

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

**CRR No.1267 of 2015 (O&M)**  
Date of decision: 12<sup>th</sup> September, 2017

Mehar Singh

... Petitioner

Versus

State of Haryana & another

... Respondents

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Ms. Baljit Mann, Advocate  
for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana  
for respondent No.1/State.

Ms. Reeta Kohli, Senior Advocate with  
Mr. Rahul Sharma, Advocate for respondent No.2.

**FATEH DEEP SINGH, J.**

Through this criminal revision petition under Section 401 of the Code of Criminal Procedure (in short, 'the Code' or 'Cr.P.C.') by petitioner complainant Mehar Singh he has laid challenge to impugned order dated 17.03.2015 whereby the trial Court of learned Sessions Judge, Jind through impugned findings declined to show indulgence in entertaining the application under Section 319 Cr.P.C. moved by the present petitioner whereby he has sought summoning of one Sumit as an additional accused in the present case got registered by way of FIR No.144 dated 28.07.2014 under Sections 302/341/148/149 IPC at Police

Station Garhi, District Jind (in short, 'the FIR'), and thereby dismissed the same.

Upon hearing Ms. Baljit Mann, Advocate for the petitioner/complainant; Mr. Munish Sharma, Assistant Advocate General representing the State of Haryana/respondent No.1 and Ms. Reeta Kohli, Senior Advocate assisted by Mr. Rahul Sharma, Advocate for respondent No.2 and on perusal of the records. It is essential to highlight the background which had led to this petition.

The FIR in question was got registered on the statement of complainant Mehar Singh wherein he alleged that on 27.07.2014 around 10.00 p.m. while he along with one Sonu was going on a car make Swift bearing registration No.HR-08F-9173 and they were about two acres away from the house of one Monika, 4/5 persons in furtherance of their common intention waylaid them and pulled Sonu out of the car and started beating him with Lathis and Dandas. On enquiry by the complainant, it transpired that the persons were led by Rameshwar Sarpanch, paternal uncle (Chacha) of Monika, besides Sumit (person so sought to be summoned) son of Raghbir and cousin brother of Monika, and others and the motive behind this was that Sonu (now deceased) was alleged to be in relationship with Monika. The complainant claims that at that juncture, he managed to save himself by fleeing away and thereafter

disclosed the entire story to father of Sonu, namely Jagdev and thereafter a call was received from the phone of Sonu disclosing that they have killed the boy. Thereafter, the complainant and others informed the police and along with the police went to the house of Rameshwar Sarpanch where they discovered the dead body of Sonu, leading to registration of the case in which Sumit was declared as innocent and placed in column No.2 of the report under Section 173 of the Code.

It is during the course of recording of evidence the prosecution has moved application in question which stood declined and that is how the parties are before this Court by way of instant revision petition.

Appreciating the submissions of the two sides, by now it is well settled proposition of law, reference of which can be taken note of the ratio laid down in '**Hardeep Singh v. State of Punjab & others**' **2014(1) RCR (Criminal) 623**, whereby the Court has considered the ambit of provisions of Section 319 of the Code and after framing questions as to at which stage powers under Section 319 Cr.P.C. can be exercised, defined the word 'evidence' and in what eventuality such a power and to what extent it can be exercised.

The document first in point of time, immediate upon occurrence i.e. the FIR, as has been contended by Ms. Baljit Mann on

behalf of the petitioner complainant, and wherein the very motive of this murder being relationship between the deceased and Monika, daughter of Raghbir brother of Rameshwar Sarpanch, was the cause and name of the accused including Sumit finds duly elaborated therein. Though on behalf of the respondent side, Ms.Reeta Kohli, learned Senior Advocate assisted by Mr. Rahul Sharma has sought to assail that it was subsequent in this FIR, his name has cropped up, does not impresses the Court much as it is in the initial statement of the complainant itself that a role as well as presence of this person so sought to be summoned as additional accused, has come about. Even during the course of trial PW1 Mehar Singh, the complainant and eye-witness, has spelled out in no uncertain terms who were the persons who waylaid them and dragged the deceased out of the car and gave him injuries and the reason for that. There is accusation by this witness whereby accused Rameshwar Sarpanch, uncle of the girl, has too confessed of having committed the murder while talking on the mobile phone to the complainant's family and he has categorically stated that the deceased was murdered by these accused including Sumit. It has been vehemently argued by Ms. Reeta Kohli that there is a usual tendency to implicate the entire family and this is precisely what has happened in the case of Sumit who is only around 18 years of age, purely because he happens to be cousin of Monika and son of Rameshwar

Sarpanch. It is the own admission by the stand even during the course of arguments before this Court, that the dead body of the deceased has been recovered from the house of Rameshwar Sarpanch, father of Sumit. Thus, even by the very provisions of Section 106 of the Evidence Act, a natural presumption arises and it is for the accused side to rebut under what circumstances the same has come about. Admittedly, it is a case of unnatural death by means of assault, which could not be displaced by any means by the accused side and there are almost seven injuries on the dead body whereby left lung along with left pleura have been ruptured and the death has been opined to be due to hemorrhage and shock as a result of these injuries and the call details have been proved through PW9 ASI Navdeep Kumar, Incharge of the Cyber Cell as well as PW12 Deepak Sandhu, Nodal Officer of the service provider Company, and there is recovery of incriminating articles/ weapons on the basis of disclosure statement of the accused side, which further lends credence and corroboration to the case of the revisionist. Even the investigating officer PW10 ASI Karan Singh in no uncertain terms has elaborated that upon arrest of accused Amit in pursuance of his disclosure statement, he got recovered a Danda and mobile phone make Samsung from his conscious possession which has been duly proved on the record, are matters which are sharp pointers in this direction and which is further corroborated by

none other than SI Sombir Singh Dhaka SHO-cum-investigating officer of this case and the own admission as has been pointed out by Ms.Baljit Mann on behalf of the complainant petitioner, by the principal accused Rameshwar Sarpanch in his stand under Section 313 Cr.P.C., are matters of great significance and as has been laid down in **Hardeep Singh's case (ibid)** their Lordships were of the opinion and while discussing catena of case law, whether the word 'evidence' used in Section 319(1) of the Code has been used in a comprehensive sense and includes evidence collected during investigations or the word 'evidence' is limited to the evidence recorded during trial, and their Lordships after comprehensive discussion reached the conclusion that apart from evidence recorded during trial, any material that has been received by the Court after cognizance is taken and before the trial commences, can be utilized only for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. The 'evidence' is thus, not limited to the evidence recorded during trial.

Precisely in the present case, evidence collected during the investigations by the investigating agency clearly corroborates the evidence recorded by the Court and thus, leaves no scope to doubt the veracity of the stand of the prosecution at this juncture.

Learned counsel for the petitioner has sought to place reliance on **‘Shashikant Singh v. Tarkeshwar Singh’ 2002(3) RCR (Criminal)191** and **‘Rajendra Singh v. State of U.P. & another’ 2007(3) RCR (Criminal) 1022.**

Though as a last resort on behalf of the accused/respondent, Ms.Reeta Kohli has sought to take up the plea that the trial has already concluded, is no ground to deter this Court from disposing off this matter when it is well settled law for which Ms.Baljit Mann has relied upon **‘Babubhai Bhimabhai Bokhiria and another v. State of Gujarat and others’ 2014(1) RCR (Criminal) 542,** clearly answers this objection sought to be raised on behalf of the accused side, wherein their Lordships have clearly laid down that such an eventuality would not prevent prosecution of the persons for the offences even if they have not been earlier facing trial and though summoned subsequently thereto.

In the light of what has been detailed and discussed above, the learned Court below has fell in error whereby it has sidetracked the actual definition assigned to the word ‘evidence’ and has rather harboured on what has come in the cross-examination to tilt the scales in favour of the accused side and has wrongly come to a conclusion that the assertion that Sumit was also present at the time of occurrence is not substantiated by any cogent and reliable evidence, and is certainly to the

mind of this Court unfounded and wrong interpretation of what has come on records. The impugned order is certainly bad in law, not only perverse in its approach but also illegal in its findings and is contrary to canons of administration of justice and thus, needs to be set aside by way of acceptance of this revision petition.

The instant revision petition stands allowed in those terms.

Records be sent back forthwith.

**(FATEH DEEP SINGH)**  
**JUDGE**

**September 12, 2017**

*rps*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |