

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. CRR No. 3225 of 2017
Date of Decision: 26.10.2017**

Tajinder Singh @ Gagan and another ...Petitioners

VERSUS

State of Punjab ...Respondent

2. CRR No. 1160 of 2017 (O&M)

Varinder Singh @ Vicky ...Petitioner

VERSUS

State of Punjab ...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ish Puneet Singh, Advocate
for petitioners in both the petitions.

Mr. V.G. Jauhar, Sr. D.A.G. Punjab.

Mr. C.S. Bakhshi, Advocate and
Mr. Gautam Dutt, Advocate
for the complainant.

SURINDER GUPTA, J.

Above captioned revisions have been taken up for disposal by common order as the same arise out of order dated 24.01.2017 passed by Additional Sessions Judge, Jalandhar, whereby petitioners in both the cases have been summoned as additional accused to face trial in case bearing FIR No. 82 dated 06.05.2016, registered for offences punishable under Sections 302, 304, 148 and 149 of Indian Penal Code (for short 'IPC').

The incident in this case took place on 05.05.2016. Complainant-Surinder Kaur, aged 70 years, has stated that her husband had given his 6 acres of land situated in village Dhaliwal on lease to Suleman

son of Marid Ali resident of Lohar Nangal through her relative Avtar Singh son of Mehanga Singh. Now they wanted to take possession of the same land back but Avtar Singh was instigating Suleman not to leave the land. As per allegations in FIR, complainant on the day of occurrence i.e. 05.05.2016 alongwith her husband had gone to their land on scooter at about 05.00 p.m.. Suleman son of Marid Ali, Avtar Singh son of Mehanga Singh, Manjinder Singh @ Manga son of Avtar Singh, Tajinder Singh @ Gugan son of Avtar Singh and Vicky nephews of Avtar Singh came there and started abusing husband of complainant and had a scuffle with him. On hearing *raula* Mandeep Singh @ Deepa, Balwant Singh son of Nirmal Singh, nephews of complainant were attracted to the spot and witnessed the occurrence. On seeing them, aforesaid persons left the spot. Husband of complainant was feeling uneasy and was brought to home and then taken to hospital, where doctor declared him dead. Complainant in her supplementary statement to police stated about role of petitioners in the occurrence and injuries caused to her husband, which were attributed to the petitioners. Police after investigation presented the challan against Avtar Singh and Suleman, who were charge-sheeted and learned trial Court recorded statement of complainant, wherein she again named petitioners and attributed specific injuries caused by them to deceased. Relying on her statement, which found corroboration from the medical record, learned trial Court summoned petitioners as additional accused.

Learned counsel for petitioners argues that petitioners have raised plea of *alibi* before the investigating officer, which was verified by recording statements of number of witnesses. Trial Court without looking into statements of those witnesses and the report of investigating officer in

this regard has summoned petitioners to face trial as additional accused by relying on statement of complainant. In support of his contention, he has relied on observations of Hon'ble Apex Court in case of **Brijendra Singh and others vs. State of Rajasthan, 2017 (4) JT 530.**

Learned State counsel has argued that complainant is an old lady of 70 years. She lost her husband in the incident. In FIR she has named petitioners. Her supplementary statement was recorded by the police on 16.05.2016, wherein she has attributed specific role and injuries to petitioners, which find corroboration from the medical evidence. The police has relied on plea of *alibi* of petitioners and statements of some witnesses, which was not made part of challan and even the report given in this regard was also not on record. Even otherwise, plea of *alibi* and statement of witnesses deposing in favour of petitioners is subject to scrutiny by the Court.

Learned trial Court has relied on statement of complainant, supported by medical evidence. In para 6 of order, it has given reasons for summoning petitioners, which reads as follows:-

“.....They have been declared innocent by the police on the ground of plea of alibi. Burden to prove this defence lies on the accused persons and this plea cannot be presumed at all. Postmortem of the deceased shows that deceased was having an injury on his nose which was bleeding and was having a contusion on the nasal bridge. He was also having injury on the skull i.e. a large subdural heamotoma about 6 cm x 3 cm at fonto prital area of brain and occipital area of the scalp was submerged with blood. So, the postmortem report

shows that deceased was subjected to infliction of injuries and complainant had stated in her evidence that Manga gave a baseball bat blow which hit upon the nose of her husband, Gangan gave a baseball bat blow which hit upon the backside of head of her husband and Vicky gave a baseball bat blow which hit upon the right and left biceps of her husband and all these injuries are corroborated with the postmortem report. Complainant may improve upon her statement or her statement may be explanatory in nature, this fact at this stage cannot be considered and decided. But at this stage, accused persons are named by the complainant as well as by the deceased and injuries specifically attributed to the accused persons have been corroborated by the postmortem report, so there is sufficient evidence to summon all above named accused persons under Section 302 IPC and in alternative under Section 304 read with Section 148 , 149 IPC.”

Learned trial Court while allowing application of prosecution to summon petitioners as additional accused in this case, has observed that plea of *alibi* cannot be presumed and is required to be proved by leading evidence in defence. In postmortem report of the deceased, there was injury on his nose, which was bleeding and was having a contusion on the nasal bridge. He was also having injury on the skull i.e. a large subdural heamotoma about 6 cm x 3 cm at fonto prital area of brain and occipital area of the scalp was submerged with blood. In her supplementary statement and statement in Court complainant has deposed that petitioner-Manga had given baseball bat blow on the nose of her husband, Gagan gave baseball

bat on backside of his head while Vicky gave a blow with baseball bat on right and left biceps of her husband. On perusal of order of learned trial Court it appears that before his demise deceased had also moved an application before the police naming the petitioners. Testimony of complainant also finds corroboration from medical evidence, which gave sufficient reasons for the learned trial Court to summon petitioners as additional accused.

In the case of ***Brijendra Singh (supra)***, police on the basis of evidence and documents had accepted the plea of *alibi* of some of the accused named in the FIR. In this case, there is no documentary evidence regarding the plea of *alibi* set up by petitioners. Admittedly, the police has not placed on record with charge-sheet any statement of witness recorded during investigation that petitioners were not present at the place of occurrence. In view these facts, onus will lie on petitioners to prove the plea of *alibi* by leading evidence in defence, which will be subject to scrutiny by the Court. At this stage, learned trial Court had no reason to discard supplementary statement of complainant recorded by the police during investigation and her statement in Court, which find corroboration from medical evidence.

As a sequel of my above discussion, I find no merit in these revisions petitions and the same are dismissed.

October 26, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No