

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3928 of 2016 (O&M)
Date of Decision: 27.10.2016

Pardeep Kumar

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Ashwani Kumar Bura, Advocate, for the petitioner.

RITU BAHRI, J. (ORAL)

The petitioner has come up in the revision petition against the order dated 06.10.2016 passed by Addl. Sessions Judge, Bhiwani, whereby, the second application under Section 319 Cr.P.C. for summoning the additional accused namely Om Parkash, Rani, Monika, Prem and Anil and Kiran has been dismissed. The petitioner had earlier approached this Court challenging the order dated 13.05.2016, whereby first application of petitioner under Section 319 Cr.P.C. has been dismissed. He had taken a plea that Pardeep Kumar-husband of the deceased was 70% disable and cause of death of Poonam @ Mukesh, as per postmortem report, is on account of three injuries and asphyxia. That criminal revision i.e. CRR No.2245 of 2016 was disposed of on 08.07.2016 (Annexure P-4) by giving liberty to the petitioner to lead adequate evidence with regard to disability of the accused-Pawan Kumar and and make second application under Section 319 Cr.P.C. before the trial Court. Therefore, petitioner has filed second application under Section 319 Cr.P.C. before the learned trial Court.

Petitioner has placed on record the disability pension details Ex.PB and copy

of permanent disability certificate Mark P-17 with the second application which has not been considered in the impugned order . As per para 26 of the impugned order, it has been observed that even though the husband of the deceased suffering from 70% disability of right leg due to polio and as per his physical appearance, it seems that he was physically able bodied person and capable of leading life like a normal person. The deposition of the Medical Officer PW-8 who had also stated that there was abrasion on the body of deceased which was of superficial nature and there was no other injuries on the body of the deceased except on the neck.

Learned counsel for the petitioner has referred to the opinion given by the doctor (Annexure P-1) dated 01.06.2015 :

“In our opinion the injuries present on the deceased may lead to aspiration of gastric contents which may lead to stimulation of vague nerve in the nemo causing stimulation of vomiting centre in the brain which may ultimately lead to aspiration of gastric contents. So, the injuries present may be caused by marial compression of neck. So death is related to these injuries.”

As per opinion given above, there were injuries present which may be caused by marial compression of neck. The opinion of the doctor is not proved that there were other injuries on the body. Hence, the participation of the accused is sought to be summoned is not made out. Moreover, the husband of the deceased in his confessional statement Annexure P-2, has stated that in the night of 10/11.02.2014, he and his wife Poonam were sleeping in one room of the top of his house. His wife was pregnant of about 8 ½ months. He had an intention to perform second

marriage after his wife. So on 10/11/-2/2-15 at about 12:00 p.m in the night, when his wife started coughing then he put his hand on her mouth and stopped her breath and killed her by pressing her throat. Thereafter, by posing her ill they made call in his in-laws home and took his wife to the Chug Hospital, bhiwani where Doctor declared her dead. Now the question for consideration on the basis of this disclosure statement and the deposition of medical officer PW8 challan was present against accused Pawan Kumar. Now, to summon the other accused, the Court was to examine the evidence version whether some evidence has been left and misread which can be allowed for the conviction of the accused. The Supreme Court in **Hardeep singh and another Vs. State of Punjab and others 2014(1) RCR (Criminal) 623**, the guideline as under:-

“The degree of satisfaction for summoning a person under Section 319 Cr.P.C. would be the same as for framing of charge but satisfaction of the Court is to be relevant in case and only when, the Summoning Court is of the opinion that some other person are also involved in the commission of the offence. No only prima facie case is to be established from the evidence led before the Court but that material which has come in the form of statement, is sufficient for framing of charge”

In the present case, after placing on record the disability certificate Mark P-17 and after examining the Medical Officer, Ex.P-8 on 25.07.2016, who conducted the autopsy, no evidence has come about to link the role of the accused being sought to be summoned causing the death of deceased-Poonam. Petitioner after the order dated 08.07.2016 (Annexure P-

4) had placed on record the disability certificate and opinion of doctor (Annexure P-1) and had examined the medical officer (Annexure P-8) but the deposition of Medical Officer PW-8 is not contrary with opinion as given by the doctor at Annexure P-1.

Keeping in view the above and the injuries present may be caused by marial compression of neck, there is no ground is made to interfere in the order dated 06.10.2016 passed by the learned Additional Sessions Judge, Bhiwani and the present petition seeking summoning of the additional evidence under Section 319 Cr.P.C. is hereby dismissed.

(RITU BAHRI)

JUDGE

27.10.2016

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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>