

An F.I.R. dated 04.09.2005 was registered in P.S. Khera Garh, District Agra, Uttar Pradesh in respect of Crime Case No. 331/05 under Sections 147, 148, 149, 307, 302, 323, 504 and 506 of I.P.C. The police carried out investigation and filed a charge sheet. While the trial was on, during the examination-in-chief of P.W.-1, an order has been passed exercising power under Section 319 of the Cr.P.C. to summon the appellant as an accused. This order was sought to be ⁸⁰assailed in a revision petition which was dismissed. Thus, the appellant has filed the present appeal.

A perusal of the F.I.R. would show that the complainant is P.W.-1. The role ascribed to the appellant was that he came with a country made revolver at the site but the deceased Satyapal was fired upon by two other accused which caused the death. This is what has been stated in the examination-in-chief of P.W.-1. It is pointed out by learned counsel that ¹⁶⁰P.W.-1 was the only person who named the appellant while other eye witnesses including the injured witness did not do so.

A perusal of the order dated 02.09.2006 would show that what is recorded is that the prosecution has given an application under Section 319 of the Cr.P.C. This is admittedly not factually correct. The application was filed by the complainant aggrieved by the dropping of the name of the appellant from the array of accused on which orders have ²⁴⁰been passed. The trial court has stated that the appellant was not summoned as and accused on the basis of the charge sheet which did not name him as an accused. The order for summoning has been passed on the following rationale. In the present case P.W.-1 has stated under the evidence given on oath that Shishupal son of Gitam Singh was also present along with other accused he was carrying a country made revolver. He had fired upon them ³²⁰with an intention to kill from which persons from their side have suffered injury. Those of this accused was mentioned in the written complaint of the complainant and the F.I.R. But the police had not sent charge sheet against him. There are sufficient grounds available for summoning the accused Shishupal son of Gitam Singh under Section 319 Cr.P.C. application No. 13 fit to be admitted.

The role ascribed to the appellant is also not correctly reflected as it has been ⁴⁰⁰stated that he fired upon them with an intention to kill them. This is not what was stated in the three complaint nor is it part of the testimony recorded of P.W.-1. If we turn to the order of the High Court in revision, after extracting the legal principles what has been observed is that Section 319 Cr.P.C. is a power available to summon a person as an accused even if he is not named in the F.I.R. or in the charge sheet. ⁴⁸³