

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-2836-2015 (O&M)

Reserved on: 26.10.2017

Pronounced on : 02.12.2017

Baldev Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

**PRESENT:** Mr. KB Raheja, Advocate for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

Mr. Ajay Pal Singh, Advocate for respondents No. 2 and 3.

**RAMENDRA JAIN, J.**

1. Through the instant revision petition, challenge has been laid to the order dated 03.07.2015, passed by the trial Court dismissing the application of the petitioner under Section 319 Cr.P.C., for summoning of respondents No. 2 and 3, namely; Pala Ram and Aad Ram, as additional accused.

2. In nutshell, around 9.30 p.m. on 14.07.2014, co-accused Om Parkash and respondents No. 2 and 3, have caused injuries to Immi Chand, uncle of the petitioner-complainant, on account of hurling abuses by him to them and their families after consuming some intoxicant substance. As a result thereof, Immi Chand, succumbed to his injuries at the spot. During investigation, respondent No. 3-Aad Ram was found innocent by the Investigating Officer, whereas respondent No. 2-Pala Ram was got

discharged by the Investigating Officer by giving statement before the

Judicial Magistrate Ist Class, Abohar on 14.08.2014, being innocent. After completion of investigation and necessary formalities, final report under Section 173(2) Cr.P.C. was filed against co-accused-Om Parkash only for offence under Section 302 IPC.

3. Since, the case was triable by the Court of Sessions, therefore, after committal of the case by the Judicial Magistrate Ist Class, Fazilka, the learned Additional Sessions Judge, Fazilka, charge-sheeted Om Parkash, under Section 302 IPC. Complainant-petitioner-Baldev Singh, appearing as PW-2 during trial, testified about the complicity of respondents No. 2 and 3, namely; Pala Ram and Aad Ram, who, as discussed above, were found innocent during investigation by the police. Consequently, the prosecution, through learned APP, moved an application under Section 319 Cr.P.C. for summoning respondents No. 2 and 3 as additional accused, which was dismissed vide impugned order dated 03.07.2015.

4. Learned counsel for the petitioner contends that respondents No. 2 and 3, namely; Pala Ram and Aad Ram, were very much named in the FIR as well as in the deposition of Baldev Singh (complainant-petitioner) as PW-2. Even a specific role was attributed to respondent No. 2-Pala Ram. The trial Court has failed to appreciate that they had equally participated in the occurrence with their co-accused Om Parkash, who caused a spade (Kassia) Blow to the uncle of the petitioner-complainant, which resulted into his death. The injuries suffered by deceased-Immi Chand, at the hands of respondents No. 2 and 3, are corroborated by the medical evidence. The impugned order, being illegal and perverse, is liable to be quashed. In support of his contentions, learned counsel for the petitioner has placed reliance upon judgments in *(i) Hardeep Singh Vs. State of Punjab and*

others (along with other connected appeals), 2014(3) SCC 92; (ii) Balbeer Vs. State of U.P. and 2 others, 2016 (8) ADJ 245 and (iii) Sanjeev and another Vs. State of Rajasthan, 2002 (2) RajasthanLR 192.

5. On the other hand, learned counsel for respondents No. 2 and 3 has vehemently opposed the submissions made by learned counsel for the petitioner submitting that the complainant-petitioner has improved the version while appearing as PW-2, therefore, the learned trial Court has rightly dismissed the application.

6. Having given anxious considerations to the submissions made by learned counsel for both the sides, this Court is of the considered opinion that revision being without any merit, is liable to be dismissed for the reasons to follow:

7. FIR Ex. PB (Annexure P-1) was recorded on the statement of PW-2 Baldev Singh, nephew of Immi Chand (deceased). In his initial statement, which culminated into FIR, the petitioner, though named respondents No. 2 and 3-Pala Ram and Aad Ram, but role attributed to them, at that moment, was quite different as testified by him as PW-2. In his initial statement, Ex. PB, the petitioner alleged that respondent No. 2-Pala Ram was empty handed and caught hold of his uncle Immi Chand (deceased) from arms, whereas co-accused-Om Parkash (facing trial under Section 302 IPC) gave a spade blow from its reverse side on the backside of his uncle with an intention to kill him. At that moment, the role attributed to respondent No. 3-Aad Ram, is only that he armed with stick (dang) rushed behind his uncle along with empty handed Pala Ram. At that time, it was not stated by the petitioner that Aad Ram had also caused injury to his uncle. That apart, the petitioner also attributed hurling abuses to respondent

No. 3 to his deceased uncle. To make it more clear, at that time, he did not allege that after receiving spade blow from its reverse side, his uncle fell down and respondent No. 3-Aad Ram, gave stick blow twice on the person of Immi Chand (deceased) hitting his forehead near both eye brows and respondent No. 2-Pala Ram, gave kick blows. However, while appearing as PW-2, the petitioner attributed the said role to respondents No. 2 and 3, contrary to his initial version.

8. That apart, the petitioner moved successive applications/ revisions before the Director General of Police, Punjab; the Senior Superintendent of Police, Fazikla and Deputy Superintendent of Police, Baluana, Abohar (Annexure P-2 to P-4) respectively in which the petitioner did not specify as to causing of two stick blows by respondent No. 3 to his uncle, rather he simply requested to take action against respondent No. 3 as he had given stick blows (not giving their number) to his uncle while he was lying on the ground after the receipt of injuries at the hands of co-accused Om Parkash. Thus, there are three versions of the petitioner on the record qua the role of respondents No. 2 and 3.

9. It is pertinent to mention here that respondents No. 2 and 3-Pala Ram and Aad Ram, respectively, are closely related to co-accused, Om Parkash, inasmuch as respondent No. 2-Pala Ram is the brother of Om Parkash and respondent No. 3-Aad Ram, is their nephew. During investigation, Investigating Officer/SHO Kuldeep Chand, on 14.08.2014, made a statement before the Illaqa Magistrate/Judicial Magistrate Ist Class, Abohar that on an enquiry conducted by his superior officer i.e. Deputy Superintendent of Police, Baluana, respondent No. 2-Pala Ram was found innocent. Accordingly, respondent No. 2 was discharged on that very date

by the Illaqa Magistrate/Judicial Magistrate Ist Class, Abohar. Similarly, respondent No. 3 was also found innocent as no role except that he hurled abuses to the deceased was attributed to him, therefore, he was placed in Column No. 2 of the final report under Section 173(2) Cr.P.C.

10. As discussed above, while appearing as PW-2, the petitioner by making improvements in his statement has attributed kick and stick blows to respondents No. 2 and 3-Pala Ram and Aad Ram, respectively, contrary to his initial version. In the above circumstances, the trial Court has rightly dismissed the application under Section 319 Cr.P.C. for summoning of respondents No. 2 and 3 as additional accused. It seems that the petitioner, with a view to take revenge, has falsely attributed role to three male members of the same family closely related to each other.

11. Though, there is no dispute with regard to law laid down in Hardeep Singh's case (supra) relied upon by learned counsel for the petitioner, but for the facility of reference, it would be more appropriate to reproduce para Nos. 98 and 99 of the judgment, which are as follows:-

*“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. 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 the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be*

*exercised and not in a casual and cavalier manner.*

99. *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 un rebutted, 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.”*

12. The facts and circumstances mentioned in **Balbeer's case (supra)** and **Sanjeev and another's case (supra)**, are not identical to that facts of the instant case, inasmuch, as the petitioner in the instant case had

given three versions, by making improvements, in his statement on the record qua the role of respondent Nos. 2 and 3, thereby, *prima facie* making no case against Pala Ram and Aad Ram. Therefore, the authorities (supra) relied upon by learned counsel for the petitioner, being distinguishable on facts, do not render any assistance to him.

13. Since, in the instant case, the prosecution could not prove any *prima facie* case against respondents No. 2 and 3-Pala Ram and Aad Ram, respectively, to the satisfaction of the trial Court, in spite of making improvements, therefore, this Court is not inclined to differ with the findings recorded by the Court below.

14. In view of discussion made above, the instant revision, being completely devoid of any merit, fails and is dismissed.

**December 2<sup>nd</sup>, 2017**  
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**( RAMENDRA JAIN )**  
**JUDGE**

**Whether speaking/reasoned**  
**Whether Reportable**

**Yes/No**  
**Yes/No**