
(1993) 07 CAL CK 0019

Calcutta High Court

Case No: Criminal Rev. No. 313 of 1992

Smt. Minati Das

APPELLANT

Vs

Radhakanta Patra and
Others

RESPONDENT

Date of Decision: July 12, 1993

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 173(5), 226, 231
- Evidence Act, 1872 - Section 3, 73
- Penal Code, 1860 (IPC) - Section 302

Citation: (1994) 2 CALLT 432

Hon'ble Judges: Gitesh Ranjan Bhattacharjee, J

Bench: Single Bench

Advocate: Dilip Dutta and Arup Chatterjee, for the Appellant; A.P. Chatterjee and Soumen Kumar Dutta for the Opposite Parties Nos. 1 to 3 and Balai Roy and Ashim Roy for the Opposite Parties Nos. 5 to 27, Alakananda Bose, for the Respondent

Final Decision: Dismissed

Judgement

Gitesh Ranjan Bhattacharjee, J.

In this criminal revision the question that has fallen for consideration is whether any interference with the order of the learned Additional Sessions Judge, 4th Court, Midnapur refusing to add the opposite party Nos. 1, 2 & 3 as accused in the pending sessions trial, is necessary. In this case charge was framed against the added opposite party Nos. 5 to 27 u/s 302 I.P.C. and examination of as many as four prosecution witnesses including the present petitioner has been completed. At this stage prosecution made an application before the learned Court below for making the opposite party Nos. 1 to 3 accused in the said proceeding u/s 319 Or. P.C. in view of the evidence obtained in the case implicating the said 3 persons who were not charge-sheeted as accused. On consideration of the evidence so far adduced and the statements recorded u/s 161 Cr. P.C. the learned Additional Sessions Judge however did not find it to be a fit case for taking action against

the opposite party Nos. 1, 2 and 3 u/s 319 Cr. P.C. Being aggrieved by the said order of the learned Additional Sessions Judge the petitioner who was examined as PW-2 in the learned Court below has preferred this revisional application.

2. As I have already mentioned the examination of four witnesses has been completed by the learned Court below. Out of those four witnesses PW-4 was only tendered, but he was neither examined nor cross-examined. PW-1, Kanak Bala Das and PW-2, Minati Das are sisters. The deceased Motilal was their brother. The trial in the court below relates to a charge of murder u/s 302 I.P.C. concerning the death of Motilal. The contention of the petitioner as made in this revisional application is that on 6th September, 1989 the opposite party No. 1, Radhakanta Patra came to the house of the petitioner at about 1/1-30 p.m. and took away the said Motilal from the house and then at about 3/3-30 p.m. Motilal returned but after a while he again went out and when he was sitting by the side of Shiva temple, the O.P. No. 1, Radhakanta Patra, O.P. No. 2, Madan Mohan Patra and O.P. No. 3, Prabhat Pradhan took him away and after sometime the petitioner Minati and her sister Kanak Bala heard a hue and cry and then at about 8-00 p.m. O.P. No. 1, Radhakanta came with his garments wet with blood stains and with a lathi in his hand and the petitioner and her sister asked him about the whereabouts of their brother Motilal, but the O.P. No. 1 was at first reluctant to say anything but later he said that Motilal went with him as well as with O.P. Nos. 2 and 3, but thereafter what happened he did not know and that subsequently one Patla alias Aisim Mazumder, Sudhanshu and Golak came and said that they would search and find out Motilal. It is the further contention of the petitioner that being suspicious the petitioner along with her sister went in search of their brother and they found that the dead body of their brother was lying on the paddy field near the house of one Bhanu Das who told that motilal was murdered. This Bhanu Das has been examined in the court below as PW-3. It is also the allegation in the revisional application that Patla, Sudhanshu and Golak then came there and began to shout that Ajoy Maity and Sanjay Maity committed murder of Motilal and they along with other villagers went in procession to the house of Ajoy and Sanjoy and looted away the articles from their house. It is the further allegation of the petitioner that thereafter when police came the said Golak Behari Das Mahapatha and the aforesaid persons namely, Patla alias Asim Mazumder and Sudhanshu were found talking with the police and the said persons did not allow the petitioner and her sister any opportunity to talk to the police and tell the actual facts. The grievance of the petitioner is that the police did not investigate the case properly and the petitioner made several representations to different authorities for proper investigation but without any effect and ultimately on being influenced by political pressure the police submitted charge-sheet against wrong persons leaving aside the real culprits, namely, the opposite party Nos. 1 to 3 herein.

3. At this stage it will be profitable to read Section 319 Cr. P.C. which runs thus :

" Section 319. Power to proceed against other person appearing to be guilty of offence :--

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the court, although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the court proceeds against any person under Sub-section (1), then--

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced."

4. The learned Court below considered the evidence given by the three witnesses, namely, P.Ws. 1, 2 and 3 and noticed that their evidence in court differed materially from the statements they made before the I.O. u/s 161 Cr. PC. The learned Court below found that there was nothing which could prima facie lead to the conviction of the persons in respect of whom the petition u/s 319 Cr. P.C. had been filed by the prosecution and accordingly rejected the petition. It has been vehemently argued on behalf of the petitioner that in view of Section 162 Cr. P.C. the learned Court below was not entitled in this connection to look to the statements recorded by the police u/s 161 Cr. P.C. during investigation. Curiously enough, as it appears from the impugned order of the learned Court below dated the 11th February, 1993, the very foundation of the application filed by the prosecution u/s 319 Cr. P.C. was that in the statements of the witnesses recorded u/s 161 Cr. P.C. by the I.O. the names of the opposite party Nos. 1, 2 and 3 appeared as active participants in the commission of murder of Motilal but the I.O. did not submit charge-sheet against them, and now a contrary plea is taken on behalf of the petitioner that the Court is not entitled to look to the statements recorded by the I.O. u/s 161 Cr. P.C. while considering whether any action u/s 319 Cr. P.C. is warranted. Section 162 Cr. P.C. runs thus:

"Section 162. Statements to police not to be signed : use of statements ill evidence :-

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it, nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter

provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made ;

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872), and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (i) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation--An omission to state a fact or circumstance in the statement referred to in Sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

5. Now, before I proceed to examine the import of the term "evidence" as used in Section 319 Cr. P.C. and whether the said term includes a statement recorded u/s 161 Cr. P.C I would rather like to take notice of the decisions cited before me as to in what circumstances the court would be justified in taking action u/s 319 Cr. P.C. Mr. Dilip Dutt appearing for the petitioner attracted my attention to the decision of the Supreme Court in [Mahant Amar Nath Vs. State of Haryana and Another](#), . In that case the witness examined before the learned Sessions Judge gave sufficient details about the participation in the crime by the persons who were sought to be arraigned as accused in the case u/s 319 Cr. P.C. and on the basis of his evidence the learned Sessions Judge came to the conclusion that it was necessary and proper to take action against those persons u/s 319 Cr. P.C. It was urged before the Supreme Court that the details given by the witness at the trial had not figured in his statement u/s 161 Cr. P.C. and therefore the Sessions Judge ought not to have given the impugned direction. The Supreme Court repelled the argument by observing that the said aspect clearly fell within the domain of appreciation of evidence to be done finally at the end of the trial before pronouncing the guilt or otherwise of the concerned accused and that it could not be disputed that there was sufficient material before the learned Sessions Judge warranting the impugned direction. It is evident that the argument advanced before the Supreme Court was that the details given by the witness in court had not figured in his statement u/s 161 and in that background the Supreme Court observed that this aspect clearly fell within the domain of appreciation of evidence to be done finally at the end of the trial. This decision does not say that the statement u/s 161 Cr. P.C. cannot be at all looked into at the stage of Section 319(1) Cr. P.C. or that the same should be overlooked at that stage even when there is

any material discrepancy between the evidence given in Court and the earlier statement u/s 161 Cr. P.C. and even when such discrepancy, instead of being confined only to the details given by the witnesses in evidence, rather visibly, readily and pronouncing discredits the very core of the allegation of involvement brought against the person sought to be arraigned as accused u/s 319 Cr. P.C. On the other hand, Mr. A. P. Chatterjee, the learned Advocate for the opposite party Nos. 1, 2 and 3 attracted my attention to the decision of the Supreme Court in [Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others](#), where it has been observed thus in paragraph-19 thereof :

"In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceeding have been quashed have also committed the offence the court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extra-ordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against whom action has not been taken. More than this, we should not like to say anything further at this stage. We leave the entire matter to the discretion of the Court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondents Nos. 2 to 5 will not prevent the Court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence let before it."

6. The above observations, particularly the underlined portions thereof would clearly indicate that action u/s 319 Cr. P.C. should not and cannot be taken lightly or superficially on the basis of materials which are even prima facie incapable of standing any judicial scrutiny at the threshold. Mr. Chatterjee also relied upon another decision of the Supreme Court being [Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another](#), where the Supreme Court in paragraph-14 observed thus :

"On looking into the record we are of the view that the Magistrate had good reason to summon the appellant u/s 319 of the Code as it appears from the evidence led at the trial that there was a strong case made out against the appellant for joining him in the criminal case as an accused."

7. It is submitted by Mr. Chatterjee that the said decision also clearly indicates that for taking action u/s 319 Cr. P.C. the evidence must show a strong case and not only a prima facie or superficial case against the person sought to be arraigned as an accused u/s 319. In [Joginder Singh and Another Vs. State of Punjab and Another](#), the Supreme Court in paragraph-6 observed thus :

"A plain reading of Section 319(1), which occurs in Chap. XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the courts including the sessions court and as such a sessions court will have the power to add any person,

not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused."

The above observation also clearly indicates that for taking action u/s 319 Cr. P.C. there must be sufficient evidence, as distinguished from superficial or merely nominal evidence, indicating the involvement of the concerned person in the commission of the offence. Of course in this connection sufficiency of evidence has to be adjudged not necessarily by quantitative sufficiency but rather by qualitative sufficiency. The decisions of the Supreme Court thus clearly indicate that for taking action u/s 319 Cr. P.C. against any particular person there must be sufficient evidence so as to make out a strong and compelling case against the particular person. Mere existence of some nominal evidence raising at best only a feeble case languishing in the domain of speculative suspicion will not justify an action u/s 319 Cr. P.C.

8. u/s 157 Cr. P.C. the police can investigate a cognizable case if from information received or otherwise the officer-in-charge of a police station has reason to suspect the commission of an offence. But suspicion on the basis of some clues which may actuate the Investigating Officer to conduct an investigation in a particular direction may not be sufficient unless something tangible is forthcoming, to make out a prima facie case against an accused for framing of charge. In [Binode Behari Dey Vs. The State](#), it has been observed by Court, after discussing a good number of decisions, at page-270 :

"6. In this connection, a distinction has to be borne in mind regarding the import of "grave suspicion" that would justify the framing of charge for trial which is something quite different from the suspicion which may reasonably lead the Investigating Officer to direct investigation against the suspected person. ***** Grave suspicion which would justify the framing of charge against a particular accused must be based on a prima facie case made out by the materials but if there are no such materials to make out even a prima facie case which if accepted at face value would indicate the commission of offence by the accused, in that case there is no question of framing of charge, even if there exist certain facts and circumstances giving rise to a speculation that a particular person might have been involved in the commission of the offence.

"7. Mere speculation on clue, in the backdrop of particular facts and circumstances, may legitimately activate police investigation in a particular direction on suspicion but mere speculative suspicion will not justify framing of charge against an accused. For framing of charge there must be at least a grave suspicion, not speculative suspicion but a very strong suspicion founded upon materials projecting a prima facie case against the accused."

9. In connection with the requirement of materials to justify framing of charge the different provisions in the Code of Criminal Procedure, such as, Section 228, Section 240, Section 246 have used the language "there is ground for presuming that the accused has

committed an offence. But in Section 319 Cr. P.C. the requirement has not been left to the domain of mere presumption. The Section rather provides that from the evidence it should appear that the person concerned has committed the offence. There is thus a difference, a difference in degree. In one case it will suffice if the materials under consideration are capable of raising a presumption that the accused has committed an offence while in the other case it must appear from the evidence that the person concerned has committed an offence. While mere suspicion or clue may entitle the police to embark upon an investigation into a cognizable case, for framing of charge there must be at least grave suspicion and there must be ground for presuming that the accused has committed an offence, but for taking action u/s 319 Cr. P.C. there must still be a stronger case, higher in degree than mere grave suspicion or presumption so much so that it must appear from the evidence that the person concerned has committed the offence. The evidence which may give rise to a grave suspicion or presumption justifying framing of charge may not therefore necessarily be sufficient for an action u/s 319 Cr. P.C. unless such evidence projects a probative effect rather than being merely nominal or marginal. Indeed it is not necessary that the evidence must project a conclusive case, but it should project a reasonably strong case for taking action u/s 319 Cr. P.C.

10. An argument has been advanced by Mr. Dutt on behalf of the petitioner that in considering the question as to whether any action is required to be taken u/s 319 Cr. P.C., the learned Court below was not justified in looking to the statements recorded u/s 161 Cr. P.C. In this connection, it was his submission that Section 162 Cr. P.C. bars the use of statements recorded u/s 161 Cr. P.C. except for the purposes mentioned in the said Section, namely, for the purpose of contradicting a witness in the manner provided in Section 145 of the Indian Evidence Act or where such statement comes within the purview of Section 32 or Section 27 of the Evidence Act. In my opinion, however, in spite of the bar of Section 162 the said Section need not be taken to be restraining the court from taking notice of the statements recorded u/s 161 Cr. P.C. in certain circumstances for some limited purposes. As for example, for the limited purpose of considering the question whether an accused should be released on bail under Sections 437 or 439 or on anticipatory bail u/s 438 Cr. P.C. the concerned court including the High Court very often has to, and does look into the statements recorded u/s 161 Cr. P.C. Then again, in considering the question whether in a sessions trial case, based on police report, charge is required to be framed u/s 228 read with Sections 226 and 227 Cr. P.C. and if so, under what heads, the Court of session has to consider, amongst other materials, if any, the statements of witnesses recorded u/s 161 Cr. P.C. Similarly, in a warrant procedure case started on the basis of a police report, under Sections 239 and 240 Cr. P.C. the Magistrate has to consider the statements recorded u/s 161 and forwarded u/s 173 Cr. P.C. for the purpose of deciding whether the accused should be discharged or charge should be framed against him and if so, under what sections. Section 162 Cr. P.C. cannot be so interpreted as to bar looking into statements recorded u/s 161 Cr. P.C. in such circumstances as mentioned above. It is therefore evident that Section 162 Cr. P.C. does not bar looking into statements recorded u/s 161 Cr. P.C. for having a preliminary idea as

to what was purportedly stated by the witnesses during investigation.

11. Now let us try to understand the import of the word "evidence" as used in Sub-section (1) of Section 319 Cr. P.C. for ascertaining whether the said term also includes in that context the statements recorded u/s 161 Cr. P.C. In Section 3 of the Indian Evidence Act, 1872 the word "evidence" has been defined thus :

"Evidence means and includes-

(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry ; such statements are called oral evidence;

(2) all documents produced for the inspection of the court; such documents are called documentary evidence."

12. The statements recorded u/s 161 Cr. P.C. and forwarded to the Magistrate u/s 173(5) Cr. P.C. along with the charge-sheet are obviously documents produced for the inspection of the court in connection with the consideration of framing of charge and for other purposes and therefore these recorded statements answer the description of documentary evidence as contained in Section 3 of the Evidence Act. Such statements recorded u/s 161 Cr. P.C. can also be viewed as proposed or possible oral evidence coming within the definition of evidence as contained in the said Section 3 of the Evidence Act because the makers of such recorded statements are expected to make such statements while examined in court. Such proposed or possible evidence however can be adduced in evidence in court only if the same is admissible and relevant under law. In order to be "evidence" within the meaning of Section 319 Cr. P.C. the concerned statement or document will not only have to answer the description as given in the definition of the said term in Section 3 of the Indian Evidence Act but the same must also be admissible and relevant under the provisions of law as may be applicable to a case including the provisions of the Indian Evidence Act. A study of the different provisions of the Criminal Procedure Code will lend support to the import of the definition of the term "evidence" as given in Section 3 of the Evidence Act that the "evidence" as referred to in the different provisions of the Code may mean either proposed or possible evidence, i.e., the evidence that may be legally adduced or the evidence already adduced or in both senses depending upon the context in which the term has-been used. As for example, Section 226 Cr. P.C. provides that while opening the case for the prosecution in a sessions case the prosecutor is required inter alia to state before the court by what "evidence" he proposes to prove the guilt of the accused. Obviously here in Section 226 Cr. P.C. the term evidence has been used in the sense of proposed evidence and not in the sense of evidence adduced. Section 231 Cr. P.C. says that the Judge shall proceed to take all such evidence as may be produced in support of the prosecution." Here also the word "evidence" has been used in the sense of proposed or possible evidence. In Section 232 Cr. P.C. it is stated that if "after taking the evidence" for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the

Judge considers that there is "no evidence" that the accused committed the offence, the Judge shall record an order of acquittal. Obviously here the term "evidence" has been used in the sense not of proposed or possible evidence but of evidence adduced and recorded in the trial. Section 309(2) Cr. P.C. provides that if the court, after taking cognizance of an offence or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time postpone or adjourn the same and may remand the accused if in custody. In explanation (1) thereto it is provided that if sufficient "evidence" has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further "evidence" may be obtained by a remand, then this will be a reasonable cause for a remand. It is evident that in the said explanation (1) the word "evidence" has been used both in the sense of evidence adduced and of proposed or possible evidence as may be applicable in the particular context of a given situation. Without further referring to different other provisions of the Criminal Procedure Code it can be safely concluded that in the different provisions of the Criminal Procedure Code the word "evidence" has been used in different senses so as to connote proposed or possible evidence or evidence adduced or in both senses depending upon the context. Having regard to the context, it can be seen that the word "evidence" used in Section 319 Cr. P.C. includes or refers to both proposed or possible evidence as well as the evidence adduced, if any. Of course the proposed or possible evidence must have a sustainable basis and it must not be merely speculative. As for example, if the statement recorded u/s 161 Cr. P.C. clearly shows the participation of a person in the commission of an offence but such person has not been included as accused in the charge-sheet by mistake or for any unexplained reason, the court in an (appropriate case may take notice of such statement recorded u/s 161 Cr. P.C. and also take action on the basis of the same u/s 319 Cr. P.C.

13. The question whether the word "evidence" in Section 319 Cr. P.C, only means evidence recorded by the court fell for consideration in the Full Bench decision of the Rajasthan High Court in [Dalip Singh and Others Vs. State of Rajasthan](#), and the Full Bench held thus in para-graph-54 :

"When the Legislature while enacting Section 319(1) has used the term "evidence" only and not the evidence recorded in the court, the meaning of the word should be understood in its generic sense. Courts should read and interpret the section as it is. No canon of construction permits the court to interpret a section in such a manner as to render it to some extent otiose. Section 319(1) vests in the Court power to correct the error of the investigating agencies if it appears that there is some flaw in proceeding only against some persons and dropping others. Such a power is meant to check the unbridled power of the investigating agency in determining the guilt or innocence of the suspects. The interpretation, of the word "evidence" in Section 319(1), we are inclined to make, would help the Courts to put up the offender in the dock at the earliest stage possible."

Instead of repeating the reasons I would only like to say with respect that I fully agree with the interpretation of the word "evidence" in Section 319(1) Cr. P.C. as made by the Full Bench of the Rajasthan High Court in Dalip Singh v. State of Rajasthan (supra). I hold that in appropriate cases the Court may look into the statements recorded u/s 161 Cr. P.C. in connection with the question as to whether any action is required to be taken u/s 319 Cr. P.C. in any particular case. Even then I would however like to leave a note of caution that while looking into the statement recorded u/s 161 Cr. P.C. the Court will have to be cautious and careful.

14. In the present case however it can be reasonably presumed that the statements recorded u/s 161 Cr. P.C. did not implicate the present petitioners in the commission of the offence, else that would have been brought to the notice of the learned Court below. On the other hand, as I have already recorded the learned Court below found material discrepancy in the form of omission on vital points, between the statements recorded u/s 161 Cr. P.C. and the evidence so far adduced in court. However, even brushing aside such discrepancy and even without looking into the statements recorded u/s 161 Cr. P.C. if we consider the evidence of the PWs examined so far in Court, we will find that no case has been made out against the present petitioners, beyond speculation only, as could legitimately warrant action u/s 319 Cr. P.C. PW-1, Kanak Bala says in her evidence that Radhakanta, Madan and Prabhat, the Opposite party Nos. 1 to 3 herein came to the temple while Motilal was sitting there and took him towards the hospital and after a few minutes they heard hue and cry and after half-an-hour Asim Alias Patla passed by the road crying "Motilal, come out with arms, Radhakanta was taken away." Such cry, even if true, does not project any intelligible case. If really Motilal was taken by Radhakanta and others it is not understood why Patla should come there to invite Motilal to come out with arms and why he should say that Radhakanta was taken away. She says that at that time Radhakanta appeared there on the village road when his garments were wet and it "seemed" to them that there was blood stains in his garments and he had one lathi at that time in his hand. PW-2, Minati Das says that at about 8J00 p.m. Radhakanta came there having his garments wet "probably" with blood stains. It will thus be seen that even these 2 witnesses were only speculating that what they had seen were probably blood stains, but could not even reasonably persuade themselves that it was so. This at least indicates the necessity of circumspection. According to the evidence of PW-1, Asim, Ajit and Sudhangshu came there and told them that they would search out. her brother. PW-2 says that Patla, Sudhangshu and Golak came there and assured that they would search for their brother. According to the evidence of PWs 1 and 2 they themselves went out in search of their brother and found the dead-body of their brother in the paddy field near the house of Bhanu Das. PW-1 states that Bhanu Das told her that there were some trouble in the field and accordingly they went there being accompanied by Bibhu, Ajit, Sudhangshu and others and found the dead body of Motilal in the field. PW-3, Bhanu Das says that he found that five persons, namely, Patla, Radhakanta, Prabhat, Madan and Motilal were going along the Ail of the paddy field and that after a while he heard cries ""Bachao, Bachao" ("save, save") and that there were tangis in the hands of Patla and

Madan, and lathis in the hands of Prabhat and Radhakanta and on hearing the cries he entered into his room out of fear and after half-an-hour he found PWs 1 and 2 coming crying accompanied by Golak, Ajit, Sudhangshu and others and that he told them that he did not see Motilal and he only heard the cries and then they went towards the paddy field and after a while they came back and told that Motilal was murdered. His evidence thus is vitiated by prima facie inconsistency. In one place he says that he saw Motilal, Madan, Prabhat, Radhakanta and Patla and in another place he says that he did not see Motilal and only heard the cries. As we have noticed PW-1 says that PW-3, Bhanu Das told her that there was some trouble in the field. If really Bhanu Das had seen Motilal, Madan and others, it was expected that he would have reported the same to PW-1 when he met her. But neither PW-1 nor PW-3 says that any such report was made. The evidence so far adduced is not only not specific about the alleged participation of the opposite party Nos. 1, 2 and 3 in the commission of the offence but the evidence also lacks even prima facie consistency as can legitimately prompt the court to take action u/s 319 Cr. P.C. The evidence adduced, far from being direct or specific is only nebulous and speculative which is inadequate for an action u/s 319 Cr. P.C.

15. In this connection, it is also to be noted that the word "may" used in Section 319(1) makes it rather optional and discretionary for the Trial Court to take any action under the said section. If the trial court takes a decision as to whether it should or should not exercise its judicial discretion for taking action under the said section on due consideration of the evidence, a Revisional Court will undoubtedly be very slow to interfere with such decision unless there is any patent illegality, perversity or impropriety in it. If the decision of the Trial Court in the matter is not perverse or illegal the same shall not be disturbed by the Revisional Court simply on the ground that a different view on the point also would be possible. In any view of the matter I find that no sufficient reason has been made out for interfering with the impugned order of the learned Court below or for holding that a reasonably good case has been made out for taking action against the opposite party Nos. 1, 2 and 3 u/s 319 Cr. P.C., at least at this stage. The revisional application is accordingly dismissed.