



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.4656 OF 2024
(Arising out of S.L.P.(Criminal) No.4253 of 2023)

HETRAM @ BABLI ... APPELLANT(S)

VS.

STATE OF RAJASTHAN & ANR. ... RESPONDENT(S)

J U D G M E N T

ABHAY S.OKA, J.

Leave granted.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent-State.

3. By the order dated 6th February, 2015, the learned Sessions Judge rejected the application made under Section 319 of the Code of Criminal Procedure, 1973 (for short, "the CRPC") for issuing summons against the present appellant. The application under Section 319 of the CRPC was made by the second respondent. The Trial Court rejected the application. The High Court has interfered by the impugned judgment in a Revision Petition filed by the second respondent.

4. With the assistance of the learned counsel appearing for the appellant and the learned counsel appearing for the respondent-State, we have perused the material on record. The application under Section 319 of the CRPC was based on the depositions of two alleged eye witnesses PW-2 Sona and PW-4 Seema. Both of them, in the examination-in-chief, deposed that they had seen the present appellant hitting on the left side of the head of the deceased by a spade.

5. The learned counsel appearing for the appellant submitted that there was no *prima facie* material against the appellant. The submission of the learned counsel appearing for the respondent-State, relying upon a decision of this Court in the case of *Hardeep Singh v. State of Punjab*¹, is that the Court while dealing with the application under Section 319 of the CRPC has to only see the examination-in-chief and decide whether if the same goes uncontroverted, it will lead to the conviction of the persons sought to be implicated. He would, therefore, submit that the High Court is right in allowing the application.

6. We have carefully perused the evidence of both PW-2 ad PW-4. We have already referred to what they stated in examination-in-chief. Their cross-examination shows that

1. (2014) 3 SCC 92.

the allegation made by them against the appellant in the examination-in-chief is an omission. PW-2 stated that apart from her and PW-4, there was no other eye witness. The omission is significant and relevant. Therefore, in view of explanation to Section 162 of the CRPC, it will amount to contradiction.

7. This Court in the case of *Hardeep Singh*¹ has observed that the test to be applied for dealing with the application under Section 319 of the CRPC is of more than a *prima facie* which is required to be considered at the time of framing of the charge. The test to be applied is that if the evidence goes unrebutted, whether it would lead to conviction. The Court has to record satisfaction in such terms and if such satisfaction cannot be recorded, the Court should refrain from exercising power under Section 319 of the CRPC.

8. The learned counsel appearing for the respondent-State relied upon the first sentence of paragraph 106 of the aforesaid judgment. In a given case, if power under Section 319 is sought to be exercised before cross-examination of material witnesses, the Court cannot postpone the consideration of the prayer under Section 319 of the CRPC on the ground that the cross-examination of the witnesses is yet to be recorded.

9. In the facts of the case, the occasion for considering the application under Section 319 of the CRPC arose after the cross-examination of the only eye witnesses was recorded. Therefore, while deciding an application under Section 319 of the CRPC, the Court must consider the cross-examination as well. If an application under Section 319 of the CRPC is made after the cross-examination of witnesses, it will be unjust to ignore the same. The power under Section 319 of the CRPC cannot be exercised when there is no case made out against the persons sought to be implicated. In view of the omissions which are material and which amount to contradiction, obviously no Court could have recorded a satisfaction which is contemplated by Section 319 of the CRPC. It is impossible to record a finding that even a *prima facie* case of involvement of the appellant has been made out.

10. Accordingly, we cannot sustain the impugned order dated 8th February, 2023 of the High Court and the same is set aside. S.B.Criminal Revision Petition No.375 of 2015 stands dismissed.

11. We make it clear that consideration by this Court of the evidence of the two prosecution witnesses is only for the limited purposes of considering the prayer under Section 319 of the CRPC as against the appellant.

12. The appeal is accordingly allowed.

.....J.
(ABHAY S.OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
November 20, 2024