2025 INSC 1386

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(Arising out of SLP(Crl.) No. 7518 of 2025)

NEERAJ KUMAR @
NEERAJ YADAV **...APPELLANT(S)**

Versus

STATE OF U.P. & ORS. **...RESPONDENT(S)**

J U D G M E N T

SANJAY KAROL J.

Leave Granted.

2. The present appeal arises out of the impugned judgment and order dated 22nd April 2024 passed by the High Court of Judicature at Allahabad in Criminal Revision No. 4729 of 2023, which affirmed the order dated 3rd August 2023 passed by the Court of Additional District and Sessions Judge, Bulandshahar[1]

[1] Hereinafter referred to as the 'Trial Court'.

whereby the application filed by the prosecution under Section 319 of the Code of Criminal Procedure, 1973[2], praying for summoning additional accused (Respondent Nos.2 to 4 herein)[3] in Sessions Trial No.1151 of 2021 arising out of Case Crime No.187 of 2021, was dismissed.

3. The facts in brief, shorn of unnecessary details, are as under:

3.1. On 25th March 2021, the appellant Neeraj Kumar lodged FIR No. 187 of 2021 at PS Sikandrabad under Section 307 of the Indian Penal Code, 1860[4] alleging that his sister Smt. Nishi[5] had been shot by her husband, Rahul, at her matrimonial home. The said FIR was registered based on the information received by him from his niece Shristi, aged about nine years, who informed the appellant that '*Papa has shot Mummy at home'*.

3.2. The deceased was first taken to Government Hospital, Bulandshahar, and thereafter to Kailash Hospital, Noida, where she underwent treatment for the firearm injury sustained by her. During the course of treatment, her statements were recorded under Section 161 CrPC on two occasions – firstly on 25th March 2021 and then again on 18th April 2021. In her first statement, she named her

[2] Hereinafter referred to as 'CrPC'
[3] Collectively referred to as 'the respondents'.
[4] Hereinafter referred to as 'IPC'
[5] Hereinafter referred to as 'the deceased'.

husband Rahul as the person who shot her; in the subsequent one, she further alleged that he had done so at the instigation of his mother Rajo @Rajwati (Respondent No.2 herein), brother Satan @Vineet (Respondent No.3 herein) and brother-in-law Gabbar (Respondent No.4 herein). Both the statements were video recorded.

3.3. On 15th May 2021, the deceased succumbed to the injuries sustained. Following her death, the appellant, on 20th May 2021, made another complaint before the SHO PS Sikandrabad, requesting that appropriate legal action be taken against the respondents (relatives of the husband), since the deceased had categorically named them and mentioned their role in the statement(s) recorded by the police.

3.4. Upon completion of the investigation, a chargesheet was filed on 16th July 2021 only against Rahul, the husband of the deceased, under Sections 302 and 316 IPC, while exonerating the private respondents herein.

3.5. The case thereafter proceeded to trial before the concerned Court. The charges were framed on 18th October 2021 and the appellant was examined as PW-1 on 28th March 2022 and he deposed about the incident and the events immediately following it. The minor daughter of the deceased, Shristi, was examined as PW-2 on 12th July 2022. In her testimony, she narrated the circumstances

surrounding the said incident, stating that her father had shot her mother at the instigation of the private respondents herein.

3.6. On the strength of these testimonies and the statements of the deceased recorded under Section 161 CrPC, the prosecution moved an application under Section 319 CrPC, praying for summoning the private respondents as additional accused to face trial along with the husband of the deceased. It was contended that the evidence recorded during the trial clearly disclosed their role in the commission of the offence.

3.7. The Trial Court, *vide* its order dated 3rd August 2023 dismissed the said application, holding that the material on record was insufficient or was not of such strength and cogency to exercise the extraordinary power provided under Section 319 CrPC.

3.8. Aggrieved by the said order, the appellant preferred Criminal Revision No.4729 of 2023 before the High Court, which was dismissed *vide* the impugned judgment for the following reasons:

(i) The statements of the deceased dated 25th March 2021 and 18th April 2021 recorded before her death could not be treated as dying declarations under Section 32 of the Indian Evidence Act 1872[6]

[6] Hereinafter referred to as 'Evidence Act'

since her death had occurred on 15th May 2021, after the expiry of a substantial period from the date of recording such statements.

(ii) The statement of PW-1, the informant/brother of the deceased, was held to be of limited evidentiary value with respect to the actual occurrence, as he was not an eyewitness to the incident.

(iii) The testimony of PW-2, the minor daughter of the deceased, was also not sufficient to summon the respondents, since she had admitted in her cross-examination that she reached the place of occurrence only after hearing the sound of two gunshots, thereby indicating that she was also not an eyewitness to the said incident.

Relying on the above, the High Court concluded that no strong and cogent evidence emerged justifying exercise of power under Section 319 CrPC and accordingly affirmed the order passed by the Trial Court.

3.9. It is against this judgment of the High Court that the appellant is before us.

4. We have heard the learned counsel for the parties and perused the material on record. The sole issue that arises for our consideration is whether the Courts below, in the attending facts

and circumstances, were justified in dismissing the application for summoning the respondents as additional accused?

5. Section 319 CrPC contemplates that:

> "(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 law governing the summoning of an additional accused under Section 319 CrPC is now well settled. The provision is an enabling one, empowering the Court, during the course of an inquiry or trial, to proceed against any person not already arraigned as an accused, if, from the evidence adduced before it, such person appears to have committed an offence. Its object is to ensure that no guilty person escapes the process of law, thereby giving effect to the maxim *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted). It casts a duty upon the Court to ensure that the real offender does not go unpunished, for only then can the concept of fair and complete trial be realised.

7. It is no longer *res integra* that the power conferred under this Section is extraordinary and discretionary in nature, intended to be exercised sparingly and with due circumspection. While invoking it, the Court must be satisfied that the evidence appearing against the person sought to be summoned is such that

it *prima facie* necessitates bringing such person to face trial. The degree of satisfaction required is higher than that warranted at the stage of framing of charge, yet short of the satisfaction necessary to record a conviction. Such satisfaction must rest on cogent and credible material brought on record during the trial, and not based on conjectures or speculations. In this regard, reference to a few judicial pronouncements of this Court would be apposite.

7.1. The Constitution Bench of this Court in ***Hardeep Singh v. State of Punjab***[7] extensively discussed the power conferred under Section 319 CrPC. Relevant part is extracted hereunder:

> "**90.** … all that is required for the exercise of the power under Section 319 CrPC is that, it must *appear* to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person *could* be tried" instead of *should* be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than

[7] (2014) 3 SCC 92

not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the *court is satisfied* that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

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106. 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 CrPC. …

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110. In *Lal Suraj* [*Lal Suraj* v. *State of Jharkhand*, (2009) 2 SCC 696 : (2009) 1 SCC (Cri) 844] , a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been chargesheeted, he may come within the purview of the description of such a person as contained in Section 319 CrPC. A similar view had been taken in *Lok Ram* [*Lok Ram* v. *Nihal Singh*, (2006) 10 SCC 192 : (2006) 3 SCC (Cri) 532 : AIR 2006 SC 1892] , wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

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117.6. A person not named in the FIR or a person though named in the FIR but has not been

> chargesheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial…"
>
> (emphasis supplied)

7.2. In ***S. Mohammed Ispahani v. Yogendra Chandak***[8], it reiterated that under this Section the Court possesses the power to summon the persons not named in the chargesheet to face trial, if the evidence on record so warrants. It further clarified that a statement recorded under Section 161 CrPC, though not an independent piece of evidence, sufficient in itself to invoke the power under this Section may, nevertheless, be relied upon for corroborative purposes when supported by evidence emerging during trial. It was observed as under:

> "**34.** … No doubt, at one place the Constitution Bench observed in *Hardeep Singh case* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that the word "evidence" has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. In para 105 of the judgment, however, it is observed that "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". This sentence gives an impression that only that evidence which has been led before the Court is to be seen and not the evidence which was collected at the stage of inquiry. However there is no contradiction between the two observations as the Court also clarified that the "evidence", on the basis of which

[8] (2017) 16 SCC 226

> an accused is to be summoned to face the trial in an ongoing case, has to be the material that is brought before the Court during trial. The material/evidence collected by the investigating officer at the stage of inquiry can only be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 CrPC.
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> **35.** It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the chargesheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the chargesheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the chargesheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."
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> (emphasis supplied)

7.3. In ***Omi v. State of M.P.***[9], a coordinate bench of this Court laid the following principles of law with regard to Section 319 CrPC:

> "**19.** The principles of law as regards Section 319CrPC may be summarised as under:
> **19.1.** On a careful reading of Section 319CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the

[9] (2025) 2 SCC 621

proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

19.2. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the chargesheet or the case diary, because such materials contained in the chargesheet or the case diary do not constitute evidence.

19.3. The power of the court under Section 319CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the chargesheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the chargesheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.

19.4. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer hardly matters. If satisfaction of investigating officer is to be treated as determinative then the purpose of Section 319 would be frustrated."

(emphasis supplied)

7.4. Recently, this Court, through one of us (Sanjay Karol, J.), in ***Shiv Baran v. State of U.P.***[10] summarised the principles that the Court ought to keep in mind while considering an application under this Section. It was observed:

> "15. The principles that the Trial Court ought to follow while exercising power under this Section are:
> (a) This provision is a facet of that area of law which gives protection to victims and society at large, ensuring that the perpetrators of crime should not escape the force of law;
> (b) It is the duty cast upon the Court not to let the guilty get away unpunished;
> (c) The Trial Court has broad but not unbridled power as this power can be exercised only on the basis of evidence adduced before it and not any other material collected during investigation;
> (d) The Trial Court is not powerless to summon a person who is not named in the FIR or Chargesheet; they can be impleaded if the evidence adduced inculpates him;
> (e) This power is not to be exercised in a regular or cavalier manner, but only when strong or cogent evidence is available than the mere probability of complicity;
> (f) The degree of satisfaction required is much stricter than the prima facie case, which is needed at the time of framing of charge(s);
> (g) The Court should not conduct a mini-trial at this stage as the expression used is 'such person could be tried' and not 'should be tried'.
>
> (emphasis supplied)

[10] 2025 SCC OnLine SC 1457

8. Keeping in view the principles delineated above, let us now examine whether the Courts below have applied the correct standard while declining the prosecution's prayer to summon the respondents as additional accused. As is evident from record, the prosecution has relied primarily on three facets of evidence: (i) the testimony of PW-1, the informant and brother of the deceased; (ii) the testimony of PW-2, the minor daughter of the deceased, along with her statement recorded during investigation; and (iii) the statements of the deceased herself recorded under Section 161 CrPC. We may consider each in turn.

9. The statement of PW-1, the appellant and informant, when read in its entirety, clearly attributes specific roles to each of the respondents. The relevant extract of the statement reads as under:

> "… Due to three daughters of my sister, her Dewar- Satan, Husband- Rahul, Sas- Rajwati,Nandoi- Gabbar used to harass my sister- Nishi. When my sister- Nishi, became pregnant fourth time, sex determination test of child in her ovary was got done by Dewar- Satan, Husband- Rahul, Sas- Rajvanti, Nandoi- Gabber. In said test, it had appeared that, this time also in her ovary is female child. Then her Dewar- Sattan, Husband- Rahul, Sas- Rajwati, Nandoi- Gabbar mounted pressure over her for getting abortion. In this context, my sister had told me telephonically. She had also told that, she is willing to give birth to her female child. On the date of 25.3.21 at about 9.30 a.m. my niece[sister's daughter] namely- Shristi telephonically informed me that, on instigation of uncle- Satan, grandmother- Rajwati and Fufa - Gabbar, Papa opened fire upon mummy. At this information, with members of my family, I proceeded for matrimonial home of my sister-

> Nishi. In route, we got information that; Nishi is brought to Rana Hospital at Buland Shahar. …"

A perusal of his statement indicates that, allegedly, the deceased, his sister, was continuously harassed by the respondents for having given birth to three daughters, and that upon her subsequent pregnancy, they compelled her to undergo a sex determination test. When it was found that she was carrying a female foetus, they pressured her to terminate her pregnancy. It is further deposed that his niece (PW-2), an eyewitness to the occurrence, telephonically informed him that her father had shot the deceased and that the respondents had provoked him to commit the said act. His statement, therefore, *prima facie* indicates active participation and instigation on the part of the respondents in the commission of the offence.

10. While it is true that the appellant did not specifically mention in the FIR that the husband of the deceased had fired at the instigation of the respondents, as conveyed by his niece, however, it is trite law that an FIR is not an encyclopaedia that must contain every minute detail of the incident, since its primary purpose is to set criminal law in motion. [See: ***CBI v. Tapan Kumar Singh***[11] and ***Amish Devgan v. Union of India***[12]] Therefore, at this stage, his deposition cannot be construed as an embellished or improved one simply because of the absence of certain particulars in the FIR, particularly when his testimony is

[11] (2003) 6 SCC 175
[12] (2021) 1 SCC 1

consistent with the overall narrative. Moreover, the representation dated 20th May 2021, made before the SHO, wherein he categorically named the respondents, further corroborates his testimony.

11. The deposition of PW-2, Shristi, the minor daughter of the deceased, *prima facie* has considerable evidentiary value, given the fact that she is allegedly an eyewitness to the occurrence. She narrated the events of the fateful day in the following terms:

> "Mummy had asked to Papa for bringing tea leaves and sugar. But Papa did not bring tea leaves and sugar. Meantime my grandmother came and she asked my mother to consume some pill (contraceptives), but my mummy refused to take the same. So, my grandmother complained to my Papa in this regard. Then my Fufa-Gabbar and Uncle- Satan said that, she gives birth of only female child. So, kill her. Hearing this, Papa opened fire upon my mummy twice. Receiving fire arms/gun shot injuries, my mummy fell down in her room. Then my uncle and Fufa tried to find out that, whether my mummy is dead or not? After examining they said, she still alive. So, kill her. At this, Papa this time opened fire and shot three more times, from his country made pistol. At this, I suggested mummy to go house of Baba. At this, Mummy reached to house of my Baba. He was at his home. He carried away my mummy to Hospital. My uncle had given to my Papa the said gun. My Papa had opened fire and shot every time before me. Said occurrence is of morning. Name of my grandmother is Rajo."
>
> (emphasis supplied)

From reading the above, it is evident that a quarrel took place between her parents. During this altercation, her father, Rahul

Yadav, obtained a country made pistol from her uncle Sattan @Vineet (Respondent No.3 herein) and, on the provocation of her grandmother Rajo @Rajwati (Respondent No.2 herein) and her aunt's husband Gabbar (Respondent No.4 herein), fired at her mother/deceased. The High Court, however, in the impugned judgment, concluded that PW-2 was not an eyewitness to the actual firing and relied on her cross-examination wherein she stated – "*I had heard the sound of firing. From sound of firing I came to know that, that two times firing was made. I had seen empty cartridge on ground.*". to hold that she had reached the scene of occurrence only after hearing the gunshots. In our considered view, the High Court's approach is erroneous. Drawing such an inference amounts to conducting a mini-trial at the stage of summoning, which is impermissible. At the stage of deciding the application under Section 319 CrPC, the Court is not required to test the credibility or weigh the probative value of the evidence as would be done at the end of the trial for determining the conviction or otherwise of the accused. What the Court has to consider at this stage is whether the material on record reasonably indicates involvement of the proposed accused so as to exercise the extraordinary power. Therefore, the reliance placed by the Courts below on PW-2's cross-examination to discredit her testimony was misplaced.

12. The respondents have further contended that PW-2 did not initially name the respondents in her statement recorded during

the investigation and that, being a minor, she may have been influenced or tutored to implicate the respondents, as she was residing with the appellant's family following the incident. However, we are not persuaded to accept this contention, as even in her statement recorded under Section 161, had categorically named the respondents as those who instigated the commission of the said crime. She stated:

> "Q.No.12: What happened to your mother and whether father did something to her?
> Ans: First Papa went out outside then return back, mother asked him to bring Tea Leaves and Sugar and later on asked him to bring chilli but he did not brought any of the item mother started preparing kitchen after little quarrel. In the meantime, Grand Mother came in and asked my mother to take pills to which she refused. Then Grand Mother went and called father, Rahul, Uncle-Gabbar, Satan Uncle.
>
> Q.13.: What happened next?
> Ans: Grand mother told if she wont take pills then she should take bullets now kill her. Uncle gave the pistol.
>
> Q.14: What happened next?
> Ans: Then papa fire two bullets and went away, Mummy got up and went inside the room, then Satan Uncle and Gabbar Uncle went inside to check and told she still alive go and finish her .... then Papa again shot 3 more bullets
>
> Q.15: Where your father go?
> Ans: He went outside and I do not know where.
>
> …
>
> Q.20: At the time of incident, who else where there at the time when your father shot your mother?
> Ans: Fufa, Uncle and Grand Mother
>
> Q. 21: Who amongst you were there?

Ans: We all were there (Three Sisters)"

(emphasis supplied)

While a statement recorded under Section 161 CrPC is not substantive evidence in itself, it may be used to corroborate the evidence recorded by the Court to invoke the power under Section 319 CrPC, as held in ***S. Mohammed Ispahani*** (supra). Therefore, conjointly reading PW-2's deposition along with her Section 161 statement, we find that a specific and overt act has been assigned to the respondents. Whether she actually witnessed the firing or arrived immediately thereafter, and the extent to which her statement inspires confidence, are matters that are to be determined at the stage of trial, upon full appreciation of the evidence. The testimony of a child witness shall be weighed by the Court concerned in view of the principles in laid in ***State of Rajasthan v. Chatra***[13] and ***State of M.P. v. Balveer Singh***[14].

13. Lastly, the prosecution has also placed reliance upon the statements of the deceased recorded during the investigation under Section 161 CrPC to seek the summoning of the respondents. However, the respondents have contended that such statements cannot be relied upon as, firstly, they were neither recorded in the presence of a Magistrate nor accompanied by any contemporaneous medical certification regarding the mental fitness of the deceased to give such statements; and secondly,

[13] (2025) 8 SCC 613
[14] (2025) 8 SCC 545

both statements are inconsistent *inter se*, since the first one does not name the respondents whereas the second does.

14. We find these contentions bereft of any merit. We say so because it is a well-established position of law that a statement made by a deceased person, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a Police Officer and recorded under Section 161 CrPC, shall be relevant and admissible under Section 32(1) of the Evidence Act, notwithstanding the express bar provided in Section 162 CrPC. Such a statement, upon the death of the declarant, assumes the character of a dying declaration. It is also equally settled that a dying declaration need not necessarily be recorded in the presence of a Magistrate, and that the lack of a doctor's certification as to the fitness of the declarant's state of mind would not *ipso facto* render the dying declaration unacceptable. This position has been recently reiterated by this Court in ***Dharmendra Kumar v. State of M.P.***[15], wherein it was held:

> "**65.** Section 161CrPC empowers the police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The police may reduce such statement into writing also. Section 162(1)CrPC, nonetheless, mandates that no statement made by any person to a police officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the Evidence Act. However, sub-section (2) of Section 162CrPC carves out an exception to sub-

[15] (2024) 8 SCC 60

section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the Evidence Act. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a police officer and which has been recorded under Section 161CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon…

66. As regards the assessment of mental fitness of the person making a dying declaration, it is indubitably the responsibility of the court to ensure that the declarant was in a sound state of mind. This is because there are no rigid procedures mandated for recording a dying declaration. If an eyewitness asserts that the deceased was conscious and capable of making the declaration, the medical opinion cannot override such affirmation, nor can the dying declaration be disregarded solely for want of a doctor's fitness certification. The requirement for a dying declaration to be recorded in the presence of a doctor, following certification of the declarant's mental fitness, is merely a matter of prudence. [*Koli Chunilal Savji* v. *State of Gujarat*, (1999) 9 SCC 562 : 2000 SCC (Cri) 432]"

[See also: ***Laxman v. State of Maharashtra***[16]; ***Bhagwan v. State of U.P.***[17]; ***Jagbir Singh v. State (NCT of Delhi)***[18]; ***Pradeep Bisoi v. State of***

[16] (2002) 6 SCC 710
[17] (2013) 12 SCC 137
[18] (2019) 8 SCC 779

Odisha[19]; and ***Manjunath v. State of Karnataka***[20]]

15. Coming to the instant case, the two statements of the deceased, dated 25th March 2021 and 18th April 2021, clearly fall within the ambit of Section 32(1) of the Evidence Act. For convenience, the relevant portions of both these statements are extracted below:

First statement dated 25th March 2021:

> "Statement of Victim ..... On asking, Mrs Nishi W/o- Rahul … told that, Sir, I have three daughters. On this issue often my husband used to quarrel with me. But when today my husband quarrelled with me, firstly he asked to our children to go out, but my elder daughter Shrishti remained there and in her presence, my husband opened fire upon me with country made pistol. Thereafter I got dizziness. …"

Second statement dated 18th April 2021:

> "What happened in occurrence? What all thing was done? ..... Answer- I was shot by firearm .. .. By whom? .... By my husband, I was shot on instigation by one of my Nandoi (Brother-in-law of husband), my [Saas] mother-in-law and Dewar [Brother-in-law] under their conspiracy. ..... What is name of your Nandoi? His name is Gabbar. … What was said by your Dewar? My Dewar had me threatened me. Earlier, we used to reside with him. My Dewar said to me that, he will get send me home, then he will get me killed. What did your Mother-in-Law say? ..... My mother-in-law said to me that, I shall not permit to live in my house and you cannot live in my house and I will get you killed ... . My Nandoi said one plot is in

[19] (2019) 11 SCC 500
[20] 2023 SCC OnLine SC 1421

> your name also. He instigated my husband to open fire upon me. i.e. when your husband opened fire upon you, your Nandoi was present on spot. Yes sir. They had tried to hang me also. i.e. they done everything for committing my murder. … My mother-in-law had given me threat of getting my murder done and My Dewar also had given me threat of getting my murder. … My mother-in-law had given me threat of getting my murder done and My Dewar also had given me threat of getting my murder. Who had brought you to hospital? Sir, I was unconscious. So, I do not about it."

A perusal of both these statements reveals that while the former primarily narrates the incident, the latter elaborates on the circumstances that culminated in the fatal act and brings forth the complicity of the respondents. The mere omission of their names in the first statement, or the lack of the Magistrate's presence or medical certification, does not undermine the relevance of these statements. Any inconsistencies between them, as well as their evidentiary value, reliability, and the weight to be attached to them are, again, matters which are to be examined at trial and not at the preliminary stage of summoning.

16. Additionally, in our considered view, the High Court erred in holding that these statements cannot be treated as dying declaration(s) merely because the death of the deceased occurred after a substantial lapse of time from their recordings. Such an approach is clearly untenable since the law does not require that a declarant, at the time of making the statement, to be under the shadow of death or the expectation that death is imminent. Here the time gap between the incident and the death is less than 2

months. In any event, Section 32 of the Evidence Act, contains no such limitation. What is pertinent is that the statement relates either to the cause of death or the circumstances leading to it. [See: ***Rattan Singh v. State of H.P.***[21]; ***Kulwant Singh v. State of Punjab***[22]; and ***Amar Singh v. State of Rajasthan***[23]]

17. Consequent to the above discussion, we find that the material on record, i.e. the depositions of PW-1 and PW-2, along with the statements of the deceased recorded during the investigation, *prima facie* suggests the complicity of the respondents in the commission of the said offence. There, thus, exists sufficient ground to exercise the power under Section 319 CrPC and summon them to face trial in Sessions Trial No.1151 of 2021. The objections raised by the respondents, including the alleged tutoring of the minor witness, omission of their names in the FIR, inconsistencies in the statements of the deceased and lack of contemporaneous medical certification, are all premature and cannot be conclusively decided at the stage of exercising power under Section 319 CrPC.

18. We clarify that all the observations made herein are only for the purpose of deciding the application under Section 319 CrPC to summon the respondents as additional accused and should not be construed as remarks on the merits of the matter.

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[21] (1997) 4 SCC 161
[22] (2004) 9 SCC 257
[23] (2010) 9 SCC 64

19. Therefore, the appeal is accordingly allowed. The impugned judgment and order of the High Court, as referred to in Paragraph 2, is set aside. Parties are directed to appear before the Trial Court on 08th January 2026. We direct them to fully cooperate and not take any unnecessary adjournments. The trial is expedited.

Pending application(s), if any, shall stand disposed of.

…….J.
(SANJAY KAROL)

……..J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi;
December 04, 2025