



2026:AHC:37889

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 697 of 2026

Avdhesh Chauhan

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Ajit Kumar Rahi, Raj Kumar Singh,
Sunil Kumar Singh

Counsel for Opposite Party(s) : Ashutosh, G.A., Pavan Kumar

Court No. - 87

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the revisionist, learned counsel appearing for opposite party no.2 and the learned A.G.A. for the State.

2. The present revision has been preferred against the order dated 01.11.2025 passed by the learned Sessions Judge, Ghazipur, in Sessions Trial No. 267 of 2021 (State vs. Ramawadh @ Seru Rajbhar and Others), whereby the learned Sessions Judge, Ghazipur, has summoned the revisionist in the aforesaid Sessions Trial arising out of Case Crime No. 187 of 2020, under Sections 302/34, 394, 411 I.P.C. and 7/25/27 of the Arms Act, Police Station Barehar, District Ghazipur, pending in the Court of the learned Sessions Judge, Ghazipur.

3. Learned counsel for the revisionist has submitted that there is no evidence against the revisionist; hence, his name was exonerated and no charge sheet was filed against him. The statements of P.W.-1, P.W.-2, P.W.-3, and P.W.-4 have been recorded, and there is no substantial evidence against the revisionist under the aforesaid sections.

4. Learned counsel appearing for opposite party no. 2 has opposed the revision and contended that the revisionist is named in the FIR and is the main accused. Chandrabhan Chauhan (P.W.-1) has specifically stated that he had identified the persons who fired and that one of them was Avdhesh Chauhan, the revisionist. P.W.-2, Keshari Chauhan, has also stated that he identified Avdhesh Chauhan. P.W.-3, Shesh Nath, verified the inquest report of the deceased. The deposition of Nathuni Gupta has also been recorded before the trial court, wherein he stated that he identified Avdhesh Chauhan and specifically deposed in his examination-in-chief that it was Avdhesh Chauhan who had fired.

5. Learned counsel for the opposite party no. 2 has relied on Section 319 Cr.P.C. which reads as under:-

"Section 319 Cr.P.C. 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."

6. The Hon'ble Supreme Court has consistently held, and more particularly in the Constitution Bench judgment in **Hardeep Singh Versus State of Punjab, (2014) 3 SCC 92**, that the evidence recorded during trial can be considered for summoning an accused under Section 319 Cr.P.C.

7. The summoning of the revisionists by the impugned order dated 1.11.2025 was passed by the learned trial court after perusing the statements recorded during trial. The learned trial court also considered the law laid down by the Hon'ble Supreme Court in **Hardeep Singh (supra), Brijendra Singh and Others v. State of Rajasthan; 2017 Lawsuit SC 484**. The ingredients and conditions required for summoning an accused under Section 319 Cr.P.C., as elaborated in Hardeep Singh (supra), stand duly satisfied.

8. It is held by Hon'ble Supreme Court in **Asim Akhtar Versus The State of West Bengal and another, 2024 INSC 794** that complicity of any person sought to be arrayed as an accused can be decided with or without conducting cross-examination of the complainant and other prosecution witnesses and there is no mandate to decide the application under section 319 Cr.P.C. before cross examination of other witnesses. It is held by the Hon'ble Supreme Court in **Hardeep Singh (supra)**, that the word "evidence" used in section 319 Cr.P.C. indicates, the word "evidence" is limited to the evidence recorded during trial. The summoning of accused under section 319 Cr.P.C. is settled, that this power is an extraordinary power, which should be used sparingly with circumspection and while passing the summoning order under section 319 Cr.P.C. court must consider whether more than prima facie case made out, or not; mere prima facie case is not sufficient.

9. It is held by Hon'ble Supreme Court in **Omi Versus State of M.P. (2025) 2 SCC 621**, that trial court can add an individual as accused only on the basis of the evidence adduced before it and not on the basis of the materials available in the charge sheet or the case diary because such materials contained in the charge sheet or the case diary do not constitute evidence. It is held by the Hon'ble Supreme Court in **Shiv Baran Versus State of U.P., 2025 SCC OnLine SC 1457** that trial court can exercise power to summon an additional accused under section 319 Cr.P.C. only on the basis of the evidence adduced before it and not any other material collected during investigation.

10. Upon perusal of the record and in light of the aforesaid legal position, it is evident that the revisionist is named in the FIR and that the witnesses have deposed before the trial court identifying Avdhesh Chauhan, the revisionist, as the person who fired. Their statements clearly attribute a specific role to

him in the commission of the offence. The contention of the learned counsel for the revisionist that the eyewitnesses were subsequently introduced, as stated by the deceased's father, pertains to appreciation of evidence, which is a matter for trial. The credibility and reliability of such witnesses can only be tested during the course of the trial.

11. At this stage, there exists sufficient evidence on record which satisfies the standard required for invoking Section 319 Cr.P.C., and such evidence, if unrebutted, may reasonably lead to conviction.

12. In view thereof, there is neither any illegality nor irregularity in the impugned order. The criminal revision is liable to be dismissed and is dismissed accordingly.

February 19, 2026
M. Tarik

(Abdul Shahid,J.)