

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-704-2017 (O&M)

Date of Decision : 12.06.2019

Kajal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Sherry K.Singla, Advocate
for the petitioner.

Mr. Vikas Chopra, DAG, Haryana.

Mr. Atul Pratap Dhankar, Advocate
for respondent No.2.

Mr. Ashok Kumar Sharma, Advocate
for respondent No.3.

RAJ SHEKHAR ATTRI, J. (Oral)

Feeling aggrieved against the order dated 12.01.2017, passed by the learned Addl. Sessions Judge, Yamuna Nagar at Jagadhari vide which the application, filed by the prosecution for summoning Munish and Brijesh (respondent Nos.2 and 3 here), as additional accused to face trial, has been dismissed, the petitioner-prosecutrix has preferred the instant petition.

As per prosecutrix story, she was alone at home. Then Kinnu, Brijesh, Manish and Shalu forcibly entered her house and they made an attempt to forcibly commit rape upon her. The prosecutrix resisted their attempt. Then Kinnu, who was having knife in his hand, inflicted numerous injuries. All the aforesaid persons started abusing her in filthy

language. However, on hearing the noise, her relative Gurmit came there.

After investigation, the charge-sheet was submitted only against Avinash alias Kinnu; Vishal alias Shalu. However Brijesh and Munish were found innocent.

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

A bare perusal of the FIR and other material available on record reveals that specific role has been attributed to the private respondents as that to Avinash alias Kinnu and Vishal alias Shalu. Avinash alias Kinnu inflicted 13 injuries on different parts of the body of the prosecutrix out of them 11 injuries were with sharp edged weapons i.e. with knife.

In *Hardeep Singh vs. State of Punjab and others 2014 (1) RCR (Criminal) 623*, Hon'ble Supreme Court has made the following observations:-

“In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under [Section 193 Cr.P.C.](#) and the Sessions Judge need not wait till 'evidence' under [Section 319 Cr.P.C.](#) becomes available for summoning an additional accused ? [Section 319 Cr.P.C.](#), significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under [Sections 200, 201, 202 Cr.P.C.](#); and under [Section 398 Cr.P.C.](#) are species of the inquiry contemplated by [Section 319 Cr.P.C.](#)

Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial."

Keeping in view the facts and circumstances of the case, this Court is of the opinion that more than prima facie case is made out against respondent Nos.2 and 3 Munish and Brijesh to face trial for the offences under Sections 323, 324, 452, 376-D, 511, 506, 307 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act but the trial court failed to appreciate the material available on record and has wrongly dismissed the said application. Thus, the impugned order dated 12.01.2017 suffers from illegality and infirmity. As such, the same is not sustainable in the eyes of law and is hereby set aside.

Consequently, the instant revision petition stands allowed. Respondent Nos.2 and 3 Munish and Brijesh are ordered to be summoned as additional accused to face trial for the offences under Sections 323, 324, 452, 376-D, 511, 506, 307 IPC, Section 25 of the Arms Act and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

12.06.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No