

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1301 OF 2013
(@ SPECIAL LEAVE PETITION (CRL.) NO. 5294 OF 2012)

GULAB CHAND

...APPELLANT

VERSUS

PRADEEP KR. DEHALWAL AND ANR.

...RESPONDENTS

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Judicature of Madhya Pradesh, Bench at Gwalior in Criminal Revision No. 704 of 2011, dated 23.09.2011. By the impugned judgment and order, the High Court has set aside the order passed by the Trial Court on an application filed by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 ('the Code' for short).

3. The Trial Court as well as the High Court has referred to the facts in detail. Therefore, we will only advert to the facts of the case briefly and they are as follows :- The incident occurred on 04.05.2007 at around 3.30 p.m. in the house of the Respondent No. 1 - Pradeep Dehalwal, where the deceased-Nitesh succumbed to a bullet injury. Thereafter, an FIR was lodged by the Respondent No. 1 before the Police station at Ashok Nagar against Ritesh Pathak (A1) and Narendra Singh Dhakad (A2) under Sections 304, 201, 34 of the Indian

Penal Code ("the IPC" for short) and Section 3(2)5 of S.C./S.T. Act.

4. After completion of the investigation, the investigating agency had filed a charge-sheet against (A1) and (A2) for the offences under Sections 302 read with 34 of the IPC.

5. After examining the main prosecution witnesses during the trial, the prosecution had filed an application under Section 319 of the Code, *inter alia*, requesting the Court to direct respondent No.1 herein to face the trial along with the other arraigned accused persons for offences under Section 302 read with 34 of the IPC.

6. The Trial Court after taking into consideration the evidence of P.W.5- mother of the deceased and the evidence of P.W.6- father of the deceased, has come to the conclusion that respondent no. 1 had formed a common intention along with the other accused and in furtherance of the common intention, played an important role in the killing of the deceased, and accordingly, has allowed the application filed by the prosecution. In the words of the Trial Court :

"Both sides were heard on the present application and original case and the statements of the witnesses were perused. From the perusal of the records it is found that before the Court Manjulata Jaatav (PW-5) who is the mother of the deceased, has stated in para 2, 4 of her statement and witness (PW-6) Gulabchandra who is the father of the deceased has stated in para 1, 4 and 5 of his statement and PW-7 Niran Nigam has stated in para 3 and 7 of his statement clearly about the threatening given by Pradeep Dahalwaar to the deceased to kill him and committing the

murder of Nitesh by shooting and his involvement in the incident and even in forensic report the place of incident is stated to be the room of Pradeep Dahalwaar. In this way from the statements of the above prosecution witnesses and from the forensic report given by the senior scientist the evidence in record to the place of incident as the room of Pradeep Dahalwaar has appeared. Looking at the above evidence it is found proper to accuse Pradeep Dahalwaar along with other accused persons in the case, to take cognizance against him and conduct his trial."

7. Being aggrieved by the order so passed by the Trial Court, respondent no.1 herein, had filed a Criminal Revision Petition before the High Court. The High Court in the impugned judgment notices the conclusions reached by the Trial Court. However, on a very strange reasoning holds that the Trial Court was not justified in allowing the application filed by the prosecution to call upon the respondent no.1 to face the trial for the death of the deceased.

In the words of the High Court :

"Looking to the statements of the witnesses, it is gathered that just before the incident, deceased Nitesh informed that accused and the petitioner were threatening him to kill, but therefore the trial Court, there was no strong circumstance appeared against the petitioner to establish his involvement in the commission of murder of Nitesh. Besides, it there was no direct or indirect evidence to involve him in the alleged crime. No doubt, 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 material available in the charge-sheet or the case diary, but to invoke powers under Section 319 of Cr.P.C., it is essential that need to proceed against a person other than accused appearing to be guilty of offence, should arise only on the evidence recorded in the course of any enquiry or trial. Where no such evidence is recorded nor the Investigating Officer has collected any material against such person during investigation, the person shouldn't be summoned under Section 319 of Cr.P.C., the Court must arrive at the satisfaction that there

exists a possibility that the accused so summoned is in all likelihood would be convicted. So, the Court has to use the power under Section 319 of Cr.P.C. Sparingly and primarily to advance the cause of criminal justice but not as a handle at the hands of the complainant to cause harassment to the person who is not involved in the commission of crime."

8. With the assistance of the learned counsel for the appellant and respondent no.1, we have carefully perused the evidence of the mother of the deceased- P.W.5 and the father of the deceased-P.W.6. We have also seen the order passed by the Trial Court as well as by the High Court. The High Court, without properly examining the evidence on record and without properly appreciating the judgment passed by the Trial Court, ought not to have reversed the findings reached by the Trial Court. In our considered view, the Trial Court was justified in calling upon the respondent no.1 to face the trial for the death of the deceased.

9. In view of the above, we allow this appeal, set aside the order passed by the High Court in Criminal Revision No.704 of 2011 and restore the order passed by the Trial Court.

10. Any observations made by us in the course of our order are only for the purpose of disposal of this appeal. This should not be taken as an expression of our opinion for involving of respondent no.1 for the death of the deceased.

11. In view of the order passed by us, the interim order granted by

this Court stands vacated.

12. The incident is of the year 2007 and, therefore, we request the Trial Court to expeditiously dispose of the trial, provided both the parties co-operate in completion of such trial.

.....J.
(H.L. DATTU)

.....J.
(SUDHANSU JYOTI MUKHOPADHAY)

.....J.
(M.Y. EQBAL)

NEW DELHI;
AUGUST 29, 2013

JUDGMENT