables the court to record evidence in absence of the accused in the circumstances mentioned therein.

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

6.1.6 While answering Question (iv), namely, what is the degree of satisfaction required for invoking the power under Section 319 CrPC, this Court after considering various earlier decisions on this point, has observed and held as under:

> 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.
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> 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 unrebutted, 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.

6.1.7 While answering Question (v), namely, in what situations can the power under Section 319 CrPC be exercised: named in the FIR, but not charge-sheeted or has been discharged, this Court has observed and held as under:

112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged.

Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

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116. Thus, it is evident that power under Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC without taking recourse to provisions of Section 300(5) read with Section 398 CrPC. 6.2 Considering the law laid down by this Court in Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges 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. 6.3 In S. Mohammed Ispahani v. Yogendra Chandak (2017) 16 SCC 226, this Court has observed and held as under: (SCC

p. 243) "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." 6.4 In the case of Rajesh v. State of Haryana (2019) 6 SCC 368, after considering the observations made by this Court in Hardeep Singh (supra) referred to hereinabove, this Court has further observed and held that 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 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 FIR but not implicated in charge-sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

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 charge-sheeted. 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.

8. Now, so far as the impugned judgment and order passed by the High Court is concerned, it appears that while quashing and setting aside the order passed by the learned Trial Court, the High Court has considered/observed as under:

> "No evidence except the statement of Sartaj Singh, which has already been investigated into by the concerned DSPs was relied upon by the trial Court to summon, which was not sufficient for exercising power under Section 319 Cr.P.C.
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> As per statement of Sartaj Singh, Palwinder Singh and Satkar Singh gave him lathi blows on the head. Manjeet Singh, Amarjeet Singh, Rajwant Singh, Narvair Singh and Sukhdev Singh were holding gandasi. Manjeet Singh, Amarjeet Singha and Rajwant Singh gave him gandasi blows on the head and face. All the injuries are stated to fall in the offence under Sections 323, 324, 326, 341 read with Section 149 IPC. In case, so many people as mentioned above were giving gandasi and lathies blows on the head, Sartaj Singh was bound to have suffered more injuries, which would not have left him alive and probably he would have been killed on the spot.

He seems to have escaped with only such injuries as have invited offence only under Sections 323, 324, 326, 341 read with Section 149 of IPC. Therefore, the trial Court erred in exercising his jurisdiction summoning the other accused where exaggeration and implication is evident on both sides." 8.1 The aforesaid reasons assigned by the High Court are unsustainable in law and on facts. At this stage, the High Court was not required to appreciate the deposition of the injured eye witness and what was required to be considered at this stage was whether there is any prima facie case and not whether on the basis of such material the proposed accused is likely to be convicted or not and/or whatever is stated by the injured eye witness in his examination□in□chief is exaggeration or not. The aforesaid aspects are required to be considered during the trial and while appreciating the entire evidence on record. Therefore, the High Court has materially erred in quashing and setting aside the order passed by the learned Trial Court summoning the accused to face the trial in exercise of powers under Section 319 CrPC, on the reasoning mentioned hereinabove. Even the observations made by the High Court referred to hereinabove are on probability. Therefore, the impugned judgment and order passed by the High Court is not sustainable in law and on facts and is beyond the scope and ambit of Section 319 CrPC.

8.2 In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the High Court dated 28.08.2020 in revision application bearing CRR No. 3238 of 2018 and CRMM No. 55631 of 2018 is hereby quashed and set aside and the order passed by the learned Trial Court summoning the private respondents herein to face the trial is hereby restored. The private respondents herein now to face the trial as summoned by the learned Trial Court. The present appeals are allowed accordingly.

.....J. [Dr. Dhananjaya Y. Chandrachud] .....J. [M. R. Shah] New Delhi, March 15, 2021