

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 251

Criminal Revision No.525 of 2016
Date of Decision: *December 05, 2016*

Vidhya

..... PETITIONER

VERSUS

Maiya & others

..... RESPONDENTS

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: Mr. Rakesh Gupta, Advocate, for the petitioners.

Mr. Karan Garg, Advocate, for respondent Nos.1 to 4.

Mr. Parveen Aggarwal, Deputy Advocate General, Haryana.

. . . .

Jaspal Singh, J

1. Challenge in this revision petition is to order dated November 07, 2015 passed by the Sessions Judge, Kaithal in case FIR No.15 dated January 11, 2015 under Sections 302/148/149 IPC, registered at Police Station, Pundri, wherein an application under Section 319 Cr.P.C. moved by complainant – Vidhya Devi, for summoning Maiya, Binu, Sube, Manoj and Shani Devi has been partly allowed. Sube son of Multan Singh has been ordered to be summoned as additional accused to face trial under Section 302 IPC read with Section 34 IPC, whereas the application qua other persons has been dismissed.

2. The instant case has been registered on the basis of statement of complainant – Vidhya Devi. In her statement made before the police, she alleged that about two years ago prior to the incident, a dispute had arisen between her son Rajeev and Balwan on one side and accused Raj Pal & others on the other side. On January 09, 2015, Mohinder son of Maya Ram had come to her house for taking Rajeev with him on the pretext of compromise but he did not accompany him on that day. On January 10, 2015, Rajeev went to the house of accused for compromise, however, Balwan did not accompany him. At about 1:30 PM, Rajeev had gone at the ‘Baithak’ of Maya Ram for compromise. Complainant thought that her son had gone alone, so, she also went there. When she reached there, she saw that Rajeev was laid on the ground in front of Baithak of Maya Ram, who was trying to strangulate him while accused Raj Pal had put his both legs on the chest of Rajeev. Sons of Maya Ram @ Maiya, namely, Mohinder and Binny @ Binnu, accused Ishwar and his two sons, Sube son of Multan, Manoj Kumar son of Mange Ram and Rajinder son of Jai Bhagwan were armed with lathis and Bindas. Sube inflicted lathi on the head of Rajeev. She tried to rescue him. Accused gave a push to her and took Rajeev from there and threw him in front of the house of Raj Pal. Shani Devi wife of Rai Bhagwan was armed with a wooden kutka and Mahendro wife of Raj Pal was having a ‘Takwa’. They gave repeated blows on the person of Rajeev. She deposed that all the accused gave injuries to her son. She went back to her house and took along women and children to the house of Raj Pal but neither her son nor any of the accused was found present there. After some time, she came to know that he had been taken to hospital at Kaithal. On the

next morning, police came to her house and told that her son had expired.

Statement of complainant (Ex.PA) was recorded.

3. Learned counsel for the petitioner has contended that inspite of the fact that complainant, in her statement made before the police, specifically named all the accused, yet challan was presented only against three accused namely, Raj Pal son of Sewa Singh, Mahendro wife of Raj Pal and Ishwar son of Risal Singh. During trial, petitioner was examined as PW-1 on September 21, 2015 and again reiterated the ocular eye witness account in the Court. Since, petitioner named all the accused once again, public prosecutor moved an application under Section 319 Cr.P.C. for summoning Maiya, Binu, Sube, Manoj and Shani Devi. Learned counsel has contended that the trial court has gravely erred in summoning only Sube and exonerating the other accused. The trial court is factual incorrect while observing that no specific role or injury has been attributed to Binu, Manoj and Shani Devi. It has come in sworn testimony of complainant that Maya @ Maiya, Binu, Manoj caused injuries to Rajeev and all of them were carrying lathis and bindas. It is apparent from the post mortem report that there were 15 injuries on the persons of Rajeev including 7 injuries on head. Since the ocular version given by the petitioner matches with the medical version on record, the impugned order deserves to be modified and the application under Section 319 Cr.P.C. should be allowed in toto.

4. On the other hand, learned counsel for the respondents have strongly opposed the instant petition while submitting that the order passed by the trial court is absolutely in consonance with the legal proposition. All the facts have been elaborately gone through by the trial court. It has rightly been held by the trial court that no specific role has been attributed to Maiya

@ Maya and there are only general allegations of beating against Binu, Manoj and Shani Devi. Though, as per the complainant Maya caught hold the neck of Rajeev, however, MLR and post mortem report do not show any injury on his neck. Accordingly, they prayed for dismissal of the petition.

5. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties, perused the record available on file.

6. Undisputably, complainant has lost her son. FIR was lodged on the statement of complainant and her statement has already been recorded. The prosecution moved an application under Section 319 Cr.P.C. for summoning aforementioned persons, in which, Sube has already been summoned as additional accused to face trial. Power under Section 319 Cr.P.C. is discretionary and an extra-ordinary. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. As per the settled proposition of law, a person can be summoned under Section 319 Cr.P.C. only where strong and cogent evidence occurs against a person from the evidence led before the court. The test that has to be applied is one that there should be more than prima facie case as exercised at the time of framing of charge. To summon a person, there should be hope or prospect of conviction. A person should not be summoned to face trial if prima facie case was made out against him. A person should be summoned only when court finds that evidence on record is such which would reasonably lead to conviction of person sought to be summoned.

7. Reverting back to the instant case, complainant was examined as PW-1. Only general allegations have been levelled against Binu, Manoj, Maiya @ Maya and Shani Devi. No specific role has been attributed against them. Allegation against Maiya @ Maya is that he caught hold the neck of Rajeev and was made to lay on the ground whereas, the medical evidence do not show any injury on the neck of Rajeev. The other evidence available on file does not make any specific case against the persons sought to be summoned, except Sube, who gave lathi blow on the head of Rajeev. As per the MLR and post mortem report, injury Nos.5 and 7 have been shown on the head of deceased i.e. parietal part/temporal region. Thus, the evidence qua Sube is more than prima facie strong and shows his involvement in the commission of crime. So, Sube has rightly been ordered to be summoned to face trial.

8. In the light of what has been observed above, this Court is of the considered view that the impugned order passed by the trial court does not suffer from any illegality or impropriety. Finding no merit in the instant petition, same is dismissed. The order passed by the trial court is upheld.

December 05, 2016
avin

(Jaspal Singh)
Judge

Whether Speaking or Non-speaking
Whether Reportable or not

: Yes/No
: Yes/No