



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 3172 OF 2023

AARIF & ORS.

...APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN & ANR.

...RESPONDENT(S)

J U D G M E N T

ABHAY S. OKA, J.

1. In a pending prosecution for the offences punishable under Sections 148, 341, 323, 302 read with Section 149 of the Indian Penal Code, 1860, by order dated 08th June 2022, the learned Additional Sessions Judge exercised power under Section 319 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and directed that the appellants who were not shown as accused in the charge sheet should be proceeded against with the accused named in the charge sheet. The appellants preferred a Revision Application before the High Court to challenge the said order. By the impugned order, the Revision Application has been dismissed.

FACTUAL ASPECTS

2. The complainant lodged the First Information Report about the incident of 22nd February 2017, which occurred in the morning at around 09.15. The complainant, his father-

Shirajuddin, and his mother-Manja were standing near heaps of bricks. At that time, Shahid, Javed, the present appellants, and four to five persons came there and assaulted the complainant's father with iron rods. The father succumbed to the injuries, and even the mother sustained injuries.

3. A charge sheet was filed against five other accused. The present appellants were not named in the charge sheet. After evidence of PW-1-Manja (the widow of the deceased) was recorded, by the order dated 24th July 2018, the Trial Court took cognizance of the offence against the appellants by exercising the power under Section 319 of the Cr.P.C. However, by the order dated 16th August 2018, the said order of the Trial Court was set aside by the High Court. The High Court held that in the facts of the case, the Trial Court ought to have recorded evidence of all eyewitnesses and only thereafter ought to have considered the application for invoking the powers under Section 319 of Cr.P.C. Therefore, the High Court remanded the application by granting liberty to the Trial Court to pass an appropriate order in the exercise of power under Section 319 Cr.P.C. after recording evidence of eyewitnesses. Thereafter, the order mentioned above, dated 8th June 2022, was passed by the Trial Court against the appellants under Section 319 of Cr.P.C. By the impugned judgment dated 04th April 2023, the order of the Trial Court has been confirmed.

SUBMISSIONS

4. The learned Senior counsel appearing for the appellants has invited our attention to evidence of PW-1 (Manja), PW-5 (Shahrookh) and PW-7 (Ekaramuddin). He submitted that,

taking the evidence of the said witnesses as correct, even a *prima facie* case against the appellants was not made out. He would, therefore, submit that impugned orders are liable to be set aside. The learned counsel appearing for the State and the first informant supported the impugned orders. Their submission is that at this stage, close scrutiny of the evidence of the prosecution witnesses is not warranted for passing an order under Section 319 of Cr.P.C. The Court has to consider the *prima facie* view. Both, therefore, submit that no interference is called for.

CONSIDERATION OF SUBMISSIONS

5. Perusal of the judgment and order dated 16th August 2018, passed in the Revision Petition filed by the appellants, shows that the High Court set aside the order passed under Section 319 of Cr.P.C. by the Trial Court. The High Court order notes that evidence of PW-1 has been recorded. The purport of the order of the High Court is that unless the evidence of other prosecution witnesses (eyewitnesses) is recorded, the application under Section 319 Cr.P.C. cannot be considered. From the bare reading of the order dated 16th August 2018, it is apparent that the High Court did not find evidence of PW-1 as sufficient to confirm the order passed under Section 319.

6. Regarding the extent and degree of inquiry required for deciding an application under Section 319 of Cr.P.C., the decision of the Constitution Bench of this Court in the case of

Hardeep Singh v. State of Punjab¹ will be relevant. In para 95 of the said judgment, it is stated thus:

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan* [(2014) 3 SCC 321 : (2013) 11 Scale 23], held that on the *objective satisfaction* of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.”

(underline supplied)

7. As far as evidence of PW-1 is concerned, we find that though opportunities were available earlier, the statement of the said witness was recorded very late. The witness admitted that at 4 a.m., when she was in the hospital where the deceased was undergoing treatment, a police constable came. Still, she did not disclose anything about the incident to the police constable. She was in the hospital for the entire night, where a police outpost was there. But she did not disclose anything to the police. In any event, in the earlier round, the High Court did not find evidence of the PW-1 sufficient to sustain the order under Section 319 of Cr.P.C.

8. PW-5 - Shahrookh, in his cross-examination, admitted that he had not seen the incident with his own eyes. Therefore,

¹ (2014) 3 SCC 92

he is not an eyewitness. PW-6 - Mohammed claims to have seen the incident from some distance. He also claims to have gone to the hospital where the deceased was taken. He did not report the incident to the police, though the deceased was related to him. The respondents also placed reliance on the testimony of PW-7 - Ekaramuddin S/o Chand Mohammed. His statement was recorded three weeks after the incident. Evidence of said witnesses is insufficient to meet the standards of a *prima facie* case laid down by the Constitution Bench. No other evidence is relied upon by the respondents to support the application under Section 319.

9. Hence, the appeal succeeds, and we set aside the impugned orders dated 8th June 2022 and 04th April 2023. The application under Section 319 of Cr.P.C. stands dismissed. We make it clear that the observations made in this judgment regarding the testimony of eyewitnesses are only for the limited purposes of deciding the issue of applicability of Section 319 of Cr.P.C.

10. Appeal is accordingly allowed on the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

**New Delhi;
October 19, 2023**