

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR 1912 of 2013(O&M)

Date of Decision : February 04, 2015

Dharambir

.....Petitioner

VERSUS

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Naresh Prabhakar, Advocate
for the petitioner.

Mr. Munish Dev Sharma, Asstt. A.G., Haryana
for respondent No.1.

Mr. Deepender Singh, Advocate
for respondent No.2.

T.P.S. MANN, J.

The present revision has been filed by complainant-Dharambir for challenging the order dated 18.4.2013 passed by the Additional Sessions Judge, Faridabad whereby application moved by the prosecution under Section 319 Cr.P.C. for summoning respondent-Satbir as additional accused was dismissed.

As per the prosecution, the petitioner's son Rajesh was given beatings by respondent-Satbir and his co-accused Hoshiyar Singh. FIR was registered on the basis of statement made by the petitioner at Police Station Sadar, Ballabgarh for the offences under Sections 323, 307, 34 IPC. Later on, Rajesh died and, accordingly, the offence under Section 302 IPC was added to the

FIR. In the investigation, which followed, respondent-Satbir was found innocent and, accordingly, his name was put in column No. 2 of the challan which was presented against Hoshiyar Singh. Said Hoshiyar Singh was charged and tried. In support of its case, the prosecution examined a number of witnesses including PW1 Gulab Singh, PW5 Parkash, PW7 Shakeel, PW8 complainant-Dharambir and PW10 Kunwar Pal. This was followed by the Public Prosecutor moving an application under Section 319 Cr.P.C. for summoning respondent-Satbir as additional accused. After going through the material brought on record and the evidence available, the Additional Sessions Judge concluded that there were no chances of the trial ending in the conviction of respondent-Satbir as PW1 Gulab Singh, PW5 Parkash and PW7 Shakeel had categorically deposed that respondent-Satbir was not present at the time of the occurrence. Accordingly, the application under Section 319 Cr.P.C. was dismissed.

The revision came up for preliminary hearing before this Court on 17.9.2013 when learned counsel for the petitioner while referring to the statements of PW8 Dharambir and PW10 Kunwar Pal which he had brought on record by filing CRM 37152 of 2013, submitted that both the said witnesses had deposed before the trial Court about the beatings having been given by respondent-Satbir to Rajesh. Accordingly, while issuing notice, the

Court stayed passing of final order by the trial Court.

Learned counsel for the parties have been heard and the statements of PW8 Dharambir and PW10 Kunwar Pal as well as the impugned order perused.

It is not in dispute that when the FIR was registered on the basis of statement made by Dharambir-petitioner, it was stated therein that Rajesh, since deceased, had told Dharambir about having been given beatings by Satbir with sugarcane which was followed by Hoshiyar Singh administering him liquor and also giving beatings to him as a result whereof, his neck suffered fracture. Initially, the FIR was registered under Sections 323, 307, 34 IPC. Subsequently, when Rajesh died, the offence under Section 302 IPC was added to the FIR. As regards the statement made by Rajesh to his father Dharambir, which related to cause of his death subsequently, it has to be termed as a dying declaration and, therefore, admissible under Section 32 of the Evidence Act. Dharambir, father of Rajesh deceased, also appeared before the trial Court as PW8 and re-iterated the version given by him to the police at the time of lodging of the FIR. Relevant portion of his statement is as under:-

“Then I visited to Rajesh at 4th floor and inquired about the cause of injury, upon which Rajesh told that firstly Satbir inflicted injuries with sugar canes and asked Hoshiyar to finish Rajesh on 10.3.12 and both

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Hoshiyar & Satbir gave injuries on his neck, as a result of which his neck got fractured. Satbir came to hospital on 11.3.12 and asked to Rajesh to sign on blank paper, upon which Rajesh refused to do so. At that time, Rajesh was in serious condition and requesting me to save him. On 12.3.12 at night time he became unconscious and died on the next day i.e. 13.3.12 in the evening time.”

Even Kunwar Pal, brother of Rajesh deceased, while appearing before the trial Court as PW10 testified that Rajesh had informed him about having been given beatings with sugarcane by Satbir which was followed by Satbir asking Hoshiyar Singh to kill Rajesh and both of them gave him beatings and fractured his neck. This statement made by Rajesh which was referred to by PW10 Kunwar Pal during his testimony also amounts to dying declaration as it related to cause of his death. Relevant portion from the statement of PW10 Kunwar Pal is as follows:-

“I inquired from Rajesh who informed that firstly Satbir gave me beatings with sugar canes and asked Hoshiyar Singh to kill Rajesh and both of them gave beatings and broken his neck. Thereafter, I shifted Rajesh to BK Hospital, Faridabad. The doctor of BK Hospital asked me to take Rajesh to Safdarjang Hospital, Delhi. I went there and doctor of Safdarjang Hospital told me to take Rajesh to Trauma Centre where he was admitted on 11.3.2012 at about 8 am and where he died in Trauma centre on 13.3.2012 at

about 9 pm due to the injuries.”

When the statements of PW8 Dharambir and PW10 Kunwar Pal are available on the file, the trial Court was not justified in not placing any reliance upon the same and, instead, giving precedence to the fact that PW1 Gulab Singh, PW5 Parkash and PW7 Shakeel had not supported the case of the prosecution. The dying declaration made by Rajesh before his death, if goes unchallenged, is sufficient to pass a judgment of conviction against Satbir as he had been attributed causing of injuries by Satbir with sugarcane to him.

In view of the above, the revision is accepted and the impugned order is set-aside. The application under Section 319 Cr.P.C. is accepted and the trial Court is directed to summon respondent-Satbir as additional accused and proceed with the trial, thereafter.

Nothing stated above shall be taken as an expression of opinion on the merits of the case. The observations have been made for the limited purpose of deciding the present revision.

February 04, 2015
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(T.P.S. MANN)
JUDGE