REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1815 of 2019
(Arising out of Special Leave Petition (Crl.) No. 5326 of 2019)

Saeeda Khatoon Arshi **…Appellant**

Versus

State of UP & Anr **…Respondents**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 This appeal arises from a judgment of a learned Single Judge of the High Court of Judicature at Allahabad dated 12 April 2019. The High Court, while allowing an application filed by the second respondent under Section 482 of the Code of Criminal Procedure 1973 ("**CrPC**"), set aside an order dated 29 January

2019 passed by the Additional District and Sessions Judge - Fast Track Court No 1, Moradabad, summoning the second respondent under Section 319 of the CrPC.

2 The appellant is the mother of Juhi Arshi who died in her matrimonial home during the early hours of 10 June 2017. The second respondent, who was the spouse of the deceased, is alleged to have been the only other occupant of the matrimonial home on the date of the incident. On 12 June 2017, the appellant claims to have moved a First Information Report ("**FIR**") at the Police Station Majhola, District Moradabad. According to the appellant, an FIR was eventually registered only on 14 June 2017 upon the intervention of higher officials. The contents of the FIR recorded that:

> "The applicant had married my daughter Juhi about 9 years ago with Akram s/o Shri Kasim r/o mohalla Rahamat Nagar, Chappar wali Masjid PS Katra, Moradabad. About three years ago Akram had constructed a MIG – 169 house at Azad Nagar PS Majhola, Moradabad. My daughter was living with her husband Akram and passing her married life in this house for the last 3 years. On 9/10/6/2017 at 3 at night my son-in-law informed by phone that Juhi has hanged herself. I with my husband and son immediately rushed to the house of our son-in-law at Azad Nagar where we saw the dead body of my daughter lying on the floor and a cloth was hanging from the channel. I, my husband and my son on seeing the dead body of Juhi lost our senses and before we could regain our senses and think, meanwhile relatives gave bath to my daughter Juhi and buried her at Azad Nagar graveyard on 10.06.2017 at about 1:30 in the afternoon. On becoming normal when I saw the photos of dead body of my daughter Juhi, injury marks were clearly visible on her body at the neck, hands and legs. She has been murdered hence it is essential that investigation be done by exhuming the dead body of Juhi from the grave and post mortem be done so that the murderer could be reached. Therefore, sir it is prayed that the applicant's report be lodged, and legal action be taken

> and dead body of Juhi be taken out from Azad Nagar graveyard and her postmortem be done."

3 On 14 June 2017, Case Crime No 654 of 2017 was registered against an unknown person. Based on an application submitted by the applicant to the District Magistrate, Moradabad the body of her daughter was exhumed on 19 June 2017, and after an inquest proceeding, a post-mortem was carried out. However, the cause of death could not be ascertained as nine days had elapsed since the date of the death and the burial of the deceased. The post-mortem report recorded that:

> "Body is in advanced decomposition stage, skin peeled off, foul smell present, eyes bulging, tongue protruded, nails and ears loose, face bloated, abdomen distended, brain liquefied."

4 The body was once again exhumed on 1 July 2017, and a post-mortem was conducted by a medical board constituted by the Chief Medical Officer, Moradabad. The medical board confirmed the findings of the earlier post-mortem that the body was in an advanced stage of decomposition. On 12 September 2017, a charge-sheet was filed under Section 173 of the CrPC against a person by the name of Manoj Shrivastav, who is alleged to have abetted the suicidal death of Juhi Arshi and thereby committed an offence under Section 306 of the Indian Penal Code 1860 ("**IPC**"). On 21 August 2018, the trial commenced before the Additional Sessions Judge – Fast Track Court – 1, Moradabad.

5 On 26 September 2018, charges were framed against one Manoj Shrivastav under Section 306 of IPC, and the appellant was summoned to give evidence in the course of the trial.

6 The appellant deposed in evidence as PW-1 on 5 October 2018. During the course of her evidence, the appellant stated that her daughter had been married to the second respondent in 2007. The appellant deposed that after the marriage, the second respondent and his family members demanded a house and mentally and physically tortured her daughter. The appellant deposed that in order to save the marriage of her daughter from collapsing, she had given a plot at Azad Nagar after constructing a house over it, to her daughter and the second respondent. The appellant deposed that whenever her daughter visited her maternal home, she would mention how her spouse, father-in-law, mother-in-law and stepbrothers as well as his friends (among them Manoj Shrivastav) would trouble her by saying her parents have given a small constructed house. The appellant stated that during the intervening night of 9/10 June 2017, at about 3:00 am, the second respondent made a phone call to the son of the appellant saying that Juhi Arshi had hanged herself. The appellant deposed that she, her husband and son reached her daughter's house at Azad Nagar. During the course of her deposition, the appellant stated as follows:

> "After hearing this news I, my husband and my son Shouib reached the house of my daughter at Azad Nagar there we saw that the body of my daughter was lying on the floor and a *dupatta* (cloth) was hanging from the channel. On seeing the dead body of our daughter we completely lost our senses and before we could come to terms, my son in law and his

> relatives gave bath to the dead body and buried her at Azad Nagar grave yard on 10.6.2017 in the afternoon. After the burial when I came to senses then I saw the photos of the dead body of my daughter Juhi Arshi. Injury marks on the body of my daughter Juhi Arshi were clearly visible on her neck, hands and legs. Thus I realized that my daughter has not committed suicide but she has been murdered. On 12.6.2017 I gave a typed report in respect of murder to PS Majhola. I had signed on that report. The witness identified the report present in the file as paper No. 4/3. She read the report and verified it as the same report which she had given to PS Majhola. Report is marked as Ex. Ka-1. I had also complained to higher officials about this incident on whose order the dead body of my daughter's body was exhumed from the grave after 9 days and post mortem was done. As my son in law Akram has high connections and a cunning person he managed to connive with the police and got his name out."

7 On 5 October 2018, on the basis of the substantive evidence of the appellant (PW-1) an application[1] was moved under Section 319 of the CrPC to summon the second respondent to face trial as he appeared to be complicit in the crime leading up to the murder of his wife.

8 On 6 December 2018, the appellant was cross-examined. In the cross-examination, the appellant deposed thus:

> "At the time of incident my daughter Juhi had been married for 9 to 10 years. My daughter did not have any child. Because of not having a child, the in laws family used to trouble her, Juhi used to say that she is not responsible for it. Daughter's in laws used to demand for a house. My daughter and son in law had come to our house on the date of incident in the evening and after having dinner went away at about 10 pm. At that time also my daughter Juhi told me that her husband etc used to trouble her. At 3 o'clock we were preparing for *sehari* (morning meal during Ramzan) when my

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> son in law Akram phoned that your daughter has hanged herself. We reached the place of incident, the house, within 10 minutes. In the house my son in law Akram was present and the gate was open. Apart from Akram there was no one else there. The dead body of my daughter was lying on the floor and Akram was sitting on the sofa and pretending to be crying. My daughter and son in law's room was on the first floor. In that house only my daughter and son in law used to reside. When I reached the place of incident there was no one else present but before we started crying and yelling rest of the people came later. At that time I was very perturbed because of which I could not see the injury marks on the body of my daughter. Later on I saw in the photos of my daughter's injury marks on her neck, hands and legs of being tied. When I reached, the floor was absolutely clean. It appeared as if the floor had been cleaned. I tried to give breath to my daughter, her mouth was smelling foul. At the site a bottle was found which the police took in it custody. There was no suicide note, etc present. I returned to my home after 10 days from the date of incident. The report of this incident was lodged by me at the police station Majhola. My daughter was buried the same day. Akram did not have any injury on his body. Nothing from the household items were found missing nor scattered in the house which may indicate that theft, etc had been committed."

9 On 29 January 2019, the Additional District and Sessions Judge allowed the application and summoned the second respondent under Section 319 of the CrPC. The order relied on the following circumstances which emerged from the evidence of the appellant (PW-1) and her son, PW-2 Shouib Raja:

(i) During the night intervening 9 and 10 June 2017 when the incident took place, the second respondent, who was the spouse of the deceased, was the only person present in the house with the deceased;

(ii) On being informed on the phone, when the parents of the deceased reached the scene of the incident, the second respondent was alone with the body of the deceased;

(iii) Since the height of the deceased was 160 centimeters, it was improbable that she could hang herself from a channel at a height of 240 centimeters, particularly when no stool was found nearby;

(iv) Either the deceased had been hanged at the place or physical changes were made at the scene of the incident;

(v) During the course of the investigation, the second respondent initially furnished his consent to the Investigating Officer to subject himself to a Narcoanalysis test but when the Investigating Officer moved an application before the Court, the second respondent refused to agree to the test;

(vi) Though the deceased died an unnatural death, the second respondent did not inform the police and her obsequial rites were conducted in haste;

(vii) Though under the orders of the District Magistrate dated 19 June 2017 and 30 June 2017, the body of the deceased was exhumed on two occasions, it was in an advanced stage of decomposition;

(viii) During the examination, injury marks were seen on the body, neck and hands “in the attached questioned photos”;

(ix) No ligature mark was seen and how such injury marks were borne on the body of the deceased could only be explained by the second respondent;

(x) The place of the incident was found to be disturbed; and

(xi) Under the provisions of Sections 103 and 114 of the Evidence Act 1872 ("**Evidence Act**"), the events which transpired during the night of 9/10 June 2017 were within the special knowledge of the second respondent.

10 The learned Trial Judge, adverted to the judgment of this Court in **Hardeep Singh** v **State of Punjab**[2] ("**Hardeep Singh**") and held thus:

> "All these circumstances in totality have evidentiary value and appear to be more than required for framing charge and if not rebutted, the proposed accused could be found guilty of the offence."

11 The learned Trial Judge noted that while summoning an accused under Section 319 of CrPC, the nature of the evidence should be such that if it is not rebutted, the accused should be held guilty of the offence. Holding that the evidence which had been adduced was of such a nature, the second respondent was summoned under Section 319.

12 The second respondent challenged the order of the learned Trial Judge dated 29 January 2019 in an application under Section 482 of the CrPC. By a judgment dated 12 April 2019, the Single Judge of the High Court allowed the application and set aside the summoning order holding that:

(i) The trial against Manoj Shrivastav for an offence under Section 306 of IPC was pending. Neither had the charge been altered nor was any evidence led to implicate the second respondent for an offence under Section 306;

[2] (2014) 3 SCC 92

(ii) The Trial Court had merely engaged in an exercise of exploring possibilities as to the cause of death, though, the specific case before it involved the prosecution of Manoj Shrivastav for an offence under Section 306; and

(iii) No 'strong or other satisfaction' appeared to have been recorded to summon the second respondent under Section 319.

13 Aggrieved by the judgment of the High Court, the appellant moved this Court under Article 136 of the Constitution.

14 Mr Andleeb Naqvi, learned Counsel appearing on behalf of the appellant, submitted that:

(i) The Additional Sessions Judge applied the correct test in law based on the judgment of the Constitution Bench in **Hardeep Singh** and evaluated the evidence of PW-1 on the touchstone of the principles enunciated by this Court;

(ii) The evidence of PW-1 and PW-2 is clearly of a nature that if not rebutted the proposed accused could be found guilty of the offence;

(iii) Each of the circumstances adverted to by the Additional Sessions Judge for issuing summons under Section 319 constituted relevant material;

(iv) The High Court, without displacing the observations of the Trial Court, erroneously interfered with the summoning order on an application filed under Section 482 of the CrPC;

(v) The order passed by the Additional Sessions Judge was revisable under Section 397 and hence a petition under Section 482 should not have been entertained;

(vi) Under Section 319, it is not necessary that the proposed accused must be summoned only for the offence with which the other accused is charged; the provision is to the effect that "the Court may proceed against such person for the offence which he appears to have committed";

(vii) The substantive evidence of PW-1 and PW-2 indicates that:

a) The second respondent who was the spouse of the deceased was the only person present in the house when Juhi Arshi died an unnatural death;

b) No efforts were made by the second respondent to inform the police of the unnatural death either on the date of the incident or thereafter; and

c) The second respondent acted in haste in getting the body of the deceased buried. Consequently, the burden of proof under Section 106 of the Evidence Act to furnish an explanation falls on the second respondent who was the sole inmate of the house

where the crime was committed (**Gajanan Dashrath Kharate** v **State of Maharashtra**[3]);

(viii) Initially, the police were reluctant to register the FIR. The FIR which was moved on 12 June 2017 was eventually registered on 14 June 2017. During the course of the investigation, PW-2, who is the brother of the deceased, handed over prints of the photographs of the deceased which showed marks of injury on her body; and

(ix) In the above circumstances, when cogent reasons were furnished by the Additional Sessions Judge for summoning the second respondent under Section 319, the High Court has manifestly erred in setting aside the order in the exercise of its jurisdiction under Section 482.

15 On the other hand, Mr Siddhartha Dave, learned Senior Counsel who appeared on behalf of the second respondent submitted:

(i) It is important to bear in mind the stage of the proceedings. The power under Section 319 can be exercised in an exceptional situation where the evidentiary material is more than what is required for the framing of the charge and is of such a character that if it is not rebutted, the proposed accused could be found guilty of the offence;

(ii) In the FIR which was lodged by the appellant four days after the incident, no allegation was made against the second respondent;

[3] (2016) 4 SCC 604

(iii) No incriminating observations are contained in the post-mortem report dated 19 June 2017 since the body was found in an advanced stage of decomposition;

(iv) A charge-sheet was filed under Section 173 of the CrPC upon which cognizance was taken. No protest petition was filed by the appellant after the police, upon investigation, did not find any material to prosecute the second respondent;

(v) Having regard to the language of Section 319, the second respondent upon being summoned has to be tried for the same offence as the co-accused who is alleged to have abetted the suicide of the deceased under Section 306;

(vi) In order to sustain the exercise of power under Section 319, there must exist strong and cogent evidence before the court. In the present case:

a) No protest petition was filed by the appellant when the charge-sheet was filed; and

b) The cross-examination of PW-1 has revealed that material aspects of the deposition had not been mentioned in the earlier statement under Section 161;

(vii) Whether it be by way of a revision under Section 397 or a petition under Section 482, the power to test the validity of the order passed by the Additional Sessions Judge rested with the High Court and in view of the

decision of this Court in **Pepsi Foods Ltd** v **Special Judicial Magistrate**[4], the High Court was not in error in exercising its jurisdiction under Section 482.

16 Having heard the counsel appearing on behalf of the parties, this Court has to decide whether the Trial Court was correct in exercising its powers under Section 319 and summoning the second respondent based on the evidence adduced by PW-1 and PW-2 during the course of the trial.

17 In assessing the rival submissions, it is relevant to refer to Section 319 of CrPC:

> "319. 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, the witness 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."

[4] (1998) 5 SCC 749

18 The decision of the Constitution Bench of this Court in **Hardeep Singh** lays down the principles governing the exercise of the jurisdiction under Section 319. Observing that "it is the duty of the court to do justice by punishing the real culprit", the court observed:

> "13…Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial."

Expounding upon this duty, the Constitution Bench held:

> "18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.
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> 19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

19 As regards the satisfaction of the court before it exercises the power under Section 319, the Constitution Bench held:

> "105. Power under Section 319 CrPC is a discretionary and an extraordinary 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**.
>
> 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. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused**." (Emphasis supplied)

20 Subsequent decisions of this Court have applied the principles which were enunciated in **Hardeep Singh** in varying fact situations. In **Babubhai Bhimabhai Bokhiria** v **State of Gujarat**[5], the Trial Court had summoned the accused person under Section 319 on the basis of a written note left by the deceased, apprehending

[5] (2014) 5 SCC 568

death at the hands of the accused person. The High Court affirmed the order of the Trial Court. A two-judge Bench of this Court while setting aside the order of the High Court held that the note written by the deceased was inadmissible in evidence and could not be considered to allow the exercise of powers under Section 319.

21 In **Brijendra Singh** v **State of Rajasthan**[6], persons named in the FIR but not in the charge sheet, were summoned before the Trial Court based on statements made by the complainant under Section 161 of CrPC. The High Court upheld the order of the Trial Court. A two-judge Bench of this Court while setting aside the High Court's order held that the police investigation revealed that the accused persons were found to be far away from the crime scene and the statements recorded under Section 161 of CrPC did not constitute sufficient evidence for the Trial Court to exercise its power under Section 319.

22 In **Rajesh** v **State of Haryana**[7], the Trial Court had summoned four persons under Section 319 based on the depositions of the complainant and an eyewitness, regarding their specific role in murdering two persons. The High Court dismissed the revision petition filed by the accused persons. A two-judge Bench of this Court upheld the High Court's order and held that the depositions of the complainant and the eyewitness before the Trial Court were "evidence" on the basis of which, the accused persons could be summoned to face trial.

[6] (2017) 7 SCC 706
[7] (2019) 6 SCC 368

23 In **S Mohammed Ispahani** v **Yogendra Chandak**[8], the Trial Court dismissed an application under Section 319 for summoning persons who were named in the FIR but not in the charge-sheet. The High Court, based on a statement recorded by the police under Section 161, set aside the Trial Court's order and summoned the accused persons for trial. A two-judge Bench of this Court, while setting aside the decision of the High Court, discussed the powers of the court under Section 319:

> "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 charge-sheet 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 charge-sheet, 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 charge-sheet. 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."

In **Rajesh** v **State of Haryana** (supra), this Court held that the court, while exercising its jurisdiction under Section 319, is not rendered powerless even in a case where the stage of furnishing an opportunity to the complainant to file a protest petition urging the Trial Court to summon other persons as well as those who are named in the FIR but not impleaded in the charge-sheet, has gone.

24 In the present case, the FIR lodged by the appellant (PW-1) recorded that on the intervening night of 9/10 June 2017, the second respondent, who was her son-

[8] (2017) 16 SCC 226

in-law, informed her on the telephone that Juhi Arshi had hanged herself. The appellant stated that on reaching the house, when she saw the body of her deceased daughter on the floor, she lost consciousness. She stated that the second respondent and his relatives bathed the dead body and buried the deceased on 10 June 2017 between 1-3 pm. She stated that after she regained consciousness, she saw the photos of the dead body, which showed that injury marks were visible on the neck, hands and legs. The appellant alleged that her daughter had been murdered. The appellant wanted an investigation to be carried out after exhuming the dead body and a post-mortem to be conducted so that the murderer "could be reached". The dead body was exhumed and a post-mortem was conducted on 19 June 2017, but the body was in an advanced stage of decomposition. The charge-sheet was submitted by the Investigating Officer implicating Manoj Shrivastav for an offence under Section 306 of the IPC. The evidence of PW-1 was recorded in the course of the trial on 5 October 2018. PW-1 deposed that:

(i) Her daughter has been harassed by the second respondent, his father, mother, brothers and others for bringing insufficient dowry. In order to save the marriage of her daughter, she had given a plot with a house constructed thereon in Azad Nagar to her daughter and son-in-law;

(ii) On receiving the intimation from the second respondent at 3:00 am on the intervening night between 9/10 June 2017, that her daughter had committed suicide, PW-1 together with her husband and son reached the

house of the second respondent and saw the dead body of her daughter lying on the floor and a dupatta hanging on the channel;

(iii) The body was buried by the second respondent and his relatives in the afternoon on 10 June 2017;

(iv) The photographs of the dead body show that the body had visible injury marks on the neck, hands and legs which led her to the conclusion that her daughter had not committed suicide but was murdered;

(v) She had furnished a report of the murder on 12 June 2017 to P S Majhola and had also complained to the higher officials on whose order the body was exhumed from the grave; and

(vi) The second respondent had managed to connive with the police and get his name excluded from the charge-sheet.

25 During the course of her cross-examination on 6 December 2018, the appellant was questioned on her deposition in the course of the Examination-in-Chief about the harassment which her daughter had suffered at the hands of the second respondent, his father, mother and brothers. PW- 1 maintained her account in the course of her cross-examination, stating that on the night before the incident when her daughter had visited her house together with the second respondent, she had informed PW-1 about the ill-treatment meted out to her. PW-1 further stated in her cross-examination that she received intimation of the death of her daughter from the second respondent at 3:00 am as she was preparing for sehari during the month of Ramzan. On reaching the scene of the incident, it was found that only the second

respondent was present in the house where the couple used to reside. She stated that besides the injury marks on the body of the deceased, the floor was found to be absolutely clear, and it appeared as if it had been cleaned. PW-1 stated that a foul smell was emanating from the mouth of her daughter and a bottle was found at the site which the police took into custody. PW -1 stated that nothing was found to be missing from the household items ruling out the possibility of a theft.

26 PW-2 (the son of PW-1 and the brother of the deceased) deposed in evidence on 4 June 2019 when he stated that on 12 July 2017, the police had taken into custody three mobiles and four SIM cards besides nine photographs which were taken by the witness from his cell phone.

27 The order of the Additional Sessions Judge dated 29 January 2019 for summoning the second respondent was on the basis of the evidence which emerged during the course of the trial. The order summoning the second respondent was on a careful evaluation of the evidentiary material and based on the principles laid down in the decision of the Constitution Bench in **Hardeep Singh.** The Additional Sessions Judge furnished reasons for relying on the provisions of Section 114 of the Evidence Act having due regard to the fact that the incident had taken place within the confines of the matrimonial home where only the second respondent and the deceased were residing on the night when the incident took place.

28 The order passed by the Additional Sessions Judge did not suffer from any infirmity. On the contrary, it was the High Court which interfered with the findings of the Trial Court on the specious ground that the trial was proceeding against Manoj Shrivastav for an offence under Section 306 and that the Trial Court had merely engaged in an exercise of exploring the possibility as to the cause of death. Section 319 empowers the court to proceed against a person appearing to be guilty of an offence where, in the course of any enquiry 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 exercise of the discretion by the Additional Sessions Judge to summon the second respondent fulfilled the requirements of Section 319 and was consistent with the parameters laid down in the decisions of this Court noted earlier. The fact that a protest petition had not been filed by the appellant when the report was submitted under Section 173 did not render the court powerless to exercise its powers under Section 319 on the basis of the evidence which had emerged during the course of the trial. The evidence of PW-1 and PW-2 which has been adverted to above meets the threshold required to sustain an order for summoning under Section 319. The High Court has failed to analyse the basis on which the Additional Sessions Judge had proceeded to issue summons under Section 319 and in a brief set of observations covering a few sentences displaced a well-considered order of the Additional Sessions Judge in purported exercise of the jurisdiction under Section 482. The order passed by the High Court is unsustainable and would accordingly have to be set aside.

29 We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 12 April 2019. In consequence, the order passed by the Additional District and Sessions Judge - Fast Track Court No 1, Moradabad on 29 January 2019 allowing the application and issuing summons to the second respondent under Section 319 of the CrPC is upheld.

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

…….....J
[Dr Dhananjaya Y Chandrachud]

…….....J
[Hrishikesh Roy]

New Delhi;
December 10, 2019.