

IN THE COURT OF ADDITIONAL SESSIONS JUDGE - IV- BHAGALPUR
ST No. 650 of 2018+895 of 2018

Sl. No.	Date of Order	Order with Signature of the Court	Office action taken with date
	22.07.2019	By this order the Court shall decide the application filed by the prosecution u/s 319 Cr.PC to summon one Kakku @ Ranjit Rai S/o Yogendra Prasad Rai, R/o Mohalla Cortage Compound, Near Head Post Office, P.S. Tilkamanjhi, District-Bhagalpur. The arguments on the application were heard on 20.07.2019. While arguing the application the Ld. Public Prosecutor has submitted that the witness Surbhi Kumari has deposed against Kakku @ Ranjit Rai in her court deposition. The Ld. Public prosecutor has specifically referred para No. 9 and 11 of the deposition of the witness and has submitted that from the deposition of the witness it appears that Kakku @ Ranjit Rai has committed the offence for which he could be tried together with the accused persons. The Ld. Prosecutor has further submitted that there is enough material to summon Kakku @ Ranjit Rai as additional accused to face trial along with the trial facing accused persons. The Ld. Defense counsels Sh. Martin Cyril Lall, Sh. Panna Kumar Singh, Sh. Kaushlendra Nath Sahai, Sh. Surya Narayan Singh, Sh. Pawan Kumar Jha, and Sh. Munir Ahmad for all the seven accused persons have vehemently opposed the prayer of the Ld. Prosecutor to summon Kakku @ Ranjit Rai as additional accused. The sum and substance of the objections of the Ld. Counsels is that the evidence of PW Surbhi Kumari is not sufficient to summon the additional accused as the standard required for reaching to the conclusion that the additional accused is involved in the case is higher than prima facie case. It is further submitted that the witness Surbhi Kumari is not an eye witness of the incident and as such her statement is not sufficient to summon Kakku @ Ranjit Rai. It is further submitted by the	

Ld. Counsel that the said Kakku @ Ranjit Rai is prosecution witness and has been examined as PW 3 and since the witness has not supported the case of the prosecution and has turned hostile the prosecution has filed the present application. It is the further argument of the Ld. Counsels that the prosecution wants to delay the trial by filling the present application.

Before dealing with the rival contentions, the brief facts of the prosecution case needs to be noted for the better understanding of the case. The present case was registered on the fardbeyan of PW-1, Anil Kumar Rai, who is the father of the deceased. In the fardbeyan it is alleged that at about 4:30 PM on 19.04.2018 the deceased Amarjeet Kumar @ Bittu aged about 30 years had gone to the market for booking of articles for the occasion of birthday of his daughter. It is alleged that at about 9:00 PM Ranjit Kumar Rai @ Kakku (the person sought to be summoned) came at the house of the informant and informed the informant that two miscreants have fired at Amarjeet @ Bittu and Amarjeet @ Bittu has been sent to Mayaganj Hospital. The informant and his other family members reached at Mayaganj Hospital and found the deceased lying dead. It is further alleged that the accused Abhishek Kumar had taken Rs. 75 Lac as loan from the deceased which was to be repaid till 6th April, 2018 but the accused Abhishek Kumar had not returned the said loan. It is further alleged that the accused Abhishek Kumar had given a checque of Rs. Eight Lac. It is alleged that 10-15 days earlier after returning from the house of Abhishek Kumar the deceased had told to the informant that Abhishek is not a good man and he has contacts with criminal Rana Mian. It is further alleged that accused Rinku Singh was friend of the deceased. The deceased was working as contractor with the municipal corporation and the accused Rinku Singh used to demand fifty percent share in the income; the deceased removed him and started working alone. It is also alleged that tenders for boring work was invited by the municipal corporation but no other contractor

has submitted the tenders and only the deceased had submitted the tender for which one Yadav Contractor has threatened the deceased. It was claimed by the informant that in order to grab Rs. 75 Lac the accused Abhishek Kumar in conspiracy with his associates got killed the deceased from unknown hired criminals.

After the registration of the case, on the basis of analysis of CCTV footage and call details analysis of mobile numbers first of all accused Mohd. Sheru was arrested and he allegedly confessed his guilt. Later in due course, rests of the accused persons were arrested and after usual investigation the charge sheets were filed against the accused persons. Kakku @ Ranjit Rai who is sought to be summoned u/s 319 Cr.PC was cited as prosecution witness in the charge sheet. The said Kakku @ Ranjit Rai was examined as PW-3 and he has not supported the case of the prosecution on certain aspects of the prosecution case and was got declared hostile by the prosecution. The witness Surbhi Kumari was examined after the examination of the said Kakku @ Ranjit Rai.

The application u/s 319 Cr.PC. and the record of the case including the court deposition of the witness Surbhi Kumari and her case diary statement perused carefully. The submissions of the Ld. Public Prosecutor and the submissions of the Ld. Counsels for all the accused persons considered.

Section 319 of Cr.PC reads as under: **Power to proceed against other persons 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."

The scope and ambit of section 319 Cr.PC was considered by the **Hon'ble Constitution Bench of the Hon'ble Supreme Court** in the case of **Hardeep Singh Vs State of Punjab, reported in AIR 2014 SC 1400**, while answering the question: What is the nature of the satisfaction required to invoke the power under Section 319 Cr.PC to arraign an accused? Whether the power under Section 319(1) Cr.PC can be exercised only if the court is satisfied that the accused summoned will in all likelihood convicted? The Hon'ble Apex court held in paragraph 98 and 99 that -

*98. Power under Section 319 Code of Criminal Procedure is a discretionary and an extra-ordinary 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.*** (Emphasis added)

99. 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 Code of Criminal Procedure. In Section 319 Code of Criminal Procedure 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 accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Code of Criminal Procedure to form any opinion as to the guilt of the accused."
(Emphasis added)

The instant application of the prosecution needs to be examined in the light of law settled by Hon'ble Supreme Court in the above noted case.

Admittedly, except the statement of PW Surbhi Kumari, there is nothing against the said Kakku @ Ranjit Rai in the entire case of the prosecution. He is the witness of the prosecution and has been examined as PW3. He did not support the case of the prosecution on certain aspects of the case and was therefore got declared hostile.

It is pertinent to mention here that the witness PW-1, who is the father of the deceased and father in law of PW Surbhi Kumari, has deposed nothing against the said Kakku @ Ranjit Rai. PW Surbhi Kumari was examined after the examination of Kakku @ Ranjit Rai and she has deposed in para No. 9 that, "दिनांक 19.04.2018 को 04:30-5:00 बजे शाम को मेरे पति

अमरजीत अभिषेक सोनी से मिलने गये थे तथा उनसे पैसे मांगना था। उन्होंने मुझसे वादा किया था कि वहाँ से लौट कर आएँगे तब तुमको लेकर बाजार जायेंगे क्योंकि मेरी बेटी का चार दिन बाद 23.04.2018 को जन्मदिन था। फिर 07 बजे शाम तक जब अमरजीत नहीं आए तो मैंने उन्हें फोन किया जिस पर उन्होंने बताया कि आज भी अभिषेक ने पैसा नहीं दिया। मेरे पति ने यह भी कहा कि मुझे कक्कू मार्केट ले कर चला गया है जबकि मेरे पति को मेरे साथ मार्केट जाना था। मेरे पति अपनी बुलेट से घर से गये थे परंतु मार्केट कक्कू उर्फ रंजीत राय के साथ उसकी बाइक से गये थे। उसके बाद मैं अपनी बेटी को लेकर मार्केट चली गयी तथा अमरजीत ने कहा कि मैं बस पाँच मिनट में घर पहुँच रहा हूँ। जब अमरजीत नहीं पहुँचे तो मैंने 08:38 बजे रात्रि में उन्हें फोन किया तो अमरजीत ने कहा कि मैं पहुँच रहा हूँ, मैं बड़ी पोस्टऑफिस के पास हूँ परन्तु अमरजीत घर नहीं आए और कक्कू ने घर पर आकर घटना की सूचना दी।

In para No. 11 of her deposition the witness has deposed that, “अभिषेक सोनी ने मेरे पति का 75 (पचहत्तर) लाख रुपया पचाने के लिए लक्की उर्फ सरफराज आलम, नाड़ा, कक्कू और शेरू के साथ मिलकर भाड़े से शूटर आमिर और आसिफ से मेरे पति की हत्या करवायी है। इस षड्यंत्र में रिकू भी शामिल था तथा लक्की ने राणा से मिलकर आमिर तथा आसिफ को बुलवाया था।

Admittedly witness Surbhi Kumari is not the eye witness of the case and what she has deposed against Kakku is her opinion only. The witness has raised questions in para No. 9 of her deposition about the events as her deceased husband had promised her that he would take her to the market after meeting with accused Abhishek Soni then why he (deceased) went to market with Kakku @ Ranjit Rai on his bike living his bullet. In para No. 11 of the deposition she has claimed that in order to grab Rs. 75 Lac of her husband the accused Abhishek Soni in connivance with Lucky @ Sarfaraj Alam, Nada, **Kakku** and Sheru got killed her husband from hired shooters Aamir and Aashif.

It is pertinent to note that the witness has not deposed any facts upon the basis of which she has claimed that in order to grab Rs. 75 Lac of her husband the accused Abhishek Soni in connivance with Lucky @ Sarfaraj Alam, Nada, **Kakku** and Sheru got killed her husband from hired shooters Aamir and Aashif.

The facts alleged in para No. 9 are innocuous and nothing turns out against Kakku @ Ranjit Rai from the allegations of the para. As far as the allegations of the para No. 11 are concerned the same is opinion of the witness which is not relevant at all in the scheme of Indian Evidence

Act, 1872. There are sections 45 to 51 of the Indian Evidence Act, 1872 in which the opinion of a witness is relevant; the said sections are not applicable in the case.

It further needs to be noted here that the witness Surbhi Kumari has not raised any kind of suspicion on Kakku @ Ranjit Rai in her statement made to the police during the course of investigation. Even if the alleged circumstances are considered as evidence for the sake of arguments then the same are not of the required standard to use the powers of section 319 of the Cr.PC.

In the FIR, the charge sheet and in the entire case diary there is nothing against Kakku @ Ranjit Rai even remotely suggesting that he has played any role in the incident. Mere claim of the witness that Kakku @ Ranjit Rai is involved in the murder of her husband is not sufficient to summon him as additional accused.

In the light of above discussions and findings, in the considered opinion of this Court, there is no strong and cogent evidence to summon Kakku @ Ranjit Rai as additional accused in the present case. Thus the application u/s 319 Cr.PC filed by prosecution is hereby rejected.

Typed and corrected by me.

(DINESH SHARMA)
4th ASJ, Bhagalpur

(DINESH SHARMA)
4th Additional Sessions
Judge Bhagalpur.