

(2001) 09 SC CK 0069

Supreme Court of India

Case No: Criminal Appeal No. 965 of 2001 (Arising out of SLP (Criminal) No. 1521 of 2001)

Rukhsana Khatoon
(Smt)

APPELLANT

Vs

Sakhawat Hussain and
Others

RESPONDENT

Date of Decision: Sept. 18, 2001

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 319

Citation: AIR 2001 SC 1968 : (2001) AIRSCW 1433 : (2001) 2 BC 304 : (2001) 105 CompCas 385 : (2001) 4 JT 133 : (2001) 2 MLJ 97 : (2001) 3 SCALE 53 : (2001) 4 SCC 713 : (2001) 2 SCR 714 : (2001) 3 Supreme 66 : (2001) 2 UJ 1031 : (2001) 2 UPLBEC 1176

Hon'ble Judges: R. P. Sethi, J; M. B. Shah, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Leave granted.

2. Heard the learned counsel for the parties.

3. By the judgment and order dated 2nd February, 2001, the High Court of Allahabad allowed the Criminal Revision No. 263 of 2001 filed by respondents Nos. 1 to 4 and set aside the order passed by the Sessions Court summoning and arraigning them as accused under S. 319 of Cr. P.C. That order is challenged by filing this appeal.

4. It is apparent from the record that the complainant lodged a report with Police Station Kotwali Thakurdwara, Moradabad on 5-5-1998 that at about 6.30 p.m., he along with his nephew Afroj, Kamal Singh and his son Alam was going towards his house from bus stand and when they reached near the house of Netram son of

Dharam Vir, all of a sudden, accused named therein came there and caught Afroj and threatened to kill him for giving evidence against them. Afroj was witness in a case under S. 302, I.P.C. against the accused persons. Accused-Sakhawat exhorted "saale ko goli mar do" and hence, the complainant and others tried to save Afroj. At that time, the accused persons pulled out country made pistol towards them and threatened to shoot down if they approached nearby. They stopped out of fear. Meanwhile, accused caught the hands of Afroj and Luvkush shot at Afroj, resultantly Afroj died on the spot. However, after investigation of the case, the Investigating Officer challaned only Luvkush and excluded the names of other persons. During the trial, an application under S. 319, Cr. P.C. was filed before the learned Sessions Judge stating that the names of above four accused persons find mention in the FIR and the evidence of P.W.1 Mohd. Alam son of Abdul Wahid and P.W. 2 Kamal Singh corroborates the role of those persons in the alleged incident. The learned Sessions Judge allowed the application and ordered summoning of all the above accused persons to stand trial under Ss. 147, 148, 149 and 302, I.P.C. By the impugned order the High Court set aside the said order by holding that Section 319 cannot be invoked by the Court when a person named as an accused in FIR is not charge-sheeted.

5. In our view, the impugned order is, on the face of it, illegal and erroneous. It is against the provisions of S. 319, Cr. P.C. and the decisions rendered by this Court interpreting the same. In *Kishun Singh and others vs. State of Bihar* (1993) 2 SCC 16, this Court considered a case where a FIR was lodged naming 20 persons including the two appellants as assailants of the deceased who died in the occurrence. After investigation, police submitted its report under S. 173, Cr. P.C. showing 18 persons other than the two appellants as offenders. The Magistrate committed those 18 persons named in the report to the Court of Session under S. 209, Cr.P.C. to stand trial. Before Sessions Court, an application under S. 319 of the Code was filed praying that remaining two accused be summoned and arraigned as accused. The Sessions Court impleaded them as co-accused. That order was finally challenged before this Court and the Court dismissed the appeal by holding that S. 319 can be invoked both by the Court having original jurisdiction as well as the Court to which the case has been committed or transferred for trial. Similar is the view taken in *Girish Yadav and others vs. State of M.P.* (1996) 8 SCC 186.

6. The learned counsel for the respondents contended that the High Court was justified in passing the impugned order and in support of his contention he has relied upon the decision in *Municipal Corporation of Delhi vs. Ram Kishan Rohtagi and others* (AIR 1983 SC 67). In our view, there is no substance in his contention. In that case also, after considering S. 319, Cr. P.C., this Court held that the said provision gives ample power to any Court to take cognizance and add any person not being an accused before it and try him along with other accused, if there appears during the trial sufficient evidence indicating his involvement in the offence. The Court also observed that this power is really an extraordinary power and should

be used very sparingly.

7. Considering the facts as stated above, in our view, it cannot be said that the Sessions Court committed any illegality or irregularity in summoning the respondents as accused. Hence, this appeal is allowed and the impugned order passed by the High Court is set aside. The trial Court to proceed with the matter in accordance with law.