

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

**Crl. Rev. No.3125 of 2014 (O&M)
Date of decision : 26.05.2016**

Gurjant Singh

.....Petitioner(s)

Versus

State of Haryana & Ors.

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. PKS Phoolka, Advocate
for the petitioner.

Ms. Vibha Dhiman, AAG, Haryana.

Mr. P.S. Dhaliwal, Advocate
for respondent no.2.

Mr. N.P. Bhardwaj, Advocate
for respondent no.3.

ANITA CHAUDHRY, J.

This revision has been directed against the order dated 27.08.2014, vide which the application filed under Section 319 Cr.P.C. was dismissed.

Petitioner Gurjant Singh had lodged a complaint, on the basis of which the FIR was recorded. The daughter of the complainant was missing since 28.01.2014. She was recovered on 30.01.2014 and her statement under Section 161 Cr.P.C. was recorded by the police and subsequently she was produced before the Magistrate for her statement under Section 164 Cr.P.C.

In the statement made to the Medical Officer, the prosecutrix had named Harpreet Singh and had made allegations of abduction and rape by him. No other name was given.

The police investigated the case and filed the challan only against Harpreet Singh. The names of Jagwinder and Gurjeet Singh @ Gagi were placed in column no.2.

After the prosecutrix had stepped into the witness box and had named the additional accused, an application under Section 319 Cr.P.C. was moved. The prosecutrix wanted to summon Jagwinder and Gurjeet Singh @ Gagi.

The trial Court made the following observation:-

“6. Now coming to the facts of the instant case, in this case, after the recovery of the prosecutrix from Jalandhar, her statements under Sections 161 CrPC and 164 CrPC were recorded. As per the prosecutrix's version, Jagminder Singh helped Harpreet in her kidnapping and also tied her with rope. Moreover, she has also implicated mason Gogi @ Gurjeet in helping Harpreet and Jagminder in tying her with a cot. Gogi @ Gurjeet also facilitated Harpreet to bring her to village Jhanir in District Mansa. The prosecutrix when appeared in the witness box has implicated the accused Harpreet and Jagminder in forcibly taking her on motorcycle to the house of Harpreet. In the house, a mason was finishing stone floor. She was put on a cot and tied with a rope by both the person. Harpreet committed rape with her. After that mason and Harpreet brought her to village Jhanir in Punjab. The name of mason is Gogi @ Gurjeet. However during the investigation, it was found that one of the person named by prosecutrix involved in the kidnapping was Jagminder son of Avtar Singh who is a student of 8th standard and his involvement in the commission of offence was not found whereas another proposed person Gogi @ Gurjeet who helped the main accused Harpreet @ Mandeep to bring the prosecutrix in village Jhanir in District Mansa is a mason and he used to leave the under constructed house in the evening.

7. In this case, a perusal of statement of prosecutrix on oath reveals that she was tied with a rope by two person but she has not disclosed the name of those two persons. The prosecutrix in her cross-examination has stated that Jagminder son of Avtar Singh is a student of 8th standard and might be 14-15 years old. She has further disclosed that it is Jagminder who used to ask her to be friend with her. The prosecutrix has not implicated Jagminder and Gogi @ Gurjeet in the commission of having intercourse with her. When her statement under Section 164 CrPC was recorded she did not state that she was tied with a rope by the accused Harpreet with the help of Jagminder and mason Gogi. No injury has been shown on her person received by her while being tied in her medico legal report placed on record.

8. A perusal of medico legal report of prosecutrix placed on record reveals that she has revealed the history of sexual assault as under:-

“As told by her a boy named Harpreet Singh R/o VPO Pilchhian forcibly abducted her on 28.01.2014 at about 09:00 PM. He came to her house on motorcycle he tied her mouth with and her hands with a rope. He forcibly done intercourse with her on that night after that he gave some toxicant and then she was not in her sense. On 29.01.2014 she found her in Jalandhar city and then she went to Jalandhar Police Station. As told by her he slapped her”

The application was dismissed on 27.08.2014. It had been disclosed during the course of arguments that the trial against Harpreet had ended in his conviction.

I have heard the counsel of both the sides.

The counsel for the petitioner contends that the prosecutrix though has not accused the additional accused of rape but they were the ones' who had facilitated the main accused and were equally liable and should have been summoned. It was urged that Jagwinder used to give

threats to the prosecutrix to establish physical relations with him and third person was the mason who was working in the under-construction house and the prosecutrix had referred to the presence of one more person but did not know his name earlier, therefore, his name had appeared at the later stages.

The submission on the other hand was that the incident was of 28.01.2014 and the name of the third person appears only after eight months and it was a case of love affair but since the girl was minor, therefore, a story was built up to show that there were more persons and a mobile was found in the pocket of the girl and a false story had been created so far as the additional accused are concerned and the police had found holes in that story and therefore, did not challan them. It was urged that when the girl was presented before the Medical Officer for examination, she did not name any other person and the only accusations were against Harpreet, whose trial has ended in his conviction. It was urged that there were general allegations against the additional accused and no specific role was assigned and the story was doubtful as there were no signs of any injury on the body when the prosecutrix has specifically stated that she had been tied with a rope. Reliance was placed upon *Maya Devi Vs. State of Haryana and others* in CRR No.2685 of 2015, D.O.O. 30.07.2015 and *Hardeep Singh Vs. State of Punjab and others 2014(3) SCC 92*.

A Constitution Bench of the Hon'ble Apex Court in case *Hardeep Singh Vs. State of Punjab and others 2014(1) R.C.R (Criminal) 623*, has very exhaustively dealt with the interpretation of Section 319 Cr.P.C and the test which has to be applied for exercising the power therein. The Hon'ble Apex Court has laid down as under:-

“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 unrebutted, 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.”

The victim on the first possible opportunity disclosed only the name of Harpreet Singh. She did not say anything about the presence of any other person. Later, she introduced Jagwinder, a friend of Harpeet and the mason who was working in the under construction house. The prosecutrix did not make allegations under Section 376 IPC against them. In the statement made under Section 164 Cr.P.C., the prosecutrix had improved her statement and had stated that Harpreet and Jagwinder took her away by putting a handkerchief on her mouth and she was made to sit on the motorcycle. She had then disclosed that some work was in progress and one mason was working there. She had stated that he too helped Harpeet and Jagwinder. There were no specific allegations against the mason.

General allegations have been made against the additional accused. No doubt, the prosecutrix has named them but that by itself would not be sufficient to summon them as the test of more than a prima facie case as laid down by Apex Court in *Hardeep Singh's* case (supra) is not fulfilled in this case.

I find no illegality in the order. The petition is dismissed.

26.05.2016

Sunil

(ANITA CHAUDHRY)
JUDGE