

**Sandeep Sharma Vs. State**

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**Court :** Delhi

**Decided On :** Aug-04-2000

**Reported in :** 2000CriLJ4448; 2000(56)DRJ715

**Judge :** R.S. Sodhi, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 319; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 307

**Appeal No. :** Criminal Revision No. 305 of 1999

**Appellant :** Sandeep Sharma

**Respondent :** State

**Advocate for Def. :** Mr. M.S. Butalia, Adv.

**Advocate for Pet/Ap. :** Mr. R.K. Naseem, Adv

**Judgement :**

**R.S. Sodhi, J.**

1. This Criminal Revision Petition No. 305 of 1999; is directed against the order of the Additional Sessions Judge dated 13.8.1999 whereby he declined to discharge the accused whom he had summoned in exercise of powers under Section 319 of the Code of Criminal Procedure (for short 'the Code') by order dated 5.7.1999

during pendency of the trial upon statement of PW-4, Gyassudin. It is the case of the petitioner that during the investigation of the case arising out of the statement of Gyassudin before the Police on 1.7.1997, FIR No. 501/97 came to be registered at Police Station Seelampur under Section 307/34 of Indian Penal Code (for short 'IPC'). The statement of Gyassudin dated 1.7.1997 reads as follows:

'Statement of Gayasuddin s/o Shri Abdul Rashid No. A-23, Chauhan Bangar Main Road, Jafrabad Delhi aged 26 years old stated that I along with my family live at the above given address and I do private service for making jacket in the factory of my brother. About 5 years back I used to study in Jakir Hussain College, Ajmeri Gate. During that period Sandeep Sharma s/o Ved Prakash Sharma also used to study in the college. There was a serious quarrel between me and Sandeep Sharma and at that time Sandeep Sharma used to reside at Shakarpur and since then he was having grudge against me. Today on 1.7.97 at about 10 P.M. I was present at my; house and at that time Sandeep Sharma along with his companion Salauddin S/O Ishwakuddin and Nurrudin S/O Munna who lives towards Delite Cinema Delhi came in the gali in front of my house and they called me and asked me to accompany. I knew all the three and identify them I accompanied them and as soon as I reached Gali No. 12 Jafrabad near New Moon School Sandeep Sharma, Salauddin and Nurrudin all of sudden took knives and all the three assaulted me with knives. Sandeep Sharma struck me on my left armpit and Salauddin struck me on my stomach and Nuruddin struck me on my right thigh. I warded off their assaulted with my hands as result of which my hand also received injury. I raised alarm by saying 'bachao-bachao' on receipt of which Saleem @ Bobby who lives near Chauhan Bangar Pulia came there and he exhorted all the three and all the three left me at the spot in injured condition and ran away. Somebody informed my brother Dilshad and my brother Dilshad and elder brother Ashu Phalwan brought me and got me admitted in the hospital. Legal action be taken against them. I have heard the statement which is correct. Sd/- English Gyassuddin.'

Also during investigation, statement of Salim @ Bobby, son of Mohd. Ali was recorded on 1.8.1997 which reads as follows:

'Statement of Salim @ Bobby S/O Mohd. Ali R/O A-16/3, Chauhan Bangar, Delhi U/S 161 Cr. P.C.

Stated that I live at above given address with my sister Razia and I am working as property dealer. On 1.7.97 at about 10.00 P.M. I was passing through Gali No. 12 Jafrabad, I heard voice of Gayasuddin addressing me 'Bhai Salim bachao' and I at once reached Gali No. 12 in front of New Moon School and I saw Salauddin and Nuruddin who are bad characters of old Delhi, assaulting Gayasuddin with knives. On seeing me they ran away. I chased them and challenged by they ran away. Sandeep was not with them. We had assaulted Sandeep with knife in case FIR No. 369/92 u/s 307/34 of PS Kamla Market. I am accused in that case and the said case is now pending in Tis Hazari. thereforee, I know Sandeep too. But I do not want to falsely involve anyone. Gayasuddin mentioned his name in this case for effecting compromise. I informed about this incident at the house of Gayas and there upon his brother Dilshad took him to GTB Hospital. Today you have recorded my statement and the same is correct.'

2. It is further the case of the petitioner that facts leading to Gyassudin making complaint resulting in FIR NO. 501/97 have been investigated by the Investigating Agency which found that the petitioner had no connection with the case arising there from and thereforee after complete investigation, the petitioner had not been put up for trial. The petitioner's case, which was investigated in case arising out of FIR No. 501/97, was that on 29.9.1992 Gyassudin and his two associates, namely, Mirazuddin and Salim attacked the petitioner and his friends with knives upon which FIR No. 252/92 under Sections 307/324/34 IPC, was registered at Police Station, Indraprastha Estate. That case is pending trial. During pendency of the trial of the case arising out of FIR No. 252/92, Gyassudin tried to prevail upon the petitioner to compound the offence, but upon the petitioner not acceding to the request of Gyassudin, Gyassudin on 15.7.1996 sent Shahid @ Kalia, a muscle man of the area, to pressurise the petitioner for compromise. When the petitioner did not succumb to the pressure of Shahid, Shahid is stated to have attempted to open fire from his country made pistol which fortunately did not operate. Shahid was caught red-handed and a case under Section 506/120-B IPC was registered against Gyassudin and Shahid which is pending trial pursuant to FIR No. 222/96,

Police Station, Preet Vihar and charges have already been framed. In order, therefore, to pressurise the petitioner herein to settle the affairs. Gyassudin has deliberately introduced the name of the petitioner in his complaint dated 1.7.1997 which gave rise to FIR NO. 501/97.

3. It was the case of the petitioner that from 25.6.1997 till 6.7.1997 he was not in Delhi and was holidaying at various places with his friends, Manoj Sharma and Mahinder Bhardwaj. This alibi set up by the petitioner was investigated by the police who was satisfied that the petitioner was not in Delhi on 1.7.1997 and that on that date he was at Dalhousie in Himachal Pradesh. This alibi was supported by receipts and other material both documentary and oral. It was on this investigation that the challan presented before the Court did not array the petitioner as an accused but, however, arrayed Salauddin and Nuruddin. The trial proceeded on that basis but the court felt that the petitioner herein ought to have been arrayed as an accused and, therefore, joined the petitioner as an accused. This order of joining the petitioner as a co-accused was challenged by the accused before recording of the evidence by way of a revision petition in the High Court. The High Court on merits of the case by order dated 16.2.1999 held that upon the material available, the petitioner could not be added as an accused. therefore, the trial commenced against Salauddin as Nuruddin remained absconding. During trial, Gyassudin was examined as PW. 4 who, in his examination-in-chief, set up a completely different case from that for which Salauddin had been charged and was being tried. During his examination-in-chief, Gyassudin completely exonerated Salauddin and Nuruddin but instead named the petitioner as the sole assailant. This witness was declared hostile and as cross-examined by the learned Additional Public Prosecutor. At this stage of the trial, the trial court exercising its powers under Section 319 of the Code, on the basis of statement of Gyassudin as PW-4, summoned the petitioner by its order dated 5.7.1999 and framed charges by order dated 13.8.1999. The charge framed was as follows:

'That you on 1.7.97 at about 10.00 P.M. Near New Moon School, Gali No. 1, Jafrabad, Delhi within the jurisdiction of P.S. Seelampur in furtherance of your common intention gave knife blows on the person of Gayasuddin, with such intention or knowledge and under such circumstances, that, if by that act, you had

caused the death of Gayasuddin you would have been guilty of murder and that you thereby caused hurt to said Gayasuddin and thereby committed an offence punishable u/s 307/34 IPC and within the cognizance of this Court.

And I hereby direct that you be tried by this Court for the said offence.'

4. The petitioner being aggrieved of the summoning order as also the order framing charge, moved the trial court by way of an application seeking his discharge on the ground, inter alia, that powers under Section 319 of the Code could be exercised only if from the material available on record it could be safely made out that the petitioner could be held guilty of the offence charged.

5. I have heard learned counsel for the petitioner and gone through the record of the case. I am of the considered opinion that while exercising power under Section 319 of the Code, the Court must have reasonable satisfaction from the evidence already collected; firstly that the person sought to be arrayed as an accused has committed the offence and secondly that for such offence the newly arrayed accused could as well be tried along with the already arrayed accused. But even this power conferred on the Court is only a discretion and could be discerned from the words 'the court may proceed against such persons'. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever he is called for keeping the conspectus of the case, the type of evidence already adduced, the stage at which trial has proceeded, quantum of the evidence collected by then and such like considerations are required to be kept in view. It must be remembered that there is no compelling duty on the Court to proceed against another person. In *Municipal Corporation of Delhi Vs . Ram Kishan Rastogi*, : 1983 CriLJ159 , the Supreme Court has struck a note of caution while considering whether prosecution can produce evidence to satisfy the Court that other accused against whom proceedings have been quashed or those who have not been arrayed as accused, have also committed an offence in order to enable the Court to take cognizance against them and try them along with the other accused. What has been observed therein is:

'But we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.'

Michael Machado and another Vs . Central Bureau of Investigation and Another, : 2000 CriLJ1706 , the Supreme Court has held that

'While deciding whether to invoke powers under Section 319 of the Code, the Court must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon he witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number, the Court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned, we would say that the Court should refrain from adopting such a course of action.'

6. In the case before me the statement of PW. 4 has been shown to me. No doubt, the statement may create some suspicion against the petitioner but suspicion is not sufficient to hold that there is reasonable prospect of convicting the petitioner of the offence charged. The statement of PW. 4 which has been pressed into service is completely divergent to the statement made earlier which formed basis of the FIR. The vacillating statement of the witness leaves only margin for some suspicion which, as already held, is not sufficient. I strongly feel that this is not a situation where the trial court ought to have exercised its powers under section 319 of the Code which necessitates wasting of evidence already collected by the trial court thus far against the arrayed accused. Hence the order of the trial court exercising its powers under Section 319 of the Code has to be interfered with to enable the trial to proceed to its normal culmination.

7. I, therefore, allow Criminal Revision Petition No. 305/99 and quash the orders of the learned Addl. Sessions Judge dated 13.8.1999 as also the summoning order dated 5.7.1999 and the framing of charge order dated 13.8.1999.

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