

In the High Court of Punjab and Haryana at Chandigarh

CRR-32 of 2015

Date of Decision: 09.02.2015

Monika and another

---Petitioners

versus

State of Punjab and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Naresh Kaushik, Advocate
for the petitioners**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The present petition lays challenge to order dated 17.12.2014 passed by the Additional Sessions Judge, Jalandhar whereby the application filed by the prosecution for summoning additional accused Ramesh Kumar and others (respondents No. 2 to 8) has been dismissed.

Counsel for the petitioners contends that Heena (deceased), sister of petitioner Monika and daughter of Madan Lal was married to Naresh Kumar and out of their wedlock, two children were born. Monika, the petitioner was married to younger brother of accused Naresh and her husband has passed away. Heena died within 07 years of marriage but

Naresh has been charged for committing offence punishable under Section 306 of the Indian Penal Code (in short “IPC”). Monika, an eye witness to the occurrence appeared in the witness box and attributed specific role to respondents No. 2 to 8 for driving Heena to commit suicide but the learned trial court committed a grave error in dismissing the application for summoning of Ramesh Kumar and others. It is prayed that the impugned order may be set aside and the respondents may be summoned to face trial along with accused Naresh Kumar, already before the Court.

I have heard counsel for the petitioner and perused the records.

Monika is the first witness partly examined in the case and even before her examination in chief was concluded, application for summoning the additional accused was filed which came to be dismissed by the trial court. A relevant extract from testimony of Monika in regard to complicity of the private respondents in the crime reads thus:-

“At the time of marriage sufficient dowry was given to the in laws but since the marriage my in laws and my sister's in law and her husband were harassing both of us on account of insufficient dowry. My brother in law Naresh Kumar, my mother in law Sheela Devi, Ramesh Kumar (Chacha Sasur), Suman Devi (Mausi Saas), my sisters in law Chandni, Lata, Sapna and Saano were demanding more dowry from me and my sister and they were pressing demand to bring car and Rs. 5,00,000/- to Rs. 7,00,000/- and they used to beat me and my sister. My sister was feeling depressed on account of this. They also threatened her to kill. I told everything to my

parents regarding this dispute. My brother and father persuaded Naresh, husband of deceased on many times but even then whole family used to press and harass to bring more dowry to Heena and me and they also tell bring the dowry articles or money otherwise do not come to the house otherwise you die and I will contract another marriage in wealthy family. On 9.3.2014 in the morning, Naresh, mother in law, mausi saas, chacha sasur, my all sisters in law mentioned above has beaten Heena and quarrelled with me. Then I and Heena has gone to their respective rooms alongwith children. When I had gone to the room of Heena at about 1 p.m., I had seen that she hanged herself with ceiling fan. I raised raula and wept and then I fell unconscious. After sometime, I regain consciousness and reached at Johal Hospital where I had seen that my sister was lying dead. Police recorded my statement Ex. PA bearing my signatures in English alongwith my father.”

A bare reading of the aforesaid extract makes it apparent that no date, month and year of demand of dowry or alleged harassment to the deceased has been given. As per allegations, on 9.3.2014 in the morning Naresh and other accused had beaten Heena. The post mortem examination of the deceased was conducted and in the post mortem report, there is no reference to any marks much less injury found on person of the deceased which could be the result of physical assault by any of the accused. The cause of death is opined to be asphyxia due to hanging sufficient to cause death in ordinary course of nature.

The Hon'ble Supreme Court of India in *Hardeep Singh vs. State of Punjab and others 2014(1)RCR(Criminal) 623* decided five questions referred to the Larger Bench and the decision was rendered by the Constitution Bench. Question No. (iv) formulated for decision reads as follows:-

“What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?”

The Court in view of its detailed analysis of various judgments starting from *Pyare Lal Bhargava vs. The State of Rajasthan AIR 1963 SC 1094* discussed in paras 87 to 97 came to record its conclusion in paras 98 and 99 quoted thus:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

99. 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused.”

As a matter of fact, the answer to question No.(iv) is given in para 99 wherein it has been held that 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 un rebutted would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. When the facts elicited during examination of Monika, the only witness partly examined in chief during trial are analysed in the light of test to be applied for recording necessary satisfaction to summon an additional accused, I find myself unable to find any error much less illegality in the

impugned order rejecting prayer of the prosecution for summoning the private respondents.

In view of what has been discussed hereinabove, finding no merit, the petition is dismissed in limine.

(REKHA MITTAL)
JUDGE

09.02.2015

PARAMJIT