

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 4092 of 2015 (O&M)
Date of Decision: 28.10.2015

Balwinder Singh

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. Ajay Pal Singh Rahon, Advocate
for the petitioner (s).

HARI PAL VERMA J.

CRM No.35284 of 2015:

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 12 days in filing the present revision petition.

For the reasons mentioned in the application which is supported by an affidavit of the petitioner, delay of 12 days in filing this revision petition is condoned. The application stands disposed of.

Main Case:

Petitioner – Balwinder Singh has filed the present revision petition against order dated 3.7.2015 passed by learned Additional Sessions Judge, Gurdaspur, whereby the application under Section 319 of the Code of Criminal Procedure, 1973 filed by the prosecution, has been allowed and the petitioner who was kept in column no.2 has been ordered to be summoned to face trial under Sections 323, 447, 427, 148, 149 of the Indian Penal Code, 1860, which is a cross version of case FIR No.68 dated 25.7.2012 under Sections 308, 379, 323, 148, 149 IPC, Police Station Tibber, District Gurdaspur.

As per the case of the prosecution, Darshan Kaur, the eyewitness, was examined on 3.12.2014, wherein she has stated that the petitioner was armed with *dang* whereas Raghbir Singh was armed with brick. While accused Raghbir Singh gave brick blow to her father Swaran Singh which hit on his head, the petitioner Balwinder Singh, Patwari, gave a *dang* blow to her father Swaran Singh which hit on his right knee. Resultantly, Swaran Singh fell down and became semi-conscious. She arranged a vehicle and shifted him to Civil Hospital, Gurdaspur, where he was medically examined. Though the police kept the name of the petitioner in column no.2 of the challan, but on application under Section 319 CrPC, learned Additional Sessions Judge, Gurdaspur has ordered summoning of the petitioner.

Learned counsel for the petitioner contends that there is a contradiction in the statement of Darshan Kaur vis-à-vis the statement of Swaran Singh, injured and therefore, the case of the prosecution being highly doubtful, the petitioner should not have been summoned to face trial. He further argued that Darshan Kaur, while deposing as a prosecution witness, has concocted a story different than the statement of Swaran Singh and thus, the trial Court has committed an error in not appreciating the said fact. There is a strong contradiction in the cross-version and the statement of PW-1 Darshan Kaur. He further submitted that the injury attributed to the petitioner as per the statement of PW-1 Darshan Kaur is not there in the medico-legal of Swaran Singh.

I have heard learned counsel for the petitioner and perused the statement of PW-1 Darshan Kaur.

PW-1 Darshan Kaur as well as Swaran Singh, injured, both have specifically mentioned the role of the petitioner and the presence of the petitioner has been duly mentioned at the scene of occurrence. Even if there is slight contradiction as regards the nature of injury attributed to the petitioner, the same is a matter of trial. However, the statements of Darshan Kaur and Swaran Singh establish the presence of the petitioner. Therefore, such contradiction in the statements of these witnesses is not very material at this stage. No doubt, the power under Section 319 CrPC has to be exercised only if the Court is satisfied that the accused so summoned is in all likelihood would be convicted as held by Hon'ble

the Apex Court in the case of **Hardeep Singh v. State of Punjab** **AIR 2009 SC 483**, but in the present case, admittedly, PW-1 Darshan Kaur, who is an eyewitness, has specifically mentioned the name of the petitioner to be armed with *dang* and gave *dang* blow to her father Swaran Singh which hit on his right knee. Thus, presence of petitioner at the scene of occurrence is not doubtful.

Therefore, I find no occasion to interfere with the impugned order.

The revision petition is dismissed.

However, expression made here-in-above shall not be construed any expression on the merits of the case and is confined only to decide the present controversy at this stage. The trial Court shall decide the case on merits without being influenced with the above observations.

October 28, 2015
AK

(HARI PAL VERMA)
JUDGE