

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

**Criminal Revision No.1778 of 2014
Date of Decision: February 16, 2016**

Laheri & Ors.

...Petitioners

Versus

State of Haryana & Anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

**Present: Mr.A.P.S.Deol, Senior Advocate with
Mr.V.R.Lamba, Advocate,
for the petitioners.**

**Mr.Pawan Gaur, DAG, Haryana,
for respondent No.1-State.**

**Mr.B.K.Bagri, Advocate,
for respondent No.2.**

*1. Whether Reporters of Local papers may be allowed to see the judgment? **yes***

*2. To be referred to the Reporters or not? **yes***

*3. Whether the judgment should be reported in the Digest? **yes***

Naresh Kumar Sanghi, J.

Challenge in the present criminal revision petition is to the order dated 26.05.2014 passed by learned Additional Sessions Judge, Rewari, whereby the petitioners, namely, Laheri, Smt. Ram Rati, Dinesh, Rohul, Sunny, Sheoraj, Smt.Sushila, Smt. Asha, Smt. Usha and Satish, were summoned under Section 319, Cr.P.C., to face trial with the principal accused, Suresh, Subhash and Sunil, all sons of Laheri, already facing trial for the offences punishable under

Sections 148 and 302 read with Section 149, IPC, in a case arising out of FIR No.246, dated 30.11.2013, for the offences punishable under Section 302 read with Section 34, IPC, registered at Police Station, Bawal, District Rewari.

At the very outset learned Senior counsel submitted that even if the whole case of the prosecution is taken at its face value then also prima facie case for summoning of the petitioners to face trial in a serious case under Section 302, IPC, is not made out. To elaborate his submissions, learned Senior counsel contended that Ramphal (since deceased) alleged to have sustained only lacerated wound (1 x 0.5 cm) on the inner aspect of upper lip for which 13 persons (three persons were originally put to trial and later 10 more persons were summoned under Section 319, Cr.P.C.) should be put to trial particularly when the medical evidence was to the effect that Ramphal (since deceased) had died due to heart ailment.

Mr.Pawan Gaur, learned Deputy Advocate General, Haryana, initially supported the impugned order but later when he was confronted with the medical evidence emerging on record and the manner in which the Investigating Agency declared the petitioners innocent then he could not contradict the submissions advanced by learned Senior counsel representing the petitioners.

Mr.B.K.Bagri, learned counsel for respondent No.2/ informant had vehemently opposed the stand taken by learned Senior counsel for the petitioners and submitted that there was

ample evidence to connect the petitioners with the offences for which they were summoned by learned trial Court to face trial. He further submitted that during his deposition, Mangal Singh (PW-1) informant deposed that the petitioners along with the persons already facing trial arrived at the spot and started inflicting injuries to Ramphal by means of wooden sticks (*lathi* and *danda's*) while Ramphal (since deceased) was lying on the ground and as such, learned trial Court had correctly opted to summon the petitioners to face trial for the offences punishable under Sections 148 and 302 read with Section 149, IPC.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

In the matter of **Hardeep Singh** vs. **State of Punjab**, **2014(1) RCR(Criminal) 623**, a larger Bench of Hon'ble the Supreme Court while dealing with every aspect relating to Section 319, Cr.P.C., held that if more than prima facie evidence was emerging on record, during trial, then the additional accused could be summoned to face trial.

While keeping in mind the above proposition of law factual aspect of the present case are scanned then it is found that the First Information Report in the present case was lodged on the statement of Mangal Singh (PW-1). The relevant part of the First Information Report is reproduced below:-

“Statement of Mangal Singh son of Ram Kumar, caste Manihar, resident of Khijuri, Police Station, Bawal, District

Rewari, age 28 years, stated that I am the resident of above stated address and doing agriculture work. Today at about 7:00 am I was in my house. My uncle Ramphal was cleaning the drain existing on the backside of his house. I was also present there. Suresh and others had piled up a block of bricks on the above mentioned drain which had caused blockade in the flow of water. My uncle Ramphal had tried to make Suresh son of Lehri, Balmiki, resident of Deh etc understand on several occasions to remove the above mentioned bricks from the drain. But they did not understand and used to reply that when that block of bricks would be lifted, some person would die. We used to make our uncle Ramphal understand not to press this issue. Today also my uncle Ramphal was cleaning the dirty water drain blocked drain. My uncle asked Lehri s/o Dhola Ram to remove their bricks from the drain as it was blocked by them. Because of that there was altercation between my uncle Ramphal and Lehri. Suresh s/o Lehri came with a spear from his house and started calling his family members and hurled abuses on my uncle Ramphal. On hearing noise, Subhash, Sunil sons of Lehri, Satish s/o Jaipal, Rahul s/o Suresh, Dinesh s/o Suresh, Sunny s/o Babu Lal, Sheoraj s/o Babulal, Sushila w/o Suresh, Ramratti w/o Lehri, Asha w/o Subhash, Usha w/o Sunil, residents of village Khijuri armed with bamboos sticks and dandas came there. On seeing their arrival, Suresh gave a spear blow on the mouth of my uncle Ramphal. Thereafter, all of them started inflicting injuries to my uncle Ramphal with lathis and dandas while my uncle was lying on the ground. I raised noise "Bachao Bachao" upon which my father Ram Kumar, my brother Bhim Singh, my grandfather Ram Sarup and my cousin brother Lakhmi son of Ramphal came at the

place of occurrence. On seeing their arrival, due to hue and cry the accused went to their house. Thereafter, I along with my family members arranged a private conveyance and took Ramphal to G.H.Bawal where the doctor declared him dead. My uncle Ramphal had died because of the injuries caused by Suresh etc. Legal action be taken against them. Now you have come I have got recorded statement to you, heard it and found it to be correct.”

During trial Mangal Singh appeared as PW-1 and reiterated the facts narrated in the FIR.

Dr.Gireesh Gupta (PW-2) by way of his affidavit deposed as under:-

“Dr.Gireesh Gupta posted as MO at CHC Bawal, on dated 30.11.2013 solemnly affirm that we have conducted postmortem examination on the body of deceased Mr.Ramphal s/o Mr.Ram Sawroop by caste Manihar age around 44-50 years r/o Khajuri PS Bawal District Rewari with alleged history of death due to physical assault brought by P.S.Bawal and prepared PMR through medical board ordered by SMO CHC Bawal vide PMR No.GG/BWL/38/2013/RNK/LCY. We found following injuries on the deceased:-

- 1. Lacerated wound of size 1 x 0.5x 0.5 cm on inner aspect of upper lip rt. Side.*
 - 2. Skull, scalp, brain-Healthy.*
 - 3. Thorax- ribs and cartilages, pleura, larynx and trachea were healthy. Both lungs were slightly pale and part of it sent for chemical examination.*
- Heart was filled with blood and sent as a whole for*

HPE. Clotted blood was present in large vessel.

4. *Abdomen-Stomach, small and large intestine were pale and sent with their contents for medical examination.*

Liver was enlarged pale and intact and part of it sent for chemical examination.

Opinion for cause of death was reserved till the chemical examination report of viscera and HPE report of heart.

HPE report vide report No.P/1629/13 of Deptt. Of Pathology, PGIMS, Rohtak, which show changes of acute ischemic heart disease. Sections from right and left coronary arteries show complicated atherosclerosis. Section from left anterior descending artery show severe atherosclerosis.

In our opinion the cause of death in this case is ischemic heart disease however viscera report is awaited.”

During his examination-in-chief and cross-examination,

Dr.Girish Gupta, deposed as under:-

“I tender in the evidence my duly sworn affidavit Ex.PC which may be read as a part of my evidence. Postmortem report is Ex.PD which bears our signatures namely, Dr.Gireesh Gupta, Dr.Ram Niwas and Dr.L.C.Yadav, which was conducted on police request which is Ex.PE. Inquest on each page.

On 12.03.2014 police had moved an application Ex.PG for seeking the cause of death of deceased Ramphal s/o Sh.Ram Swaroop on which I had opined that the case of death in this case is ischemic heart disease however, chemical examination report was awaited. My opinion is Ex.PH which bears my signatures. After going through the

chemical examination report Ex.PB which shows the contents of all the exhibits gave negative tests of common poison and ethyl alcohol I am of the opinion that the cause of death in this case is ischemic heart disease.

Xxxxx by Shri Kailash Yadav, counsel for the accused.

As per my opinion Ramphal had died a natural death. In this case, the injury sustained by the deceased could not have aggravated or resulted in heart attack. The injury of the present case has no role to play in death of Ramphal.

Court Q. Whether ischemic heart disease can be aggravated by giving blows with lathi, danda and bhala on the person of deceased at 7 AM on 30.11.2013?

Ans. As per postmortem report one injury on the lip of deceased was found. We conducted postmortem on 1 PM on 30.11.2013. Ischemic heart disease can be aggravated by any stress or fear.

In the present case there was only one injury on the body of the deceased and it was superficial in nature. Ischemic heart disease can be aggravated without any fight in normal circumstances under stress.”

Learned trial Court in para No.8 of the impugned order held as under:-

“In view of the evidence of PW-1 Mangal Singh and in view of the fact that name of Lehri, Satish, Rahul, Dinesh, Sunny, Sheoraj, Sushila, Ramrati, Asha and Usha have been mentioned in the FIR itself, it is clear that they are also involved in the murder of deceased Ramphal. PW-1 Mangal Singh was an eye-witness and there is no ground to disbelieve his evidence. Therefore, the evidence on the file is more than the evidence required for framing charge and

accordingly, the application moved under Section 319, Cr.P.C., stands allowed. Accused Lehri s/o Dhola alias Ramji Lal, Satish s/o Jaipal, Rahul s/o Suresh, Dinesh s/o Suresh, Sunny s/o Babu Lal, Sheoraj s/o Babu Lal, Sushila w/o Suresh, Ramrati w/o Lehri, Asha w/o Subhash and Usha w/o Sunil, all residents of village Khijuri, District Rewari be summoned through arrest warrants for 07.06.2014 for the offences punishable under Sections 148/149 and 302, IPC.”

There is no gainsaying that Mangal Singh not only while reporting the matter to the police but also during statement on oath as PW-1 before learned trial Court, did disclose the names of the petitioners as assailants but the question for consideration before this Court is as to whether 13 persons armed with deadly weapons like wooden sticks etc. with an intention to kill a person go to the spot and caused injuries but the aggrieved person would receive a single injury that too on his lips by itself is improbable. During investigation it was found that the petitioners had not participated in the incident of causing injuries to Ramphal (since deceased). It is an admitted position that both the factions were residing in the vicinity and there was a dispute amongst them with regard to blocking of the drain to which Ramphal (since deceased) had serious objections. Once an untoward incident occurs then there is tendency to rope in the maximum persons from the accused-side. In the present case also, it appears that Mangal Singh who is admittedly the nephew of Ramphal (since deceased) had also attempted to involve the maximum persons from the accused-side. The medical evidence

adduced on record is absolutely contradicting the oral version put forth so far during trial. The Investigating Agency has also rejected the version put up by Mangal Singh so far as the participation of the petitioners is concerned. This Court after taking into consideration overall facts and the legal proposition laid down by Hon'ble the Supreme Court in the matter of **Hardeep Singh's** case (supra) finds that what to talk of more than prima facie case even prima facie case is not made out to summon the petitioners to face trial with the persons already put to trial and as such, the impugned order dated 26.05.2014 passed by learned Additional Sessions Judge, Rewari, is set aside and the petitioners are discharged.

Accordingly, the present criminal revision petition is accepted.

February 16, 2016
seema

(Naresh Kumar Sanghi)
Judge

