SUPREME COURT OF INDIA

Sunil Kumar Gupta

Vs.

State of Uttar Pradesh

Crl.A.No.395 of 2019

(R.Banumathi and R.Subhash Reddy,JJ.,)

27.02.2019

JUDGMENT

R.Banumathi,J.,

SLP(Crl.) No.4626 of 2017

1. Leave granted.

2. These appeals arise out of the order dated 25.04.2017 passed by the High Court of Judicature at Allahabad in Criminal Revision No. 1354 of 2017 in and by which the High Court has affirmed the order of the trial court summoning the appellants under Section 319 Cr.P.C. for the offence punishable under Section 302 IPC.

3. Marriage of deceased Shilpa, daughter of Sudhir Kumar Gupta (PW-1) was solemnized with Dimpal @ Akash Deep on 26.01.2006. Out of the wedlock, two children were born. According to the complainant - Sudhir Kumar Gupta (PW-1), his daughter Shilpa was complaining about the demand of dowry by her husband Dimpal @ Akash Deep and the appellants-her in-laws. Complainant-PW-1 alleged that on 19.08.2012, his daughter Shilpa was set ablaze and she told him in full consciousness that Chanchal @ Babita, Sachin, Sunil Kumar Gupta (Elder uncle of Dimpal), Pushpa (wife of Sunil Kumar Gupta), Vicky (Son of Sunil Kumar Gupta), Neeru, Shrikant Gupta (Brother of Sunil Kumar Gupta), Bhagwan and Khusbu Gupta have poured kerosene on her and burnt her. Dying declaration of Shilpa was recorded by the Tehsildar on 19.08.2012 at 09.40 PM in which she stated that Chanchal @ Babita poured kerosene and set her on fire. Deceased Shilpa succumbed to injuries on the same day at night i.e. 19.08.2012. On the complaint lodged by Sudhir Kumar Gupta (PW-1), FIR was registered against nine accused including the appellants under Sections 304-B, 498A, 302 IPC and under Sections 3 and 4 of the Dowry Prohibition Act, 1961. On completion of investigation, charge sheet was filed against Chanchal @ Babita (wife of Sachin Kumar) for the offence punishable under Section 302 IPC. So far as other accused are concerned, the charge sheet stated that no offence was made out under Sections 498A, 304-B IPC and under Sections 3 and 4 of the Dowry Prohibition Act, 1961.

4. In the trial, Sudhir Kumar Gupta (PW-1), Mohit Agarwal (PW-2), and Munish Gupta

(PW-3) were examined on 30.10.2014, 06.11.2015 and 08.11.2015 respectively. About one year thereafter during the course of trial on 04.10.2016, an application under Section 319 Cr.P.C. was filed by the prosecution seeking to summon the appellants/accused for the offence punishable under Section 302 IPC stating that their names were mentioned in the FIR and also in the evidence of PW-1 and PW-3. The trial court held that prima facie evidence is available against the appellants for trying them for the offence punishable under Section 302 IPC and allowed the application and ordered issuance of summons to the appellants for trial under Section 302 IPC. In the revision filed by the appellants, the High Court by the impugned order dismissed the revision petition observing that there are specific allegations against the revisionists and therefore, there is no illegality or impropriety in the order of the trial court. Being aggrieved, the appellants are before us.

5. Mr. Basava Prabhu S. Patil, learned senior counsel appearing on behalf of the appellants has submitted that though the names of the appellants were mentioned in the FIR, subsequently they have been exonerated by the Investigating Officer when the charge sheet was filed and this aspect was not considered by the High Court. Placing reliance upon the Constitution Bench judgment in *Hardeep Singh v. State of Punjab and Others*[1], it was submitted that the power under Section 319 Cr.P.C. is to be exercised sparingly and only in those cases where circumstances of the case so warrant, the accused could be summoned under Section 319 Cr.P.C. It was submitted that in the present case, there are no strong and cogent evidence for the trial court to exercise its jurisdiction under Section 319 Cr.P.C to summon the appellants for trial under Section 302 IPC. It was contended that when the dying declaration of deceased Shilpa contains only the name of Chanchal @ Babita, the trial court and the High Court ought not to have ordered summoning of the appellants for the offence punishable under Section 302 IPC.

6. Per contra, Ms. Ruchi Kohli, learned counsel appearing on behalf of the respondent-State submitted that based on the evidence of PW-1 and PW-3, the trial court satisfied itself that there are prima facie evidence available on record indicating involvement of the appellants in the offence and the High Court rightly declined to interfere with the order of the trial court summoning the accused.

7. We have carefully considered the submissions and perused the impugned order and other materials on record.

8. On 19.08.2012, immediately after the occurrence at 09.40 PM in her dying declaration recorded by the Tehsilar, deceased Shilpa had stated “that she had a quarrel with her sister-in-law (Dewrani) Chanchal @ Babita and that Chanchal @ Babita poured kerosene and set her on fire". In the complaint lodged by PW-1 on the next day i.e. 20.08.2012, he has referred to the names of the appellants. Though the charge sheet was filed under Section 302 IPC only against Chanchal @ Babita, the complainant has not filed any protest petition at that stage. In his evidence, PW-1 has referred to the names of the appellants that his daughter Shilpa in consciousness told him the names of all the appellants including Chanchal @ Babita and that they are responsible for pouring kerosene and set her on fire.

9. Section 319(1) Cr.P.C. empowers the Court to proceed against any person not shown as an accused if it appears from the evidence that such person has committed any offence for

which such person could be tried together along with the accused. It is fairly well settled that before the court exercises its jurisdiction in terms of Section 319 Cr.P.C., it must arrive at satisfaction that the evidence adduced by the prosecution, if unrebutted, would lead to conviction of the persons sought to be added as the accused in the case. In Hardeep Singh, the Constitution Bench held as under:-

> "105. Power under Section 319 Cr.P.C 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 accusedThe 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."
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> [underlining added]

10. Observing that for exercising jurisdiction and its discretion in terms of Section 319 Cr.P.C., the courts are required to apply stringent tests, in *Sarabjit Singh and Another vs. State of Punjab and Another*[2], it was held as under:-

> "21. An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other persons(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests: one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.
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> 22 Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the

> Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction.
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> 23. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied."
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> [underlining added]

11. Applying the above principles to the case in hand, in our considered view, no prima facie case is made out for summoning the appellants and to proceed against the appellants for the offence punishable under Section 302 IPC. As pointed out earlier, in the dying declaration, deceased Shilpa has only mentioned the name of Chanchal @ Babita; but she has not mentioned the names of others. In his complaint lodged before the police on the next day i.e. 20.08.2012, Sudhir Kumar Gupta-PW-1 has stated that his daughter Shilpa told him that Chanchal @ Babita and all other people set her on fire after pouring kerosene. PW-1 has neither stated the names of the appellants nor attributed any overt act. Likewise, in their evidence before the court, PWs 1 and 3 have only stated that Shilpa told them that Chanchal @ Babita and all others have set fire on deceased Shilpa. Neither the complaint nor the evidence of witnesses indicates as to the role played by the appellants in the commission of the offence and which accused has committed what offence. Under such circumstances, it cannot be said that the prosecution has shown prima facie material for summoning the accused for the offence punishable under Section 302 IPC.

12. Under Section 319 Cr.P.C., a person can be added as an accused invoking the provisions not only for the same offence for which the accused is tried but for "any offence"; but that offence shall be such that in respect of which all the accused could be tried together. It is to be seen whether the appellants could be summoned for the offence under Section 498A IPC and under Sections 3 and 4 of Dowry Prohibition Act. The statement of PW- 1 both in the complaint and in his evidence before the court is very general stating that he had given sufficient dowry to Shilpa according to his status and that the groom side were not satisfied with the dowry and that they used to demand dowry each and every time. Insofar as the demand of dowry and the dowry harassment, there are no particulars given as to the time of demand and what was the nature of demand. The averments in the complaint and the evidence is vague and no specific demand is attributed to any of the appellants. In such circumstances, there is no justification for summoning the appellants even under Section 498A IPC and under Sections 3 and 4 of Dowry Prohibition Act. It is also pertinent to point out that upon completion of investigation, the Investigating Officer felt that no offence under Sections 498A, 304-B IPC and under Sections 3 and 4 of the Dowry Prohibition Act is made out. Charge sheet was filed for the offence punishable only under Section 302 IPC against Chanchal @ Babita. As held in the Constitution Bench judgment in Hardeep Singh, for summoning an accused under Section 319 Cr.P.C. it requires much stronger evidence than mere probability of his complicity which is lacking in the present case. The trial court and the High Court, in our considered view, has not examined the matter in the light of the well-settled principles and the impugned order is

liable to be set aside.

13. In the result, the impugned order of the High Court is set aside and these appeals are allowed. The Sessions Judge/Fast Track No.1, Moradabad shall proceed with Session Trial No.35/2013 in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter.

Judgment Referred.

[1]*(2014) 3 SCC 0092*
[2]*(2009) 16 SCC 0046*