

CRR-364-2019

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

CRR-364-2019

Date of decision: 12.02.2020

Thakur Singh

.... Petitioner

Versus

State of Haryana & ors.

.... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sunil Kumar Panwar, Advocate
for the petitioner.

Mr. D.R.Singla, DAG, Haryana.

Mr. Nafees Ahmad, Advocate
for respondents No.2 to 4.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed against the order dated 23.01.2019 passed by Addl. Sessions Judge, Nuh whereby application under Section 319 Cr.PC filed by the prosecution for summoning respondents No.2 to 4 as additional accused was dismissed.

As per prosecution, the victim, aged 16 years, on the day of the alleged occurrence was sleeping on the roof of her house along with her younger siblings when accused Lokesh and Rohit came to the spot and forcibly took the minor girl after putting her in fear of weapons and gagging her mouth with the cloth. Co-accused Parmod and Rahul were already waiting for accused-Lokesh and Rohit downstairs when the victim was brought by them. On a search carried out by the complainant, he found the victim on the following morning i.e. 29.03.2018 at about 6.00 am, lying unconscious in a vacant plot adjoining their house. Her clothes were soiled and she had passed

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out. When the victim regained consciousness, she disclosed the names of all the accused and the roles played by them in the occurrence in question. It was in this background that the FIR in question was registered on 01.04.2018.

Learned counsel for the petitioner submits that after the registration of FIR under Sections 363, 366-A IPC and Section 4 of POCSO Act, the statement of the victim was recorded under Section 164 Cr.PC by the learned Magistrate wherein she categorically detailed the entire occurrence as given by the complainant i.e. her father in which she again named all the accused including the respondents. Not only this, she also stated that she had been put in fear and threatened that in case she dared to disclose about the occurrence to anyone, her younger sister too would be kidnapped. While appearing in the Court below as PW-1, the victim reiterated all her allegations as well as the role played by each of the accused including the respondent-accused in the entire occurrence. It was thus urged that in the circumstances the trial court gravely erred in dismissing the application filed under Section 319 Cr.PC for summoning the respondents No.2 to 4 as additional accused.

Learned counsel for respondents No.2 to 4 on the other hand opposed the submissions made by learned counsel for the petitioner and submitted that the investigating agency after a thorough investigation had found the respondent-accused innocent and hence, the application, which was filed under Section 319 Cr.PC was rightly dismissed.

I have heard learned counsel for the parties as well as gone through other material available on record.

If the investigating agency for some reason fails to array one of the wrong doers as an accused, the Court cannot be expected to remain a mute

spectator. In the case in hand, there is sufficient evidence, which hints at the complicity of the respondents-accused, who were not sent up for trial by the investigating agency. In her testimony before the Court below, the prosecutrix has reiterated the allegations and the roles played by each of the accused in the entire occurrence. No doubt, there may not be any allegations of sexual misconduct against the three respondent-accused but the fact of the matter is that all three of them were active participants when the victim was forcibly lifted from the roof of her house by accused respondent-accused Lokesh and Rohit after being put to fear. Further, the victim was found lying unconscious on the vacant plot adjoining her house soon after the occurrence. I am unable to agree with the Court below that in view of no sexual assault/misconduct being alleged against the respondents-accused, they did not deserve to be summoned as an additional accused. It has come in the statements of both the prosecutrix recorded under Section 164 Cr.PC as well as in her testimony in the Court that after her forcible abduction she had become unconscious. Hence, an inference at this stage would have to be drawn that all the accused including the respondents were active conspirators in the crime in question.

Hence, after taking into consideration the totality of the facts and circumstances, this Court is satisfied that it is prima facie necessitating the summoning of respondents No.2 to 4 as additional accused.

As a sequel to the above, the impugned order dated 23.01.2019 is set aside and the present revision petition stands allowed.

12.02.2020
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes
Whether reportable?	Yes