

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

**CRL. REVISION NO.1503 OF 2017 (O&M)
DATE OF DECISION : 24th OCTOBER, 2017**

Balwan Singh

.... Petitioner

Versus

State of Haryana & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Sumit Gupta, Advocate for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Nonish Kumar, Advocate for respondent No.2.

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A. B. CHAUDHARI, J. (ORAL)

Rule.

Heard forthwith with consent of counsel for the rival parties.

By the present petition the petitioner has put to challenge order dated 30.01.2017 by which the request for exercising power under Section 319 Cr.P.C. qua proposed accused Sandeep alias Sonu, has been declined by the trial Court.

Learned counsel for the complainant submits that in the FIR itself the attribution of main injury is made to the proposed accused Sandeep alias Sonu, by means of sword but the police declared him innocent while filing the challan and made the other person accused whose role is also stated in the FIR. He also reiterated the submission that similar evidence has come before the trial Court. Learned counsel for the proposed accused-Sandeep alias Sonu vehemently opposed the

petition and submits that the impugned order is legal, proper and correct because the police during investigation has collected several evidence like CCTV footage, mobile phone call record etc. and found that the accused-Sandeep alias Sonu was not present on the spot but was elsewhere and therefore, the trial Court was right in denying the relief.

Following is the relevant statement made in the FIR:

“Today i.e. 07.06.2016 around 3:00am my brother Baldev Singh was sleeping in the house then Sandeep alias Sonu Rampal alias Ramu son of Dharm Singh caste Ror resident of village Chor Karsa called my brother in the street I also came along with my brother out of house Then Sandeep alias Sonu who was having sword in his hand and Rampal @ Ramu was empty then Rampal Ramu caught hold my brother Baldev Singh while abusing and Sandeep @ Sonu had inflicted a sword blow on the left side of the head of my brother. When I raised the noise then Sandeep @ Sonu and Rampal @ Ramu had fled away from the spot along with their weapon threatened to kill while leaving I arrange a private vehicle and took my brother Baldev Singh to Govt. Hospital and from there to Govt. Hospital, Karnal and thereafter Arvind Hospital, Karnal. My brother Baldev Singh is admitted in Arvind Hospital Karnal and unconscious.”

Following is the relevant portion from the deposition of
PW-1 Baldev Singh:

“On 7.6.2016 in the morning at about 3/3.30 A.M. Sandeep @ Sonu knocked my door and called me in the street. Rampal @ Ramu his brother was also along with him. On hearing call I came out of my house and thereafter they took me near Baru Wali Mata. I was followed by my mother Pyari Devi and brother Balwan Singh. Both of them also reached at the place of occurrence. Sandeep @ Sonu was armed with a sword whereas Rampal @ Ramu was empty handed. Both of them started abusing me and soon thereafter Rampal caught hold me from my waist whereas Sandeep accused gave a sword blow on my head and thereafter I fell down in the street Sandeep had inflicted a sword blow with intention to kill me whereas Ram Pal also shared the common intention with Sandeep in order to kill me.”

Following are the reasons recorded by the learned trial Court while dismissing the application under Section 319 Cr.P.C. filed by the petitioner herein:

“Although the complainant had mentioned in his statement made to the police about the injuries being caused to him by Sandeep and he had also corroborated his version in Court, however, Ld.

Public Prosecutor could not dispute the fact that CCTV footage obtained by police during investigation shows that on 7.6.2016 Sandeep remained in Maharani Hotel Murthal from 1.37 A.M. to 1.45 A.M. Receipt issued by Kundli Toll Tax Barrier shows that Sandeep had passed the barrier at 2.12 A.M. Call location also shows that Sandeep was not present at place of occurrence. Further police has also recorded statement of proprietor of Hazi Yusuf Ahsan and sons, Gaziabad to whom Sandeep delivered vegetables in Gaziabad at 3.30 A.M. He had stated that Sandeep remained with him till 11.00 A.M. The investigation in the case was also conducted by DSP, Assandh, who too found Sandeep innocent. It is not case of prosecution that CCTV footage and call details have been manipulated by Sandeep.”

Upon perusal of the aforesaid aspects, I am of the firm view that the trial Court has accepted the defence taken by Sandeep alias Sonu as a proof which was also the case with the police, who declared him innocent. The respondent proposed accused is entitled to prove whatever is relied on by him during police investigation or otherwise but it is a trite law that even the defence of alibi has to be proved rather the burden of proof is on the accused. This Court, therefore, finds that mere putting the evidence before the Court, which is unproved, the exercise of power

under Section 319 Cr.P.C. could not have been declined. Whatever the defence has been taken as above, should also be subject to cross-examination for finding out the truth. The trial Court in the wake of the role attributed to the petitioner right from the beginning, did not have rejected the prayer under Section 319 Cr.P.C.

In that view of the matter, I make the following order:

ORDER

- (i) Rule is made absolute.
- (ii) CRL. REVISION NO.1503 OF 2017 is allowed.
- (iii) Impugned order dated 30.01.2017 passed by learned Additional Sessions Judge, Karnal is quashed and set aside.
- (iv) The application, filed by the petitioner under Section 319 Cr.P.C. before the trial Court, is allowed.
- (v) The trial Court to proceed further in accordance with law.

24th OCTOBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes</i>	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	<i>No</i>