

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

CRR No.4600 of 2017 (O&M)
Date of Decision: November 26, 2018

Mahesh alias Manjeet and others

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjay Vashisth, Advocate
for the petitioners.

Mr.Tanuj Sharma, AAG, Haryana
for the respondent-State.

Mr.Sunil Chaudhary, Advocate
for the complainant.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners against respondent State of Haryana, challenging the impugned order dated 31.10.2017 passed by learned Addl. Sessions Judge, Bhiwani, vide which application under Section 319 Cr.P.C. filed by the prosecution for summoning the petitioners as additional accused, was allowed.

Notice of motion was issued. Learned State counsel as well as learned counsel for the complainant appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that challan was presented against

Jitender, Vinod, Sunil and Ravinder in case FIR No.309 dated 06.12.2016 under Sections 302, 324, 323, 365, 34 IPC and Section 25 of the Arms Act by the police of Police Station Bawani Khera. During the pendency of the trial, the prosecution filed an application under Section 319 Cr.P.C. for summoning Manjeet, Rahul, Akash, Sanjay, Sandeep alias Matru, Pankaj alias Bala, Ankesh, Sumit as additional accused to face trial along with the accused already challaned on the ground that they have actively participated in the present occurrence and during investigation, police has intentionally not made them accused in the present case.

The brief facts of the case as noted down by learned Addl. Sessions Judge, Bhiwani, in impugned order dated 31.10.2017 are as under:-

“2. The brief facts of the present case against the accused are that the present case was registered on the statement of complainant Jitender to the effect that on 5.12.2016, at about 8.00 P.M. he along with Mahesh son of Amarpal went to the shop of Shanker Chopra on foot. He was on the counter of the shop. In the meantime he saw that 3-4 motorcycles came there and there were 3/3-4/4 boys as riders. Those boys who came on motorcycles included Ravinder alias Chatru alias Mintu son of Mam Raj caste Khati, resident of Ram Kalan having a big knife in his hand, Manjeet son of Tulsi caste Khati having a knife in his hand, Chhotu alias Sunil son of Jai Pal, caste Rajput having a knife in his hand, Sonu Ahir, Phatak Hotelwala, having a knife in his hand and a danda in another hand, Rahul son of Jaivir caste Rajput having a knife in his hand, Akash son of Rattan Swingh caste Rajput having knife in his hand, Sanjay son of Dharampal, caste Rajput having a knife in his hand, Matru son of Mam Raj, caste Khati having a knife in his hand, Pankaj alias Kala son of Bhim, caste Rajput having a knife in his hand, Ankesh son of Raju Kumbhar having a knife in his hand and Sumit son of Jagdhir Jat having a knife in his hand and attacked upon him and Mahesh with their respective knives. Matru and Manjeet caught hold the feet of Mahesh and Chhotu and Ankesh caught hold of hands of Mahesh and put Mahesh on the motorcycle like a gunny bag and took him towards Pirawali Johri. Thereafter, he informed the family members of Mahesh about the incident. Thereafter,

he and Ravi the son of uncle of Mahesh went towards the Pirawali Johri where they saw that Mahesh was put on a heap of cotton sticks (Banchhati). Chhotu and Ankesh were taking petrol from the motorcycles to set the cotton sticks on fire where Mahesh was lying. He and Ravi raised commotions, upon this, all the assailants ran away from the spot towards Dang Road. Thereafter, he called Sonu along with vehicle by calling him on the telephone. Thereafter, they took Mahesh to GH Bawani-Khera where concerned doctor declared Mahesh as dead.”

All the petitioners are named in the FIR/statement of the complainant, eye witness and further complainant PW-4 Jitender has also deposed on oath before the Court. Active participation is attributed to the petitioners. Furthermore, as stated at the time of arguments, there are 17 injuries on the person of deceased with sharp edged weapon. The main argument of learned counsel for the petitioner is that application under Section 319 Cr.P.C. is premature as doctor has not been examined so far and the doctor has not deposed that these injuries have been caused by separate weapons or by one or two weapons.

After going through the record and after hearing learned counsel for the parties as well as learned State counsel, first of all, I find that standard of proof at the time of deciding the application under Section 319 Cr.P.C. is somewhat more than prima facie case and less than, that this evidence is sufficient for conviction. In the present case, the petitioners are named in the statement of the complainant i.e. first version in the FIR and PW-4 Jitender has also deposed on oath before the Court.

Keeping in view the injuries on the person of the deceased, it appears to the Court that petitioners are involved in the commission of the offence and they should be tried along with the accused already challaned.

application. Learned trial Court has discussed all these facts and evidence on record and also relied upon the law on the point. In no way, it can be held that findings given by learned trial Court are against the evidence and law.

In view of the above discussion, I find that the impugned order dated 31.10.2017 passed by learned Addl. Sessions Judge, Bhiwani, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

However, nothing stated above, shall constitute my opinion on merits of the case.

November 26, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No