

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 94 of 2013

Date of decision : 24.05.2016

Sohan Lal

..... Petitioner

versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

**Present: Mr. Sahil Thakur, Advocate
for the petitioner**

Mr. K.S. Aulakh, AAG Punjab

**Mr. J.S. Mehndiratta, Advocate
for respondent No. 2**

**Mr. Sanjeev Manrai, Sr. Advocate with
Mr. Gaurav Talwar, Advocate
for respondent No. 3**

ANITA CHAUDHRY, J. (ORAL)

This revision petition is directed against the order dated 15.12.2012 passed by Addl. Sessions Judge, Sangrur vide which the application filed under Section 319 Cr.P.C has been dismissed by the trial Court.

Suman was married to Vinod Kumar in the year 1999. They had two sons, they were in the age group of 9 and 11 years. The unfortunate incident had occurred in the year 2011. Suman died an unnatural death at the matrimonial home in the morning of 05.10.2011. Suman's father lodged an FIR blaming the husband and his parents of torture. He also narrated an earlier incident when the mother-in-law had poured kerosene oil on his daughter. The previous incident took place over two years ago. The complainant received a call from his son-in-law at 05.30 a.m.

The complainant rushed to the matrimonial home and found the body lying on the

roof and oil container was lying near the staircase. The allegations were that his daughter had been set on fire by sprinkling kerosene oil by the husband, father-in-law and mother-in-law. The police had also recorded statement of one of the children. Dharuv had stated that his mother had committed suicide and his grand-mother had abused his mother and she had been crying the whole day and in the morning she poured kerosene oil and all this occurred due to his father, grand-father and grand-mother.

The police filed the challan against the husband and his parents. The complainant was examined on 22.02.2012. Dharuv was examined on 05.10.2012, wherein he gave a different version and narrated as to what had happened on 04.10.2011. He also spoke about presence of his father's sister and uncle and the role played by them in his mother's death. He stated that all the people dragged his mother from the kitchen and his father covered her mouth with a cloth and put a scarf around her neck. His father called his elder brother and all five of them took his mother upstairs. The child was threatened but he saw the incident with his own eyes. His grand-mother had poured kerosene oil on his mother and his father had lit the fire. He stated that his grand-father had stated that she should not be alive and should be completely burnt and after this his father came down and started taking out the articles from the Almirah. He could not sleep the whole night due to fear. He had stated that he left with his maternal grand-father and narrated this incident to the grand father after a gap of 1 ½ month and also to the police on 05.10.2011. When this statement was made, the Court directed the Additional Public Prosecutor to produce the statement recorded on 05.10.2011. The Public Prosecutor stated that there was no such statement and there was one statement recorded on 23.11.2011, which was already on record.

An application under Section 319 Cr.P.C was moved by the Public

Prosecutor seeking to summon Bholi resident of Samana Mandi and Jawahar Lal

resident of Moonak as an additional accused and they were named in the statement made by Dhruv. The trial Court dismissed the application.

Learned counsel for the petitioner urges that an application had been moved by the complainant for summoning the statement sent by him alongwith copy of the statement to the SSP, Sangrur and for production of the clothes recovered to show them to the witness i.e. Dharuv and the only statement made was the statement that was sent by the complainant to the police through registered post on 23.11.2011 and they had obtained its copy under the RTI Act.

The trial Court noted that the statement had not been placed on record by the prosecution. It observed that whether the statement was sent through registered post was a relevant fact and the SSP and DSP Moonak were directed to produce the statement, if any. It also observed that its evidentiary value and the admissibility could only be tested after its production in the Court.

Learned counsel for the petitioner submits that the trial Court had dismissed the application and had doubted the credibility of the witnesses and at the same time it had observed that admissibility of the statement would be considered later. It was urged that the correct statement was the statement, which was sent to the police. The counsel refers to Annexure P-4. He states that it is the statement which contain the same allegations which the child had made in the Court and the involvement of the two additional accused was there and they should have been summoned to face the trial.

On the other hand, the submission was that the deceased was a teacher and no suicide note was left and the FIR had been lodged by the father at 08.15 a.m. where he named only the husband and his parents. It was urged that the police had recorded the statement of the child under Section 161 Cr.P.C and the child had stated that it was a suicide and the challan has been presented under Section 306

was urged that the child immediately left his father's house alongwith complainant and it is strange that he did not disclose that he was an eye witness and he comes up with version after 1 ½ month of the incident. It was urged that the complainant was examined in the Court in February, 2012 and even then the complainant conveniently forgets that his grand child had given some information but not a word was said. The counsel refers to the statement placed on record today recorded on 22.02.2012. It was urged on behalf of the complainant that the father was in custody from the beginning and there is a stay in the proceedings for the last two years and the trial had not proceeded and the effort is only to keep him in custody and widen the net. It was urged that had the child provided the additional information to the grand-father, the grand-father would have taken the child to the police and would have got his supplementary statement recorded.

Suman was married to Vinod Kumar in the year 1999. The present incident is of 05.10.2011. The FIR was lodged at 08.15 a.m. under Section 302, 34 IPC. The complainant had named the husband and his parents and about the demands made by them. He had also referred to call made at 05.30 a.m. in the morning when he received the information of the incident. He had also referred to the call made by his daughter the previous evening. The police recorded the statement of Dharuv wherein he named his father and grand parents. He had also stated that his mother had committed suicide and had poured the kerosene oil upon herself and she had been crying. He had narrated the incident and the tussle going on between his mother and the grand-mother. He had stated that his grand-mother had abused his mother and had stated that she did not care if she died and the grand-mother and the grand-father and the father were responsible.

The complainant got a typed statement purportedly of the grand child and sent it by post to the police. It was an unsigned statement. The police had investigated the case and did not make that letter part of the record and filed the

challan only against the husband and his parents. The complainant did not speak about sending any letter to the police when he was examined in February, 2012. Eight months later, when the child was examined, Dharuv gave a version implicating two other relatives. The trial Court applied the stringent tests and found that evidence was not sufficient to summon additional accused. It noted that there were different statements of Dharuv, which were noted in para 4, which reads as under:-

“4. Dharuv Singla when appeared as witness had denied his making statement to the police during the course of investigation on 23.11.2011 which is Ex.D.A In that statement the version given by Dharuv Singla is that on 04.10.2011 there was some altercation between his grand mother and mother and his grand-mother abused his mother and stated that it has no effect upon her if she dies and in the morning of 05.10.2011 his mother committed suicide by pouring kerosene oil on her and put her ablaze. Prosecution relies upon another statement of Dharuv Singla which was sent by Sohan Lal through registered post to the investigating officer and which were summoned by this Court from the investigating agency in pursuance of the application filed by Sohan Lal, complainant, though investigating agency has not relied upon the same and in that statement he has stated that on 04.10.2011 at about 10/11 P.M his grand parents, father and aunt Bholi Samanewali hatched a plan and after killing her mother took her on the roof and put her on fire. So all the three versions of Dharuv Singla are contrary to each other. In the statement Ex.DA he states about his mother putting herself on fire and in the second statement he states that his grand parents, father and Bholi killing her and thereafter taking her on the roof and their putting her on fire and in the third statement he deposes that her grand parents, father her paternal aunt Bholi hatching the conspiracy and thereafter beating her mother and calling uncle Jawahar Lal all five of them taking her upstairs and thereafter killing her by putting her on fire.”

The statement said to have been sent to the police by post was typed

authority nor made on oath and it is an issue, which is to be examined by the trial Court at the appropriate stage. The limited issue is whether there was sufficient material to summon the additional accused. I find no merit in the revision. The child was with his grand-father from the date of the incident. The child did not disclose anything to his grand-father. He did not tell him that he was an eye witness. The complainant had not taken any action and did not approach the police nor made any request for recording his supplementary statement or that of the child. It is not a case that the complainant had approached the police but they had refused. It is for them to show that they had given any representation.

The trial had commenced and the complainant was the first witness to be examined in February, 2012. In that statement also he does not disclose that his grand child had given some information. He conveniently forgets about the application he had sent in November, 2011.

The power under Section 319 Cr.P.C can only be exercised where the Court finds evidence which shows the complicity of some other persons. The powers under Section 319 Cr.P.C are not to be exercised mechanically nor additional persons can be summoned simply because they have been named. It is an extraordinary power and has to be sparingly used. A duty is cast on the Court to see whether resort can be had to the provisions. The trial Court had rightly concluded that no case was made out to summon the additional accused. I see no reason to take a different view.

The petition is dismissed.

May 24, 2016

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(ANITA CHAUDHRY)
JUDGE